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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV-92-003FR]

Nectarines and Peaches Grown in California; Finalize Revised Size, Maturity, Maturity Variance Procedure, and Container Marking Requirements for California Nectarines (M.O. 916) and California Peaches (M.O. 917)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting as a final rule, with appropriate changes, an interim final rule which revised size, maturity, maturity variance procedure, and container marking requirements for fresh nectarines and peaches grown in California effective May 15, 1992. Those revisions were designed to provide handlers with more marketing flexibility, and to promote the marketing of these fruits.

EFFECTIVE DATE: October 16, 1992.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2533–S, Washington, DC 20090–6456; telephone: (202) 720–5331, or Kurt J. Kimmel, Marketing Field Office, USDA/AMS, 2202 Monterey St., suite 102–B, Fresno, California 93721; telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order Nos. 916 and 917 (7 CFR parts 916 and 917) regulating the handling of nectarines and fresh pears and peaches grown in California. The orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Purusant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 300 California nectarine and peach handlers subject to regulation under the marketing orders covering nectarines and peaches grown in California, and about 1,800 producers of nectarines and peaches in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A majority of these handlers and producers may be classified as small entities.

The Nectarine Administrative Committee and the Peach Commodity Committee (hereinafter referred to as the committees) met January 10, 1992, and recommended revision of size, maturity, maturity variance procedure, and container marking requirements for fresh nectarines and peaches grown in California beginning with 1992 season shipments. The interim final rule generally incorporated the committees' recommendations regarding size, container marking, and maturity changes, but modified their recommendations concerning the maturity variance procedures to grant full authority to the Federal-State Inspection Service (FSIS) to make all determinations regarding maturity. The interim final rule was based upon the two committees' recommendations, information submitted by the committees, information received at a public meeting held by the Department last September to discuss the future of the California nectarine and peach marketing orders, and other available information.

The interim final rule was issued on May 12, 1992, and published in the **Federal Register** (57 FR 20735, May 15, 1992; 57 FR 31235, July, 14, 1992), with an effective date of May 15, 1992. That rule amended § § 916.350, 916.356, 917.442, and 917.459 of these marketing orders. That rule also provided a 30-day comment period which ended June 15, 1992. One comment was received.

Mr. Fitzgerald Kelly of Reedley, California, a nectarine and peach farmer/packer, filed a comment requesting that the container maturity marking requirements be changed, so that they apply to mature fruit only, and not to well matured fruit. Currently, containers of mature fruit must be marked "U.S. Mature", except that well matured fruit may instead be marked "California Well Matured". Mr. Kelly advises that since he ships mostly well matured fruit, the required marking of

containers of such fruit imposes an unnecessary burden on him, and that he is of the opinion that it would be adequate to only require that containers of "mature" fruit be marked. The container marking requirements currently in effect were unanimously recommended by the committees, and are designed to help buyers determine the maturity level of the fruit purchased. These container markings are intended to help handlers of well matured fruit to realize any price premiums which such fruit may bring. Such required marking also assists the committees in assuring compliance with the maturity requirements under the orders. Since requiring containers of well matured fruit to be marked helps meet these objectives, Mr. Kelly's request is denied.

The interim final rule relaxed the minimum maturity requirement to "mature" from the "well-matured" standard, and established a two-tiered maturity system. Fruit meeting the "mature" standard must meet the maturity requirements specified for U.S. No. 1 grade fruit, while fruit meeting the "well-matured" standard must meet the requirements specified for such standard under each marketing order. The relaxation was designed to provide growers and handlers greater flexibility in marketing their fruit, since they could ship fruit meeting either maturity standard.

Further, the interim final rule revised the maturity variance procedures used when changes to the color chip guide assigned to a peach or nectarine variety as an indicator of "well-matured" are considered. As revised, all final determinations of maturity are made by the FSIS, rather than the committees. This revision was somewhat different from the committees' recommendation that committee employees and industry members remain involved in maturity appeals procedures. This revision was designed to grant full authority to the FSIS to make all determinations regarding maturity, and to simplify the maturity variance procedures.

The interim final rule also established variety-specific size requirements for six new varieties of nectarines and three new peach varieties now produced in commercially significant quantities, and removed variety-specific size requirements for six varieties of nectarines and for six peach varieties which are no longer produced in commercially significant quantities. This action was designed to establish minimum size requirements for these fruits consistent with expected crop and market conditions.

In addition, the interim final rule required handlers to mark the maturity level of fruit on most containers. Handlers must mark the containers "U.S. Mature" if the fruit meets the maturity requirements of U.S. No. 1 grade; or instead may mark the containers "California Well Matured" if the fruit meets the "well-matured" requirements. As noted above, this requirement was designed to differentiate shipments of well-matured fruit from mature fruit, and to help shippers realize any price premiums which the well-matured fruit might bring, since such container markings inform buyers of the maturity level of the fruit purchased.

Following issuance of the container marking requirements on an expedited basis, the Department learned that due to space limitations on the containers some nectarine and peach handlers were having difficulty placing the words "U.S. Mature" and "California Well Matured" on the containers. To help resolve that problem, the Department advised nectarine and peach handlers that the abbreviation "US MAT" could be used instead of the words "U.S. Mature", and abbreviation "CA WELL MAT" could be used instead of "California Well Matured". These abbreviations are currently being successfully used by nectarine and peach handlers, and their meaning is well known by the industry and the trade. Therefore, the container marking regulations in § 916.350(a)(3) and § 917.442(a)(3) are amended to incorporate these abbreviations into the language of these sections along with words currently specified.

It is the Department's view that this action will continue to provide handlers and growers additional opportunities for marketing the 1992 season California nectarine and peach crops.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committees, and other information, it is found that finalizing the interim final rule, as published in the **Federal Register** (57 FR 20735, May 15, 1992; 57 FR 31235, July 14, 1992), with the changes herein specified, will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

Accordingly, the interim final rule amending 7 CFR parts 916 [§ § 916.350 and 916.356] and 917 [§ § 917.442 and 917.459] which was published at 57 FR 20735 on May 15, 1992, and at 57 FR 31235 on July 14, 1992, is adopted as final rule with the following changes.

1. The authority citation for 7 CFR parts 916 and 917 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 916—NECTARINES GROWN IN CALIFORNIA

2. Section 916.350(a)(3) is revised to read as follows:

Note: This section will appear in the annual Code of Federal Regulations.

§ 916.350 California nectarine container and pack regulation.

(a) * * *

(3) Each package or container of nectarines, except for consumer packages in master containers and consumer packages mailed directly to consumers, shall bear on one outside end in plain sight and in plain letters the words "U.S. Mature" or "US MAT" if such nectarines are mature as defined in the United States Standards for Grades of Nectarines (7 CFR 51.3145 through 51.3160); or may instead bear on one outside end in plain sight and in plain letters the words "California Well Matured" or "CA WELL MAT" if such nectarines are well matured as defined in § 916.356.

* * * * *

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

3. Section 917.442(a)(3) is revised to read as follows:

Note: This section will appear in the annual Code of Federal Regulations.

§ 917.442 California peach container and pack regulation.

(a) * * *

(3) Each package or container of peaches, except for consumer packages in master containers and consumer packages mailed directly to consumers, shall bear on one outside end in plain sight and in plain letters the words "U.S. Mature" or "US MAT" if such peaches are mature as defined in the United States Standards for Grades of Peaches (7 CFR 51.1210 through 51.1223); or may instead bear on one outside end in plain

sight and in plain letters the words "California Well Matured" or "CA WELL MAT" if such peaches are well matured as defined in § 917.459 of this part.

* * * * *

Dated: September 10, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92-22285 Filed 9-15-92; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 917

[Docket No. FV-92-094IFR]

Expenses for Marketing Order Covering Fresh Pears Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures for the 1992–93 fiscal year (March 1–February 28) under Marketing Order No. 917. Authorization of this budget will permit the Pear Commodity Committee (committee), the agency responsible for the administration of the order, to finance several research projects from operating reserve funds. An annual budget of expenses is prepared by the committee and submitted to the Department of Agriculture (Department) for approval.

DATES: Effective beginning March 1, 1992, through February 28, 1993. Comments reviewed by October 16, 1992, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted. Copies of material received will be made available for public inspection in the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Christian Nissen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–5127.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Marketing Order No. 917 (7 CFR part 917) regulating the handling of fresh pears and peaches grown in California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action authorizes expenditures for the 1992–93 fiscal year (March 1, 1992–February 28, 1993). This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this interim final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 45 handlers of California pears subject to regulation under Marketing Order No. 917 and about 300 producers of pears in California. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those with annual receipts of less than $3,500,000 and small agricultural producers have been defined as those having annual receipts of less than $500,000. The majority of these handlers and producers may be classified as small entities.

The budget of expenses for the 1992–93 fiscal period was prepared by the committee and submitted to the Department for approval. The members of the committee are handlers and producers of the regulated commodities. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local areas, and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The committee met June 26, 1992, and unanimously recommended 1992–93 expenditures of $86,509 be allocated from the committee's operating reserve funds to conduct several research projects and to provide for nominal committee expenses. The committee had $86,509 in reserves as of March 1, 1992, an amount within the maximum authorized. Budgeted expenditures represent the entire carryover for the committee. No provision for assessments was made. In comparison, 1991–92 fiscal period actual expenditures were $1,157,620 and the assessment rate was $0.25 per 36-pound carton or equivalent.

The absence of assessments and the differences between this budget and the budget for the 1991–92 fiscal period are due to the fact that the committee also voted to suspend the marketing order at the conclusion of this season. The budget is designed to utilize the total amount of funds remaining in the committee's reserve during this fiscal season.

Major committee expenditures proposed for 1992–93 are $86,391 for research projects and $118 for nominal committee expenses. This compares with major committee expenditures proposed for 1991–92, which were: Salaries and employee benefits, $88,279; market development and promotion, $1,140,501; and uncollected assessment accounts, $5,000. Total reserves will be sufficient to cover all anticipated 1992–93 expenditures.

Since the expenses will be financed from the committee's operating reserve, no additional costs will be imposed on

handlers. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is hereby found that this rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal year began March 1, 1992; (3) the industry is aware of this action which was unanimously recommended by the Committee at its public meeting; and (4) this interim final rule provides a 30 day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Parts 917

Marketing agreements, Pears, Peaches, Plums, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, this interim final rule amends 7 CFR part 917 as follows:

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 917 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 917.255 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 917.255 Expenses.

Expenses of $86,509 by the Pear Commodity Committee are authorized for the fiscal year ending February 28, 1993.

Dated: September 10, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–22293 Filed 9–15–92; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 920

[Docket No. FV–91–448]

Kiwifruit Grown in California; Final Rule Revising Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule will relax the size requirement for kiwifruit packed in volume-filled containers. Currently, size designations for volume-filled containers are defined in terms of numerical counts per 8-pound sample. This change permits the weight of individual samples to be up to 4 ounces less than the specified 8 pounds. This action is intended to result in reduced packing costs.

EFFECTIVE DATE: September 21, 1992.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–720–8139.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement and Order No. 920 (7 CFR part 920), regulating the handling of kiwifruit grown in California. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 handlers of California kiwifruit subject to regulation under the marketing order, and approximately 850 producers in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the producers and about 30 to 40 percent of the handlers of California kiwifruit may be classified as small entities.

The 1990 fresh utilized production of California kiwifruit totaled 9.7 million trays and tray equivalents. This was a 5 percent decrease in production from the previous year and 1 million trays less than what was projected for the season. For the past 10 years, kiwifruit production has increased in California and is expected to increase slightly this season to a total of about 10 million trays. Most of the crop is shipped to fresh markets with only a small volume utilized by processors. It is estimated that about 92 percent of the 1991 crop will be consumed in Canada and the United States. Most of the remaining 8 percent is expected to be exported to Hong Kong, Korea, and Mexico.

Under the terms of the marketing order, fresh market shipments of kiwifruit are required to be inspected and are subject to grade, size, maturity, pack, and container requirements. The handling requirements for fresh California kiwifruit are specified in 7 CFR 920.302 [50 FR 36568, September 9, 1985, as amended at 54 FR 41436, October 10, 1989, 55 FR 19717, May 16,

1990, and 55 FR 42179 October 10, 1990]. Current requirements include specifications that such shipments be at least Size 49 and contain a minimum of 6.5 percent soluble solids. Also included in the handling regulations are a minimum grade requirement and a number of pack and container requirements, including minimum net weight requirements for kiwifruit packed in trays, and uniform size requirements for fruit packed in volume-filled containers.

At a meeting held on April 26, 1991, the Kiwifruit Administrative Committee (KAC), the agency responsible for local administration of the marketing order, recommended changes in the existing size requirements.

The KAC voted 10 to 1 to recommend amending the size designations established for kiwifruit packed in volume-filled containers, as shown in subparagraph (a)(4)(ii) of 920.302 (previously (a)(4)(iii)). Such amendment was proposed in the **Federal Register** publication of September 26, 1991 (56 FR 48764). These size designations are defined by numerical counts, which establish maximum numbers of fruit per 8-pound sample for each of the 9 established sizes. The recommendation permits individual samples to be up to 4 ounces below the specified 8-pound sample weight as long as the average weight of all samples from a given lot is least 8 pounds.

Each size designation has a maximum number of fruit permitted per 8-pound sample. Currently during inspection, the inspector takes from a container the maximum number of fruit permitted for a particular size. For example, Size 30 fruit is defined as having a maximum of 32 pieces of fruit in an 8-pound sample. The inspector takes 32 pieces of fruit as a sample, and weighs the sample. If the sample weighs 8 pounds or more, it is consider to meet the pack requirements; any sample below that weight is considered to fail those requirements. The revision permits a weight variance of up to 4 ounces below the specified 8 pounds for individual samples. However, the average weight of all samples has to be at least 8 pounds for the lot to pass.

The effect of this revision is minimal and provides needed flexibility in the current size requirements, and reduces additional repacking costs due to slight variances of weight that occur during packing.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the September 26, 1991, **Federal Register** (56 FR 48762) and afforded interested persons until October 28, 1991, to submit written comments. No comments were received. A final rule was published in the December 13, 1991, **Federal Register** (56 FR 64941) which finalized the provisions of the September 26 proposal with the exception of the proposed revision of size designations. The proposed revision of size designations is made final in this rule. In addition, section 8e of the Act provides that whenever specified commodities, including kiwifruit, are regulated under a federal marketing order, imports of these commodities are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for domestically produced commodities. Accordingly, an appropriate change to the kiwifruit import regulation (§ 944.550 (56 FR 10503)) will also be published in the **Federal Register**.

After consideration of all relevant matter presented, including the information and recommendations submitted by the KAC and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the shipping season has started and therefore this rule should be implemented as soon as possible. Further, handlers are aware of this rule, which was recommended by the KAC at a public meeting.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements.

For the reasons set forth in the preamble, 7 CFR part 920 is hereby amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 920 continues to read as follows:

Authority: Secs. 1–19, 48 Stat 31, as amended; 7 U.S.C. 601–674.

2. Section 920.302(a)(4)(ii) is revised to read as follows:

Note: This section will appear in the Code of Federal Regulations.

§ 920.302 Grade, size, pack, and container regulations.

(a)* * *

(4)* * *

(ii) Kiwifruit packed in bags, volume filled or bulk containers may not vary more than ½-inch (12.7 mm) in diameter if Size 30 or larger; not more than ⅜-inch (9.5 mm) in diameter if Size 33, 36, 39, or 42; and not more than ¼-inch in diameter (6.4 mm) if Size 45/46 or smaller. Such containers shall be marked with a numerical count size designation as shown in Column 1 or the following table, and the number of fruit per 8-pound sample shall not exceed the corresponding number shown in Column 2 of the table:

Column 1, numerical count size designation	Column 2, maximum number of fruit per 8-pound sample
25	27
27/28	30
30	32
33	35
36	40
39	45
42	50
45/46	57
49	60

The average weight of all sample units in a lot must weigh at least 8 pounds, but no sample unit may be more than 4 ounces less than 8 pounds.

* * * * *

Dated: September 10, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–22290 Filed 9–15–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 944

[Docket No. FV–92–071IFR]

Kiwifruit Imported Into the United States; Relaxation of Quality Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule revises the quality requirements for kiwifruit imported into the United States. Such fruit is currently subject to U.S. No. 1 grade requirements, except for those relating to cleanness and shape. This rule increases the allowance for misshapen kiwifruit. This action is intended to make the import requirements comparable to those in effect for domestically produced kiwifruit, consistent with section 8e of the Agricultural Marketing Agreement Act of 1937.

DATES: This action is effective September 21, 1992. Comments which are received by October 16, 1992 will be considered before the issuance of any final rule.

ADDRESSES: Written comments concerning this rule should be submitted in triplicate to the Docket Clerk, F&V Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. All comments submitted will be made available for public inspection in the above office during regular business hours. Comments should reference the docket number and the date and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 690–3670.

SUPPLEMENTARY INFORMATION: This rule is issued under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act, which provides that whenever certain specified commodities, including kiwifruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality or maturity requirements as those that are in effect for a domestically produced commodity, subject to concurrence by the United States Trade Representative (USTR).

This interim final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Import regulations issued under the Act are based on those established under Federal marketing orders. Thus, they should also have small entity orientation, and impact both small and large business entities in a manner comparable to rules issued under such marketing orders.

There are approximately 75 importers of kiwifruit subject to regulation under this action. Small agricultural service firms, which include kiwifruit importers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $3,500,000. The majority of kiwifruit importers may be classified as small entities.

This action is necessary because section 8e of the Act provides that when certain domestically produced commodities, including kiwifruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality or maturity requirements. This interim final rule revises current import requirements so that imported kiwifruit will meet the same minimum quality requirements as domestically produced kiwifruit that is grown in California and regulated under Marketing Order No. 920 (7 CFR part 920). The domestic handling regulation is being changed in separate rulemaking by relaxing the minimum quality requirements to permit an additional 7 percent tolerance specifically for "badly misshapen" kiwifruit.

Minimum quality requirements for imported kiwifruit are based on the domestic handling regulation under the marketing order, which provides that fresh shipments of kiwifruit be at least KAC No. 1 quality. The term "KAC No. 1 quality" means fruit that is subject to U.S. No. 1 grade requirements, except for those relating to cleanness and shape. The Standards list a number of grade defects, which include bruises, growth cracks, misshapen fruit and discoloration. Imported kiwifruit must meet all the requirements of the U.S. No. 1 grade, except that such fruit shall be "not badly misshapen" as defined in the Standards. According to the Standards, "badly misshapen" means the fruit is so decidedly deformed that the appearance is seriously affected.

Currently, an 8 percent tolerance is allowed for fruit which fails to meet the specified quality requirements. This action relaxes the minimum quality requirements to permit an additional 7 percent tolerance specifically for "badly misshapen" kiwifruit. The additional tolerance for misshapen kiwifruit will allow more kiwifruit to be imported into the United States.

Based on available information, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant information available it is found that this action, as set forth below, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is found and determined upon good cause that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exits for not postponing the effective date of this action until 30 days after publication in the **Federal Register.** Kiwifruit is currently being imported into the U.S. and marketed, subject to the established size, quality and maturity requirements. To be consistent with section 8e of the Act, which provides that domestic and imported kiwifruits be subject to the same requirements, this action should become effective as soon as possible.

A 30-comment period is provided to allow interested persons to respond to this interim final rule. All written comments received within the comment period will be considered before a final determination is made on this matter.

In accordance with section 8e of the Act, the USTR has concurred with the issuance of this interim final rule.

List of Subjects in 7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, and Oranges.

For the reasons set forth in the preamble, 7 CFR part 944 is amended as follows:

PART 944—FRUITS; IMPORT REGULATIONS

1. The authority citation for 7 CFR part 944 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 944.550 is amended by revising paragraph (a) to read as follows:

Note: This section will appear in the annual Code of Federal Regulations.

§ 944.550 Kiwifruit import regulation.

(a) Pursuant to section 8e of the Agricultural Marketing Agreement Act of 1937, as amended, the importation into the United States of any kiwifruit is prohibited unless such kiwifruit meets all the requirements of a U.S. No. 1 grade as defined in the United States Standards for Grades of Kiwifruit (7 CFR 51.2335 through 51.2340), except that the kiwifruit shall be "not badly misshapen," and an additional tolerance of 7 percent is provided for kiwifruit that is "badly misshapen." Such fruit shall be at least Size 49, which means there shall be a maximum of 60 pieces of fruit and to average weight of all samples in a specific lot must weigh at least 8 pounds, provided that no individual sample may be less than 7 pounds 12 ounces in weight.

* * * * *

Dated: September 9, 1992.

William W. Paterson,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92-22298 Filed 9-15-92; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 944

[Docket No. FV-91-284]

Kiwifruit Imported Into the United States; Relaxation of Minimum Size Requirement

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule relaxes the minimum size requirement for imported kiwifruit. Currently, size designations are defined in terms of numerical counts which establish maximum numbers of fruit per 8-pound sample. The intent of this action is to permit the weight of individual samples to be up to 4 ounces less than the specified minimum net weight requirement. This action should benefit kiwifruit producers, handlers, importers, and consumers.

DATES: The interim final rule is effective September 21, 1992; comments received by October 16, 1992 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the Office of the Docket Clerk during regular business hours. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone (202) 690-3670.

SUPPLEMENTARY INFORMATION: This rule is issued under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act, which provides that whenever certain specified commodities, including kiwifruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality or maturity requirements as those in effect for a domestically produced commodity.

This interim final rule has been reviewed by the Department of Agriculture in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Import regulations issued under the Act are based on those established under Federal marketing orders. Thus, they should also have small entity orientation, and impact both small and large business entities in a manner comparable to rules issued under such marketing orders.

There are approximately 75 importers of kiwifruit subject to regulation under this action. Small agricultural service firms, which include kiwifruit importers, have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $3,500,000. The majority of the importers of kiwifruit may be classified as small entities.

This action is being initiated by the U.S. Department of Agriculture because section 8e of the Act was amended to require imported kiwifruit to meet the same or comparable requirements as those established under a domestic marketing order. Under this interim final rule, imported kiwifruit will have to meet the same minimum size requirement as domestically produced kiwifruit that is grown in California and regulated under Marketing Order No. 920 (7 CFR part 920).

The current import requirements for imported kiwifruit appear in § 944.550 as published in the **Federal Register** as an interim final rule on March 13, 1991 (56 FR 10503).

Under the terms of the marketing order, fresh market shipments of kiwifruit are required to be inspected and are subject to grade, size, maturity, pack and container requirements. Current requirements include specifications that such shipments be at least Size 49 and contain a minimum of 6.5 percent soluble solids. Also included in the handling regulation are a number of pack and container requirements. However, pack and container requirements that are present in the domestic handling regulation are not applicable to imports because they are not authorized by section 8e.

The size requirements for California kiwifruit packed in volume filled containers are being revised to permit the weight of individual samples to be up to 4 ounces less than the specified 8 pounds. A final rule is being published in this issue of the **Federal Register**. This rule relaxes the minimum size requirement established for imported kiwifruit. Size designations are defined by numerical counts, which establish maximum numbers of fruit per 8-pound sample. This action permits individual samples to be up to 4 ounces below the specified minimum net weight requirement for an 8-pound sample as long as the average weight of all samples from a given lot is at least 8 pounds. For example, Size 49 fruit, the minimum size allowed, is defined as having a maximum of 60 pieces of fruit in an 8-pound sample. During an

inspection, the inspector takes 60 pieces of fruit as a sample, and weighs the sample. If the sample weighs 8 pounds or more, it is considered to meet the size requirements; any sample below that weight is considered to fail those requirements. The revision will permit a weight variance of up to 4 ounces below the specified 8 pounds for individual samples. However, the average weight of all samples from a specific lot has to be at least 8 pounds for the lot to pass.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is found and determined upon good cause that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule relaxing kiwifruit size requirements into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register. Kiwifruit is currently being imported into the U.S. is now being marketed, subject to the established grade, size, quality and maturity requirements. To be consistent with section 8e of the Act, which provides that domestic and imported kiwifruit be subject to comparable requirements, this action should become effective as soon as possible.

A 30-day comment period is provided to allow interested persons to respond to this interim final rule. All written comments received within the comment period will be considered before a final determination is made on this matter.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this interim final rule.

List of Subjects in 7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth in the preamble, 7 CFR part 944 is amended as follows:

PART 944—FRUITS; IMPORT REGULATIONS

1. The authority citation for 7 CFR part 944 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 944.550 is amended by revising paragraph (a) to read as follows:

§ 944.550 Kiwifruit import regulation.

(a) Pursuant to section 8e of the Agricultural Marketing Agreement Act of 1937, as amended, the importation into the United States of any kiwifruit is prohibited unless such kiwifruit meet all the requirements of a U.S. No. 1 grade, except that such fruit shall be "not badly misshapen" as defined in the United States Standards for Grades of Kiwifruit (7 CFR 51.2335 through 51.2340). Such fruit shall be at least Size 49, which means there shall be a maximum of 60 pieces of fruit and to average weight of all samples in a specific lot must be at least 8 pounds, provided that no individual sample may be less than 7 pounds 12 ounces in weight.

* * * * *

Dated: September 10, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–22291 Filed 9–15–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Parts 966 and 980

[Docket No. FV–91–434FR]

Tomatoes Grown in Florida, and Tomatoes Imported Into the United States; Change in Effective Date for Domestic and Imported Tomato Handling Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture (Department) is adopting, without modification, as a final rule the provisions of an interim final rule which changed the effective period of the handling regulations in effect for fresh market shipments of Florida tomatoes and imported tomatoes from October 10 through June 30 to October 10 through June 15 of each season. The change in the effective period applicable to domestic tomatoes is based on a recommendation of the Florida Tomato Committee (committee), which is the agency responsible for local administration of the order. The change applicable to tomatoes offered for importation is necessary under section 8e of the Agricultural Marketing Agreement Act of 1937.

EFFECTIVE DATE: September 16, 1992.

FOR FURTHER INFORMATION CONTACT: John R. Toth, Officer-in-Charge, Southeast Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, P.O. Box 2276, Winter Haven, FL, 33883–2276; telephone: (813) 299–4770 or Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S., P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2170.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 125 and Marketing Order No. 966 (7 CFR part 966) (order), both as amended, regulating the handling of tomatoes grown in Florida. The order is authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions is order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 50 handlers of Florida tomatoes subject to regulation under the marketing order and approximately 250 producers in the production area. In addition, there are approximately 70 importers of tomatoes who are subject to the tomato import regulations. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $3,500,000 and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of the handlers, producers, and importers of tomatoes may be classified as small entities.

Prior to the interim final rule, tomatoes produced in the production area and shipped to fresh market channels were required to meet certain handling requirements in effect from October 10 through June 30 of each year. The production area is defined as the counties of Pinellas, Hillsborough, Polk, Osceola, and Brevard and all counties situated south of the before-mentioned counties.

The committee met on September 5, 1991, and unanimously recommended changing the end of the effective period of the handling regulations from June 30 to June 15.

Producers in the production area harvest tomatoes into late June. In recent years, tomatoes produced in areas of North Florida which are not regulated under the order also have been available in late June and have been in direct competition with tomatoes produced in the production area. Abundant supplies of North Florida tomatoes were expected to be again available this season.

Such tomatoes produced outside the production area are not covered by the marketing order and, therefore, are not required to meet the grade, size, pack, and container requirements established for tomatoes grown in the production area. According to the committee, handlers regulated under the marketing order believed that having to meet the requirements of the handling regulations during the last two weeks of June placed them at a competitive disadvantage. Because tomatoes produced in North Florida are not regulated, handlers of such tomatoes do not have to pay inspection and assessment fees, and thus, are able to sell their tomatoes at lower prices. The committee believes that ending the handling requirements two weeks early would allow production area tomatoes to successfully compete in the marketplace with tomatoes produced in other areas.

Section 8e of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for tomatoes under a domestic marketing order, imported tomatoes must meet the same or comparable requirements. Because the interim final rule changed the effective period of the domestic handling regulations, a corresponding change was made in the tomato import regulations. In accordance with section 8e of the Act, the United States Trade Representative has concurred with this action.

To avoid duplication of regulations, § 966.323(f), Applicability to imports, was removed from the domestic handling regulations and the requirements therein are provided in 7 CFR 980.212, Import Regulations; tomatoes. That regulation was changed to reflect this action.

An interim final rule revising the domestic handling regulations was published in the **Federal Register** on June 19, 1992 (57 FR 27350). A 30-day comment period was provided which allowed an opportunity for interested persons to submit written comments. The comment period ended on July 20, 1992, and no comments were received.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The interim final rule changed the effective date beginning with the1991–92 season, which has already ended; (2) tomato handlers will need no additional time to comply with the revised requirements next season; (3) the interim final rule provided a 30-day comment period and no comments were received; and (4) no useful purpose will be served by delaying the effective date until 30 days after publication.

List of Subjects

7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

7 CFR Part 980

Import regulations, Tomatoes.

For the reasons set forth in the preamble, 7 CFR parts 966 and 980 are amended to read as follows:

1. The authority citation for 7 CFR parts 966 and 980 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 966—TOMATOES GROWN IN FLORIDA

2. Accordingly, the interim final rule amending the provisions of § 966.323, published in the **Federal Register** [57 FR 27351, June 19, 1992], is adopted as a final rule without change.

PART 980—VEGETABLES; IMPORT REGULATIONS

3. Accordingly, the interim final rule amending the provisions of § 980.212, published in the **Federal Register** (57 FR 27352, June 19, 1992), is adopted as a final rule without change.

Note: These sections will appear in the annual Code of Federal Regulations.

Dated: September 10, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–22289 Filed 9–15–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 967

[FV–92–082IFR]

Handling Regulation for Celery Grown in Florida

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This action establishes the quantity of Florida celery which handlers may ship to fresh markets during the 1992–93 marketing season at 6,612,910 crates or 100 percent of producers' base quantities. The 1992–93 marketing season covers the period August 1, 1992, through July 31, 1993. This interim final rule is intended to lend stability to the industry, and, thus, help provide consumers with an adequate supply of the product. As in past marketing seasons, the limitation on the quantity of Florida celery handled for fresh shipment is not expected to restrict the quantity of Florida celery actually produced or shipped to fresh markets, because production and shipments are anticipated to be less than the marketable quantity. This action was

unanimously recommended by the Florida Celery Committee (Committee), the agency responsible for local administration of the order.

DATES: This action is effective September 16, 1992. Comments which are received by October 16, 1992 will be considered prior to any finalization of this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and will be made available for public inspection in the Office of the Docket Clerk during regular business hours. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Richard Lower, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2020.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 967 7 CFR part 967, both as amended, regulating the handling of celery grown in Florida. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended 7 U.S.C. 601–674, hereinafter referred to as the Act.

This interim final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291, and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action establishes the quantity of Florida celery (at 6,612,910 crates or 100 percent of producers' base quantities) which handlers may ship to fresh markets during the 1992–93 marketing season which covers the period August 1, 1992 through July 31, 1993. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are an estimated seven handlers of celery grown in Florida subject to regulation under the celery marketing order, and approximately seven producers of celery in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of celery handlers and producers may be classified as small entities.

This action is based upon a recommendation and information submitted by the Committee and upon other available information. The Committee met on June 10, 1992, and unanimously recommended a marketable quantity of 6,612,910 crates of fresh celery for the 1992–93 marketing season beginning August 1, 1992. Additionally, a uniform percentage of 100 percent was recommended which will allow each producer, registered pursuant to § 967.37(f) of the order, to market 100 percent of such producer's base quantity. These recommendations were based on an appraisal of expected 1992–93 supply and demand.

As required by § 967.37(d)(1) of the order, a reserve of 6 percent (396,775 crates) of the 1991–92 total base quantities was made available to new producers and for increases for existing producers. As of May 1, 1992, the deadline for requesting changes in base quantities, no applications for new base quantities or adjustments in base quantities from current producers were received by the Florida Celery Committee.

The interim final rule will limit the quantity of Florida celery which handlers may purchase from producers and ship to fresh markets during the 1992–93 marketing season to 6,612,910 crates. This marketable quantity is slightly reduced from the 1991–92 marketable quantity, but is more than the average number of crates marketed fresh during the 1987–88 through 1991–92 seasons. It is expected that such quantity will be more than actual shipments for the 1992–93 season. Thus, the 6,612,910 crate marketable quantity is not expected to restrict the amount of Florida celery which growers produce or the amount of celery which handlers ship. For these reasons, the interim final rule should lend stability to the industry, and, thus, help provide consumers with an adequate supply of the product.

On the basis on the foregoing, the Administrator of the AMS has determined that issuance of this interim final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of the information and recommendations submitted by the Committee and other available information, is found that this interim final rule will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impractical, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action was recommended at a public meeting and all interested persons had an opportunity to express their views and provide input; (2) it is desirable to have this action in place as soon as possible because celery planting begins in July and the beginning of the 1992–93 crop year is August 1, 1992; and (3) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 967

Celery, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 967 is amended as follows:

PART 967—CELERY GROWN IN FLORIDA

1. The authority citation for 7 CFR part 967 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Subpart—Administrative Rules and Regulations

2. A new section 967.327 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 967.327 Handling regulation, marketable quantity, and uniform percentage for the 1992–93 season beginning August 1, 1992.

(a) The marketable quantity established under § 967.36(a) of this part is 6,612,910 crates of celery.

(b) As provided in § 967.38(a) of this part, the uniform percentage shall be 100 percent.

(c) Pursuant to § 967.36(b) of this part, no handler shall handle any harvested celery unless it is within the marketable allotment of a producer who has a base quantity and such producer authorizes the first handler thereof to handle it.

(d) As required by § 967.37(d)(1) of this part, a reserve of six percent of the total base quantities is hereby authorized for:

(1) New producers, and

(2) Increases for existing base quantity holders.

(e) Terms used herein shall have the same meaning as when used in the said marketing agreement and order.

Dated: September 10, 1992.

Martha B. Ransom,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–22292 Filed 9–15–92; 8:45 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Part 1956

Processing of Debt Settlement Cases

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations regarding the internal processing of debt settlement cases to clarify which forms are to be submitted to the Finance Office for processing and which forms can be processed by the FmHA field offices. This action is necessary due to Agency provisions which require debt settlement forms coded as "Compromise," "Adjustment," or "Bankruptcy" to be processed by the Finance Office. The intended effect is to ensure correct processing of all debt settlements.

EFFECTIVE DATE: September 16, 1992.

FOR FURTHER INFORMATION CONTACT: Kris Dilger, Systems Accountant, Accounting Policy and Procedures Section II, FmHA, USDA, Finance Office, 1520 Market Street, St. Louis, Missouri 63103, telephone FTS 262–6026 or commercial (314) 539–6026.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and since this action has no impact on FmHA borrowers or other members of the public, it has been determined to be exempt from those requirements because it involves only internal Agency management. It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts, notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking since it involves only internal Agency management and publication for comment is unnecessary. Specifically, the procedures are revised to clarify the processing procedures for Forms FmHA 1956–1 and FmHA 1956–2.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an environmental impact statement is not required.

Programs Affected

These programs/activities are listed in the Catalog of Federal Domestic Assistance under the following numbers:

10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.410 Low Income Housing Loans

Intergovernmental Consultation

For the reasons set forth in the final rule related to notice 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials. This action does not directly affect any FmHA programs or projects which are subject to intergovernmental consultation.

The proposed regulation has been reviewed in light of Executive Order 12778 and meets the applicable standards provided in sections 2(a) and (2)(b)(2) of that Order. Provisions within this part which are inconsistent with state law are controlling. All administrative remedies pursuant to 7 CFR part 1900 subpart B must be exhausted prior to filing suit.

List of Subjects in 7 CFR Part 1956

Accounting, Loan programs—Agriculture, Rural areas.

Accordingly, part 1956, chapter XVIII, title 7, of the Code of Federal Regulations is amended as follows:

PART 1956—DEBT SETTLEMENT

1. The authority citation for part 1956 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Debt Settlement—Farmer Programs and Housing

2. Section 1956.58 is amended by revising paragraph (b)(1) to read as follows:

§ 1956.58 Approval or rejection.

* * * * *

(b) * * *

(1) Execute completed Form FmHA 1956–1 or Form FmHA 1956–2, whichever is applicable. Process the Forms FmHA 1956–1 and FmHA 1956–2 in accordance with the applicable forms manual insert. If a "Compromise," "Adjustment," or "Bankruptcy" is involved, the Finance Office must process the form.

* * * * *

Dated: June 26, 1992.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 92–22311 Filed 9–15–92; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-17-AD; Amendment 39-8313; AD 92-16-04]

Airworthiness Directives; Aerospatiale Model ATR42 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to all Aerospatiale Model ATR42 series airplanes, that currently requires modification or replacement of certain fuselage and wing structural components. This amendment will provide alternative methods for accomplishing certain of those modification and replacement requirements. This amendment is prompted by an evaluation of recently developed methods for modification and replacement of the subject structural components. The actions specified by this AD are intended to prevent failure of the structural components of the fuselage and wing.

DATES: Effective October 21, 1992. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 21, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Lium, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227-1112; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by revising AD 89-25-12, Amendment 39-6414 (54 FR 50343, December 6, 1989), which is applicable to all Aerospatiale Model ATR42 series airplanes, was published in the **Federal Register** on March 5, 1992 (57 FR 7895). That action proposed to provide alternative methods for accomplishing certain currently required modification and replacement requirements.

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

Paragraph (h) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

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

The FAA estimates that 16 airplanes of U.S. registry will be affected by this AD. The entire cost of the required modifications and replacements will be borne by the manufacturer; therefore, there is no cost impact of the AD on U.S. operators.

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-6414 (54 FR 50343, December 6, 1989), and by adding a new airworthiness directive (AD), amendment 39-8313, to read as follows:

92-16-04. Aerospatiale: Amendment 39-8313. Docket 92-NM-17-AD. Revises AD 89-25-12, Amendment 39-6414.

Applicability: Model ATR42 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the structural components of the fuselage and wing, accomplish the following:

(a) For airplane Serial Numbers 003 through 151, inclusive: Reinforce fuselage frame 26 in accordance with Aerospatiale Service Bulletin ATR42-53-0042, dated May 3, 1989; or revision 1, dated April 22, 1991.

(b) For airplane Serial Numbers 003 through 032, inclusive; 034; and 035: Reinforce the fuselage secondary frames in accordance with Aerospatiale Service Bulletin ATR42-53-0023, revision 2, dated May 25, 1989.

(c) For airplane Serial Numbers 003 through 059, inclusive: Perform a cold expansion of the outer wing lower skin attach fastener holes in accordance with Aerospatiale Service Bulletin ATR42-57-0010, revision 1, dated May 20, 1989; or revision 2, dated April 15, 1991.

(d) For airplane Serial Numbers 003 through 071, inclusive: Reinforce fuselage frames 24 and 28 in accordance with Aerospatiale Service Bulletin ATR42-53-0004, revision 4, dated July 25, 1989.

(e) For airplane Serial Numbers 003 through 084, inclusive; 086; 087; and 089 through 093, inclusive: Perform a cold expansion of attach holes and reinforce wing/fuselage junction fittings in accordance with Aerospatiale Service Bulletin ATR42-53-0031, revision 1, dated May 20, 1989; or revision 2, dated May 31, 1990; or revision 3, dated February 19, 1991.

(f) For airplane Serial Numbers 003 through 119, inclusive: Perform a cold expansion of the wing front and rear spar attach holes in accordance with Aerospatiale Service Bulletin ATR42-57-0021, revision 1, dated May 20, 1989; or revision 2, dated September 25, 1990; or revision 3, dated April 10, 1991; or revision 4, dated August 28, 1991.

(g) For airplane Serial Numbers 003 through 151, inclusive: Replace the wing center box, in accordance with Aerospatiale Service Bulletin ATR42-57-0027, revision 2, dated July 6, 1989; or revision 3, dated March 27, 1991; or revision 4, dated August 23, 1991; or revision 5, dated October 22, 1991.

(h) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may

be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

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

(i) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(j) The reinforcement, replacement, and the cold expansion shall be done in accordance with the following Aerospatiale service bulletins, which contain the specified effective pages:

Service bulletin referenced and date	Page No.	Revision level shown on page	Date shown on page
ATR42-53-0042, May 3, 1989	1-42	Original	May 3, 1989.
ATR42-53-0042, Revision 1, Apr. 22, 1991.	3-40, 42	Original	May 3, 1989.
	1-2, 41	1	Apr. 22, 1991.
ATR42-53-0023, Revision 2, May 25, 1989	3-8, 10-26, 28-50, 52-53, 55-64, 66-78, 81-200, 203.	Original	July 26, 1988.
	2, 9, 27, 51, 54	1	Jan. 26, 1989.
	1, 65, 79-80, 201-202	2	May 25, 1989.
ATR42-57-0010, Revision 1, May 20, 1989	2-5, 14, 20-38	Original	Apr. 18, 1989.
	1, 6-13, 15-19, 39-40	1	May 20, 1989.
ATR42-57-0010, Revision 2, Apr. 15, 1991	5, 14, 21-38	Original	Apr. 18, 1989.
	6-13, 15, 17-19	1	May 20, 1989.
	1-4, 16, 20, 39, 40	2	Apr. 15, 1991.
ATR42-53-0004, Revision 4, July 25, 1989	3-8, 13-20, 25-30, 33-34	Original	Sept. 2, 1988.
	2, 11	2	Feb. 16, 1989.
	9, 12, 21-22, 31-32, 35-36	3	May 25, 1989.
	1, 10, 23-24, 37	4	July 25, 1989.
ATR42-53-0031, Revision 1, May 20, 1989	2-7, 10-29	Original	Jan. 13, 1989.
	1, 8-9	1	May 20, 1989.
ATR42-53-0031, Revision 2, May 31, 1990	15-17, 19-28	Original	Jan. 13, 1989.
	1-14, 18, 29	2	May 31, 1990.
ATR42-53-0031, Revision 3, Feb. 19, 1991	15-16, 17, 19-28	Original	Jan. 13, 1989.
	3-14, 18, 29	2	May 31, 1990.
	1-2, 15-16 bis	3	Feb. 19, 1991.
ATR42-57-0021, Revision 1, May 20, 1989	3-6, 11-21	Original	Apr. 18, 1989.
	1-2, 7-10	1	May 20, 1989.
ATR42-57-0021, Revision 2, Sept. 25, 1990	1-23	2	Sept. 25, 1990.
ATR42-57-0021, Revision 3, Apr. 10, 1991	2, 4, 7-10, 12-22	2	Sept. 25, 1990.
	1, 3, 5-6, 11, 23	3	Apr. 10, 1991.
ATR42-57-0021, Revision 4, Aug. 28, 1991	7-9, 13-22	2	Sept. 25, 1990.
	2-6, 11-12, 23	3	Apr. 10, 1991.
	1, 10	4	Aug. 28, 1991.
ATR42-57-0027, Revision 2, July 6, 1989	5-6, 9, 11, 13, 27-71	Original	Apr. 18, 1989.
	2-4, 7-8, 10, 12, 14-18, 26	1	May 25, 1989.
	1, 19-25, 72-80	2	July 6, 1989.
ATR42-57-0027, Revision 3, Mar. 27, 1991	5-6, 9, 11, 13, 27-71	Original	Apr. 18, 1989.
	2-4, 7-8, 10, 12, 14-18, 26	1	May 25, 1989.
	19-25, 72-74, 76, 78, 80	2	July 6, 1989.
	1, 75, 77, 79	3	Mar. 27, 1991.
ATR42-57-0027, Revision 4, Aug. 23, 1991	6, 9, 11, 13, 27-71	Original	Apr. 18, 1989.
	3-4, 8, 10, 12, 14-18, 26	1	May 25, 1989.
	22-25, 72-74, 76, 78	2	July 6, 1989.
	75, 77, 79	3	Mar. 27, 1991.
	1-2, 5, 7, 19-21	4	Aug. 23, 1991.
ATR42-57-0027, Revision 5, Oct. 22, 1991	6, 9, 11, 13, 27-71	Original	Apr. 18, 1989.
	3-4, 8, 10, 12, 14-18	1	May 25, 1989.
	22-25, 72-74	2	July 6, 1989.
	75-79	3	Mar. 27, 1991.
	7, 19-21, 80	4	Aug. 23, 1991.
	1-2, 5, 26	5	Oct. 22, 1991.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(k) This amendment becomes effective on October 21, 1992.

Issued in Renton, Washington, on July 9, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-22287 Filed 9-15-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-NM-14-AD; Amendment 39-8365; AD 92-19-07]

Airworthiness Directives; Fokker Model F-27 Mark 100, 200, 300, 400, 500, 600, and 700 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD),

applicable to all Fokker Model F-27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, that currently requires supplemental structural inspections to detect fatigue cracks, and repair or replacement, as necessary, to ensure continued airworthiness. This amendment requires the same inspections, but adds and revises certain significant structural items for which inspection is necessary. This amendment is prompted by structural re-evaluation by the manufacturer which identified additional structural elements where fatigue damage is likely to occur. The actions specified by this AD are intended to prevent reduced structural integrity of these airplanes.

DATES: Effective October 21, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 21, 1992.

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

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2145; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 90-21-07, Amendment 39-6758 (55 FR 40159, October 2, 1990), which is applicable to all Fokker Model F-27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, was published in the **Federal Register** on May 1, 1992 (57 FR 18849). The action proposed to add or revise certain significant structural items for which inspection is necessary.

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

The commenter supports the proposed rule.

Paragraph (d) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

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

The FAA estimates that 44 airplanes of U.S. registry will be affected by this AD, that it will take approximately 243 work hours per airplane per year to accomplish the actions required by AD 90-21-07, and that the average labor rate is $55 per work hour. The new requirements required by this amendment (implementation of the inspections, repairs, or replacements specified in the revisions to the SIP Document into an operator's maintenance program) are estimated to require approximately 52 additional work hours (including removal, inspection, and installation) per airplane per year, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $713,900, or $16,225 per airplane for the first year and annually thereafter. (This figure includes an estimated $125,840 per year to accomplish the new requirements of this amendment.) This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-6758 (55 FR 40159, October 2, 1990), and by adding a new airworthiness directive (AD), amendment 39-8365, to read as follows:

92-19-07. Fokker: Amendment 39-8365. Docket 92-NM-14-AD. Supersedes AD 90-21-07, Amendment 39-6758.

Applicability: Model F-27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, all serial numbers, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of these airplanes, accomplish the following:

(a) Within 6 months after November 9, 1990 (the effective date of Amendment 39-6758, AD 90-21-07), incorporate into the FAA-approved maintenance program the inspections, inspection intervals, repairs, or replacements defined in Fokker Structural Integrity Program (SIP) Document No. 27438, part I, including revisions up through February 1, 1990; and inspect, repair, and replace, as applicable. The non-destructive inspection techniques referenced in this document provide acceptable methods for accomplishing the inspections required by this AD. Inspection results, where a crack is detected, must be reported to Fokker, in accordance with the instructions of the SIP document. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and have been assigned OMB Control Number 2120-0056.

(b) Within 6 months after the effective date of this AD, incorporate into the FAA-approved maintenance program the inspections, inspection intervals, repairs, or replacements defined in Fokker Structural Integrity Program (SIP) Document No. 27438, part I, including revisions up through November 1, 1991; and inspect, repair, and replace, as applicable. The non-destructive inspection techniques referenced in this document provide acceptable methods for accomplishing the inspections required by this AD. Inspection results, where a crack is detected, must be reported to Fokker, in accordance with the instructions of the SIP document.

(c) Cracked structure detected during the inspections required by paragraph (a) or (b) of this AD must be repaired or replaced, prior

to further flight, in accordance with the instructions in Fokker SIP Document No. 27438, part I, including revisions up through February 1, 1990, or Fokker SIP Document No. 27438, part I, including revisions up through November 1, 1991, respectively; or in accordance with other data meeting the certification basis of the airplane which is approved by the FAA or by the Rijksluchtvaartdienst (RLD).

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

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

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

(f) The inspections and repairs shall be done in accordance with the latest revisions of Fokker SIP Document No. 27438, part I, revised up through November 1, 1991, which contains the following list of effective pages:

Item No.	Page No.	Revision level shown on page	Date shown on page
INTRODUCTION			
	8	3	Feb. 1, 1991.
	9-12	3	Nov. 1, 1989.
	13-14	4	Feb. 1, 1991.
	15	3	Feb. 1, 1991.
	16	5	Feb. 1, 1991.
	17	3	Feb. 1, 1991.
	18	0	Feb. 1, 1991.
INSPECTIONS			
26-20-01	1	2	Nov. 1, 1989.
27-20-01	1	2	Nov. 1, 1989.
27-50-01	1	2	Nov. 1, 1989.
32-00-00	1-2	5	Nov. 1, 1991.
32-00-00	3	4	Nov. 1, 1991.
32-20-06	1	1	Nov. 1, 1989.
36-00-00	1	5	Nov. 1, 1991.
36-10-02	1	4	Feb. 1, 1990.
52-10-01	1		Nov. 1, 1991.
52-20-01	1		Nov. 1, 1991.
52-30-01	1		Nov. 1, 1991.
52-31-01	1	1	Nov. 1, 1989.
53-10-01	1	3	Nov. 1, 1989.
53-10-02	1	4	Feb. 1, 1991.
53-10-03	1	3	Nov. 1, 1989.
53-10-04	1	2	Nov. 1, 1989.
53-10-05	1	3	Nov. 1, 1989.
53-10-06	1	3	Nov. 1, 1989.
53-10-07	1	3	Nov. 1, 1989.
53-10-08	1	3	Nov. 1, 1989.
53-10-09	1	3	Nov. 1, 1989.
53-10-10	1	3	Nov. 1, 1989.
53-10-11	1	2	Nov. 1, 1989.
53-10-12	1	3	Nov. 1, 1989.
53-10-13	1	3	Feb. 1, 1991.
53-10-14	1	3	Nov. 1, 1989.
53-10-20	1	2	Feb. 1, 1990.
53-30-01	1	2	Nov. 1, 1991.
53-30-01	2	2	Feb. 1, 1990.
53-30-02	1	3	Nov. 1, 1989.
53-30-03	1	3	Nov. 1, 1991.
53-30-04	1	4	Nov. 1, 1991.
53-30-06	1	1	Nov. 1, 1989.
53-30-07	1	1	Nov. 1, 1989.
53-30-08	1	1	Nov. 1, 1989.
53-30-09	1	1	Nov. 1, 1989.
53-30-10	1	1	Nov. 1, 1989.
53-30-11	1		Feb. 1, 1991.
53-40-01	1	2	Nov. 1, 1989.
53-40-02	1	3	Nov. 1, 1989.
53-40-03	1		Nov. 1, 1991.
54-40-01	1	2	Nov. 1, 1989.
54-40-02	1	4	Feb. 1, 1991.
54-40-02	2		Feb. 1, 1991.
54-40-05	1	2	Nov. 1, 1989.
54-40-05	2-3	2	Nov. 1, 1991.
54-40-07	1	1	Nov. 1, 1989.
54-40-08	1	1	Feb. 1, 1991.
55-20-01	1	3	Nov. 1, 1991.
55-20-02	1-2	3	Feb. 1, 1991.
55-20-02	3		Nov. 1, 1991.
55-20-03	1	4	Feb. 1, 1991.
55-30-02	1		Nov. 1, 1991.
55-40-01	1	3	Nov. 1, 1989.

Item No.	Page No.	Revision level shown on page	Date shown on page
55-50-01	1	2	Nov. 1, 1989.
55-50-02	1	2	Nov. 1, 1989.
55-50-02	2		Nov. 1, 1991.
55-50-06	1		Nov. 1, 1989.
57-10-01	1	4	Feb. 1, 1991.
57-10-02	1	3	Nov. 1, 1989.
57-10-04	1	3	Nov. 1, 1989.
57-10-08	1	1	Nov. 1, 1989.
57-10-09	1	1	Nov. 1, 1989.
57-10-10	1	3	Feb. 1, 1991.
57-10-11	1	2	Feb. 1, 1991.
57-10-12	1	2	Feb. 1, 1991.
57-10-13	1	2	Feb. 1, 1991.
57-30-01	1	3	Nov. 1, 1989.
57-30-02	1	3	Nov. 1, 1989.
57-30-03	1	3	Nov. 1, 1989.
57-30-04	1	4	Feb. 1, 1991.
57-30-05	1-2	1	Nov. 1, 1989.
57-30-05	3	2	Nov. 1, 1991.
57-30-05	4-5	1	Nov. 1, 1989.
57-30-05	6	2	Nov. 1, 1991.
57-30-06	1	3	Nov. 1, 1989.
57-30-08	1	3	Nov. 1, 1989.
57-30-09	1	3	Nov. 1, 1989.
57-30-10	1	3	Nov. 1, 1989.
57-30-11	1	3	Nov. 1, 1989.
57-30-12	1	3	Nov. 1, 1989.
57-30-13	1	4	Nov. 1, 1989.
57-30-14	1	4	Feb. 1, 1990.
57-30-15	1	2	Nov. 1, 1989
57-30-17	1	Temporary Rev. 57-1	Mar. 15, 1991.
57-30-18	1	1	Nov. 1, 1989.
57-30-19	1	2	Nov. 1, 1989.
57-30-20	1	2	Nov. 1, 1989.
57-30-21	1	1	Nov. 1, 1989.
57-30-22	1	1	Nov. 1, 1989.
57-40-01	1	3	Nov. 1, 1989.
57-40-02	1	3	Nov. 1, 1989.
57-40-03	1	3	Nov. 1, 1989.
57-40-05	1		Nov. 1, 1991.
57-40-06	1		Nov. 1, 1991.
57-40-10	1	1	Nov. 1, 1989.
57-40-11	1		Nov. 1, 1991.
57-50-01	1	3	Nov. 1, 1989.
57-50-02	1		Nov. 1, 1991.
57-50-05	1		Nov. 1, 1991.
61-00-00	1-2		Nov. 1, 1989.
71-20-01	1	5	Nov. 1, 1991.
72-00-00	1	3	Feb. 1, 1990.
ILLUSTRATIONS			
27-20-01	1	1	Nov. 1, 1989.
27-50-01	1	1	Nov. 1, 1989.
32-20-06	1	1	Nov. 1, 1989.
52-10-01	1		Nov. 1, 1991.
52-20-01	1		Nov. 1, 1991.
52-30-01	1		Nov. 1, 1991.
52-31-01	1	1	Nov. 1, 1989.
53-10-01	1	1	Mar. 16, 1981.
53-10-03	1	1	Nov. 1, 1989.
53-10-04	1	1	Nov. 1, 1989.
53-10-05	1	1	Nov. 1, 1989.
53-10-06	1	1	Nov. 1, 1989.
53-10-07	1	1	Nov. 1, 1989.
53-10-09	1	1	Nov. 1, 1989.
53-10-11	1	2	Feb. 1, 1991.
53-10-12	1	1	Nov. 1, 1989.
53-10-13	1	1	Nov. 1, 1989.
53-10-20	1	1	Nov. 1, 1989.
53-30-01	1	1	Nov. 1, 1989.
53-30-02	1	1	Nov. 1, 1989.
53-30-03	1	1	Nov. 1, 1989.
53-30-06	1	1	Nov. 1, 1989.
53-30-08	1	1	Nov. 1, 1989.
53-30-09	1	1	Nov. 1, 1989.
53-30-11	1		Feb. 1, 1991.
53-40-03	1		Nov. 1, 1991.
54-40-02	1	2	Nov. 1, 1989.
54-40-04	1	1	Nov. 1, 1989.
54-40-05	1	1	Nov. 1, 1989.

Item No.	Page No.	Revision level shown on page	Date shown on page
54-40-07	1	1	Nov. 1, 1989.
54-40-08	1		Nov. 1, 1989.
55-20-01	1	2	Nov. 1, 1991.
55-20-02	1	1	Nov. 1, 1989.
55-20-03	1	1	Nov. 1, 1989.
55-30-02	1		Nov. 1, 1991.
55-40-01	1	2	Feb. 1, 1991.
55-50-01	1	1	Nov. 1, 1989.
55-50-02	1	1	Nov. 1, 1989.
55-50-06	1	1	Nov. 1, 1989.
57-10-01	1	1	Nov. 1, 1989.
57-10-02	1	3	Feb. 1, 1991.
57-10-04	1	2	Nov. 1, 1989.
57-10-08	1	1	Nov. 1, 1989.
57-10-09	1	1	Nov. 1, 1989.
57-10-10	1	1	Nov. 1, 1989.
57-10-13	1	2	Feb. 1, 1991.
57-30-01	1	2	Feb. 1, 1991.
57-30-02	1	2	Nov. 1, 1989.
57-30-03	1	1	Nov. 1, 1989.
57-30-04	1	4	Feb. 1, 1991.
57-30-05	1-7	1	Nov. 1, 1989.
57-30-06	1	2	Nov. 1, 1989.
57-30-08	1	1	Nov. 1, 1989.
57-30-09	1	2	Nov. 1, 1989.
57-30-10	1	1	Nov. 1, 1989.
57-30-11	1	2	Nov. 1, 1989.
57-30-12	1	2	Nov. 1, 1989.
57-30-13	1	2	Nov. 1, 1989.
57-30-14	1	1	[1] Nov. 1
57-30-15	1	1	[1] Nov. 1.
57-30-17	1		Feb. 1, 1991.
57-30-18	1	1	Nov. 1, 1989.
57-30-22	1	1	Nov. 1, 1989.
57-40-01	1	1	Nov. 1, 1989.
57-40-05	1		Nov. 1, 1991.
57-40-06	1		Nov. 1, 1991.
57-40-10	1	1	Nov. 1, 1989.
57-40-11	1		Nov. 1, 1991.
57-50-01	1	1	Nov. 1, 1989.
57-50-02	1		Nov. 1, 1991.
57-50-05	1		Nov. 1, 1991.
71-20-01	1	3	Nov. 1, 1989.

[1] No year indicated.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on October 21, 1992.

Issued in Renton, Washington, on August 20, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-22288 Filed 9-15-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 24

[T.D. 92-89]

Adjustment to Ad Valorem User Fee for Imported Merchandise

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final determination to adjust fee rate.

SUMMARY: Notice is hereby given that Customs has made a final determination to adjust the merchandise processing fee rate on formal entries of imported merchandise at 0.19 percent ad valorem, pursuant to the Omnibus Budget Reconciliation Act of 1986.

EFFECTIVE DATE: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Linda Walfish, User Fee Task Force, (202-927-1167).

SUPPLEMENTARY INFORMATION:

Background

Section 8101 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509, codified as 19 U.S.C. 58c), provided that, with certain exceptions, an ad valorem user fee was to be collected by Customs on formal entries of merchandise entered, or withdrawn from warehouse, for consumption, beginning on December 1, 1986. The fee was to be based on the appraised Customs value of the merchandise. The Act provided that the proceeds of the user fees were to be deposited in a dedicated account of the Treasury and, subject to authorization and appropriation, were to be used to offset Customs appropriations for the salaries and expenses of Customs incurred in processing merchandise that is formally entered or released during any fiscal year.

The current merchandise processing fee rate is 0.17 percent ad valorem, subject to a maximum fee of $400 and a minimum fee of $21. T.D. 91-33, 56 FR 15036; 19 CFR 24.23(b)(1)(i)(A). However,

a statutory exemption from the fee applies with respect to most articles covered by Chapter 98, Harmonized Tariff Schedule of the United States (HTSUS), products of insular possessions (General Note 3(a)(iv), HTSUS), products of beneficiary countries of the Caribbean Basin Economic Recovery Act (General Note 3(c)(v), HTSUS), products of least-developed beneficiary developing countries (General Note 3(c)(ii)(B), HTSUS), merchandise covered by General Note 4, HTSUS, merchandise released under 19 U.S.C. 1321, and merchandise imported by mail. See 19 CFR 24.23(c)(1) (i)–(v). In addition, certain statutory limitations or restrictions on the assessment of the fee are in effect for articles covered by subheading 9802.00.60 or 9802.00.80, HTSUS, goods originating in Canada as defined in General Note 3 (c)(vii), HTSUS, and agricultural products processed and packed in a foreign trade zone. See 19 CFR 24.23(c) (2)–(4).

Pursuant to 19 U.S.C. 58c(a)(9)(B)(i), the Secretary of the Treasury may, under certain conditions, adjust the fee rate to a maximum of 0.19 percent ad valorem, in order to offset the salaries and expenses that will likely be incurred by Customs in the processing of formal entries or releases during the fiscal year in which such costs have been incurred.

To this end, Customs has projected that an increase is needed in order to offset the salaries and expenses which are to be incurred in Fiscal Year (FY) 1993. Customs has estimated the number of entries and releases expected to be processed during FY 1993, and has further estimated the value of FY 1993 imports. Estimates have also been made of the number of entries and releases, and their values, which would be subject to the minimum, ad valorem and maximum merchandise processing rates.

Specifically, for FY 1993, the Customs commercial costs for covered merchandise processing operations are expected to be $682 million. The current fee is inadequate to produce sufficient revenues. Indeed, even at the 0.19 percent rate, it is anticipated that only $540 million in fees will be generated. Hence, a deficit of approximately $142 million will still exist.

Similarly, in FY 1992, while the cost of covered merchandise processing operations is expected to be approximately $726 million, the merchandise processing fee revenue is expected to be only $485 million, thereby resulting in a projected deficit in the 58c account of roughly $241 million.

Accordingly, as prescribed in 19 U.S.C. 58c(a)(B), a notice of intent to adjust the fee at 0.19 percent ad valorem was published in the **Federal Register** on December 11, 1991 (56 FR 64680), providing for a period of 30 days for public comment as well as consultation with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, regarding the proposed adjustment and the methodology used in its determination.

Discussion of Comments

Seven commenters responded to the notice, all raising various issues in opposition to the proposed adjustment to the fee rate. Six commenters were concerned that an increase in the rate would put U.S. companies at a competitive disadvantage. Two commenters believed that GATT (General Agreement on Tariffs and Trade) trading partners might retaliate against the increase in the fee rate. A number of commenters stated that Customs should reduce its costs by curbing inefficiency, rather than raising the fee rate, and that, inasmuch as the fee collected went into the general fund, there was no assurance that an increase in the fee rate would result in increased quality of Customs commercial operations. Two commenters were also opposed in principle to the user fee, and one commenter wanted assurance that the maximum and minimum limits on the fee rate would be maintained.

In addition, the following views were put forth: the fee rate increase would result in increased costs to consumers; the cost of collecting the fee and associated recordkeeping to U.S. business as well as the Government would more than offset the revenue collected; as increases in the dollar value of imports automatically increased the revenue collected, Customs costs had to be increasing faster than the value of imported products; minor changes to the fee would not offset revenue losses due to the limitations on the rate, as well as exemptions from it; the maximum and minimum limits on the rate discriminated against small importers in favor of large and wealthy ones; and the fee was not being collected from exporters.

Customs Analysis

Customs is bound by law to assess a user fee and to adjust the fee rate as provided for thereunder, in order to offset appropriations for Customs salaries and expenses incurred in processing imported merchandise subject to the fee, that is formally entered or released during the fiscal year. For this purpose exclusively, the proceeds collected from the assessment of the fee are deposited in a dedicated account in the General Fund of the Treasury. Concerning those imports to which it is properly applicable, the fee is assessed equally against both domestic as well as foreign importers.

The fee rate assessed for the processing of a covered entry of merchandise is limited to a minimum of $21 and a maximum of $400. These limits were added by statute (Pub. L. 101–382), and Customs must adhere to them. Also, the retention of these maximum and minimum limits is essential in order to keep the ad valorem fee rate compatible with the General Agreement on Tariffs and Trade (GATT).

In this latter regard, Article VIII, para. 1, of GATT 61 Stat. A28, requires that user fees assessed for Customs services be limited in amount to the "approximate cost of services rendered". As circumscribed by the maximum and minimum levels, the merchandise processing fee rate is so limited. "The maximum and minimum fee levels ensure that imports of very high or very low value items, which might not differ substantially in the cost of import processing, do not pay unduly different import fees. The maximum and minimum levels eliminate the excess collections on high value entries associated with the current across-the-board ad valorem fee. As a result, it also avoids the subsidization of low-value entries." H. Conf. Rep. No. 101–650, 1990 U.S. Code Cong. & Admin. News 928, 995.

The purpose of the merchandise processing fee, it must be remembered, is not to enhance the Customs budget, but rather to offset the cost of covered merchandise processing operations. Such costs are not being met by the current 0.17 percent rate, and even with an increase in the rate to 0.19 percent ad valorem, which is the maximum rate permissible under present law, these costs will still not be completely offset. It should further be noted in this connection that Customs, for its part, continually strives to control costs by improving the quality and efficiency of its commercial services, and streamlining its merchandise entry processing operations.

Conclusion

In view of the foregoing, and following careful consideration of the comments received and further review of the matter, Customs has determined to adjust the merchandise processing fee rate at 0.19 percent ad valorem. In accordance with 19 U.S.C. 58c(a)9(B), Customs has notified the Committee on Finance of the Senate and the

Committee on Ways and Means of the House of Representatives of its intention to adjust the fee rate, and is able to proceed with publication of a notice of this final adjustment in the Federal Register, which will become effective with respect to formal entries and releases on or after the 15th day following publication, and which will remain in effect until otherwise adjusted pursuant to section 58c(a)(9)(B).

Drafting Information

The principal author of this document was Russell Berger, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

Approved: August 4, 1992.

Michael H. Lane,

Acting Commissioner of Customs.

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 92-22329 Filed 9-15-92; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 3

[CGD 92-046]

Realignment of Marine Inspection Zones and Captain of the Port Zones for New Orleans, and Morgan City, LA, and Port Arthur, TX

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; correction.

SUMMARY: The temporary rule realigning the Marine Inspection and Captain of the Port Zones for the Coast Guard Marine Safety Offices in New Orleans and Morgan City, Louisiana, and Port Arthur, Texas, published in the Federal Register on September 1, 1992 at 57 FR 39613 is no longer necessary. The temporary changes to the zones were made due to the damage resulting from Hurricane Andrew in the Morgan City, Louisiana, area. Effective command and control has been reestablished in Morgan City and the temporary realignment is no longer necessary. This correction changes the termination date of the temporary final rule to September 9, 1992.

EFFECTIVE DATE: This correction is effective September 9, 1992.

FOR FURTHER INFORMATION CONTACT: Commander David W. Jones, Project Manager, Office of Marine Safety, Security, and Environmental Protection (G-MPS-3), (202) 267-0491, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

Correction: Page 39613, third column, the effective date is corrected to read as follows:

EFFECTIVE DATE: This rule is effective from August 28, 1992 until September 9, 1992.

Dated: September 9, 1992.

R.C. North,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 92-22350 Filed 9-15-92; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 1F4015/R1160; FRL-4161-1]

RIN 2070-AB78

Pseudomonas Fluorescens A506, Pseudomonas Fluorescens 1629RS, and Pseudomonas Syringae 742RS; Exemptions From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement for a tolerance for residues of the biological pesticides *Pseudomonas fluorescens* strain A506, *Pseudomonas fluorescens* strain 1629RS, and *Pseudomonas syringae* strain 742RS in or on all agricultural commodities when applied as a frost protection agent or biological control agent to growing agricultural crops in accordance with good agricultural practices. This exemption was requested by the Frost Technology Corp.

EFFECTIVE DATE: This regulation becomes effective September 16, 1992.

ADDRESSES: Written objections, identified by the document control number, [PP 1F4015/R1160], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Susan T. Lewis, Product Manager (PM) 21, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1900.

SUPPLEMENTARY INFORMATION: In the Federal Register of July 15, 1992 (57 FR 31371), EPA issued a notice that the Frost Technology Corp., 6701 San Pablo Ave., Oakland, CA 94608-1239, had submitted pesticide petition (PP) 1F4015 to EPA proposing to amend 40 CFR part 180 by establishing a regulation pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a, to exempt from the requirement of a tolerance the residues of the biological pesticides *Pseudomonas fluorescens* and *Pseudomonas syringae* in or on all raw agricultural commodities when applied as a frost prevention or biological control agent to growing crops in accordance with good agricultural practices.

There were no comments or requests for referral to an advisory committee received in response to the notice.

These bacteria are naturally occurring isolates selected for their ability to compete with and reduce populations of ice-nucleating bacteria on plant surfaces. Reduction of numbers of ice-nucleating bacteria may result in the prevention of frost damage to plants. The bacteria will also aid in the control of fire blight of apples and pears. *Pseudomonas fluorescens* is ubiquitous in the environment and is a natural component of the microbial flora of soil, water, and plants. *Pseudomonas syringae* is similarly widespread and may commonly be found on the majority of plant surfaces and less commonly in soil and water. These bacteria are not generally regarded as human or animal pathogens.

The data submitted in the petition and all other relevant material have been evaluated. The toxicological data considered in support of the exemption from the requirement of a tolerance include an acute oral toxicity/pathogenicity study in the rat and an acute intraperitoneal injection study in the mouse, using a combination of *Pseudomonas fluorescens* strains A506 and 1629RS and *Pseudomonas syringae* strain 742RS. The results of these studies indicated that these organisms were not toxic or pathogenic to rats by the oral route of exposure and not lethal or significantly toxic to mice by intraperitoneal injection. Testing of various *Pseudomonas* strains closely related to those considered in the petition was conducted. Acute oral and acute inhalation toxicity tests indicated that the strains tested were not lethal or toxic to rats. Primary eye and primary dermal studies in rabbits using closely related strains showed no significant irritation effects. The toxicology data provided are sufficient to demonstrate that there are no foreseeable human health hazards likely to arise from the

use of *Pseudomonas fluorescens* strain A506, *Pseudomonas fluorescens* strain 1629RS and *Pseudomonas syringae* strain 742RS.

The petition which was submitted requested a generic exemption for the bacterial species *Pseudomonas fluorescens* and *Pseudomonas syringae*. It was concluded that at the present time there is insufficient data available to support an exemption from tolerance requirements for all strains of these very common and widespread bacteria. The data, however, are sufficient to support an exemption for the specific strains listed above.

Acceptable Daily Intake (ADI) and maximum permissible intake (MPI) considerations are not relevant to this petition because the data submitted demonstrate that these biological control agents are not toxic to humans. No enforcement actions are expected. Therefore, the requirement for an analytical method for enforcement purposes is not applicable to this exemption request. This is the first exemption from the requirement of a tolerance for these strains of *Pseudomonas*.

Pseudomonas fluorescens strain A506, *Pseudomonas fluorescens* strain 1629RS, and *Pseudomonas syringae* strain 742RS are considered useful for the purpose for which the exemption from the requirement of a tolerance is sought. Based on the information considered, the Agency concludes that establishment of the exemption will protect the public health. Therefore, the regulation 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 (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

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: September 1, 1992.

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. By adding new § 180.1114, to read as follows:

§ 180.1114 Pseudomonas fluorescens A506, Pseudomonas fluorescens 1629RS, and Pseudomonas syringae 742RS; exemptions from the requirement of a tolerance.

The biological pesticides *Pseudomonas fluorescens* A506, *Pseudomonas fluorescens* 1629RS, and *Pseudomonas syringae* 742RS are exempted from the requirement of a tolerance in or on all raw agricultural commodities when applied as a frost protection agent or biological control agent to growing agricultural crops in accordance with good agricultural practices.

[FR Doc. 92-22253 Filed 9-15-92; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Parts 180, 185, and 186

[PP 6F3380, FAP 8H5502, and FAP 8H5568/R1161; FRL-4162-1]

RIN 2070-AB78

Pesticide Tolerances and Food and Feed Additive Regulations for Glyphosate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes tolerances and food and feed additive regulations for the combined residues of the herbicide glyphosate (*N*-(phosphonomethyl)glycine) and its metabolite aminomethyl phosphonic acid. The specific proposals are: an amended tolerance in or on the raw agricultural commodities (RACs) soybeans from 6 parts per million (ppm) to 20 ppm; a tolerance on soybean straw at 20 ppm; a food additive regulation proposing increases in tolerances for the processed human food instant tea from 4.0 ppm to 7.0 ppm; a feed additive regulation for citrus molasses at 1 ppm; and amended feed additive tolerances for dried citrus pulp from 0.4 ppm to 1 ppm and soybean hulls from 20 ppm to 100 ppm. These regulations were requested by the Monsanto Co. and would establish the maximum permissible residues of the herbicide in or on these RACs, this processed human food, and these animal feed commodities.

EFFECTIVE DATE: These regulations become effective September 16, 1992.

ADDRESSES: Written objections, identified by the document control number, [PP 6F3380, FAP 8H5502, and FAP 8H5568/R1161], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 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. 241, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-6800.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 23, 1992 (57 FR 32753), EPA issued a proposed rule that gave notice that the Monsanto Co., 1101 17th St., NW., Washington, DC 20036, proposed amending 40 CFR 180.364 by increasing established tolerances under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, for the combined residues of the

herbicide glyphosate (*N*-phosphonomethylglycine) and its metabolite aminomethyl-phosphonic acid in or on soybeans from 6 ppm to 20 ppm and soybean hay from 15 ppm to 200 ppm and proposed amending 21 CFR 561.253 by increasing the established food additive regulation under section 409 of the FFDCA, 21 U.S.C. 348, permitting residues of glyphosate in or on soybean hulls from 20 ppm to 100 ppm. (The summary to the proposed rule incorrectly stated a proposed tolerance for soybean straw at 20 ppm, but the correct increase to 200 ppm was stated elsewhere in the document.)

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 tolerances 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 (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

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 Parts 180, 185, and 186

Administrative practice and procedure, Agricultural commodities, Animal feeds, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 31, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. In § 180.364, by revising the entry in the paragraph (a) table for soybeans and adding alphabetically the raw agricultural commodity soybean straw to read as follows:

§ 180.364 Glyphosate; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Soybean straw	200
Soybeans	20.0
* * * * *	

* * * * *

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 348

b. In § 180.3500(a)(2), by revising in the table therein the entry for tea, instant to read as follows:

§ 185.3500 Glyphosate.

(a) * * *

(2) * * *

Food	Parts per million
* * * * * *	
Tea, instant	7.0

* * * * *

PART 186—[AMENDED]

3. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 186.3500(a), by revising the table therein to read as follows:

§ 186.3500 Glyphosate.

(a) * * *

Feeds	Parts per million
Citrus molasses	1.0
Citrus, pulp, dried	1.0
Soybean hulls	100

* * * * *

[FR Doc. 92-22252 Filed 9-15-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-140, FCC 92-361]

Revision of Radio Rules and Policies

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: This Memorandum Opinion and Order modifies rules adopted in Report and Order in MM Docket No. 91-140, 7 FCC Rcd 2755 (1992), 57 FR 18089 (April 29, 1992). In addition, the Commission declines to modify the restrictions on time brokerage agreements between stations adopted in the Report and Order, but it does clarify certain procedures regarding time brokerage. The Commission intends that the effect of these changes will be to strengthen the radio industry by allowing broadcasters to achieve economies of scale in the face of increasing competitive challenges within the communications industry in general and within the radio industry in particular.

EFFECTIVE DATE: September 16, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jane Kinckley Halprin, Mass Media Bureau, Policy and Rules Division, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction

Public reporting burden for a party seeking a ruling regarding a time brokerage agreement is estimated to average 45 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Information and Records Management Branch, room 416, Washington, DC 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060–xxxx), Washington, DC 20503.

This is a synopsis of the Commission's Memorandum Opinion and Order and Further Notice of Proposed Rule Making in MM Docket No. 91–140, adopted August 5, 1992, and released September 4, 1992.

The complete text of this Memorandum Opinion and Order Further Notice of Proposed Rule Making is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, Downtown Copy Center, at (202) 452–1422, 1919 M Street, NW., room 246, Washington, DC 20554.

Synopsis of Memorandum Opinion and Order

1. The Memorandum Opinion and Order and Further Notice of Proposed Rule Making (MO&O) addresses issues raised in 20 petitions for reconsideration of the Report and Order in MM Docket No. 91–140, 7 FCC Rcd 2755 (1992), 57 FR 18089 (April 29, 1992) (Report and Order), and in related pleadings. In the Report and Order, the Commission had significantly relaxed the local and national radio ownership rules and included certain local time brokerage agreements within the scope of the new ownership restrictions. The Report and Order detailed the dramatic increase in competition and diversity in the radio industry over the last decade and concluded that intense inter-industry and intra-industry competition has produced an extremely fragmented radio marketplace in which existing and future radio broadcasters will be subject to increasingly severe economic and financial stress.

2. Accordingly, the Report and Order relaxed the national ownership limit to allow single licensee to own up to 30 AM stations and 30 FM stations nationwide. The Commission also modified the local ownership rule to permit a single owner to own an increased number of stations within a local radio market, depending on market size. For all but the smallest markets, the Commission adopted a 25 percent cap on the combined audience share of all owned stations, based on shares at the time of any new station acquisition. The Commission also limited simulcasting on commonly owned stations in the same service (AM/AM or FM/FM) serving substantially the same area to 25 percent of the broadcast schedule. In addition, the Report and Order restricted local time brokerage by providing that if a station licensee programs more than 15 percent of the time of another station and the principal community contours of the brokering and brokered stations overlap, then the brokered station would be counted against the brokering station's permissible ownership levels. The Commission further required that time brokerage contracts be placed in the stations' public inspection files, and that local brokerage agreements that would be attributed to the broker for purposes of the Commission's ownership rules be filed with the Commission within 30 days of execution.

3. *National Ownership Rules.* In its Memorandum Opinion and Order and Further Notice of Proposed Rule Making, the Commission stated that it remains convinced that changes in the radio ownership rules are essential to ensure the continued availability of broad and diverse radio broadcast service to the public. The Commission also stated, however, that after a thorough review of the record in this proceeding, it will adopt more moderate increases in the national and local ownership rules. The Commission therefore amended its national ownership rule to permit a single entity to hold an attributable interest in up to 18 AM and 18 FM stations. After two years, that limit will increase to 20 AM and 20 FM stations. An entity may also have a non-controlling attributable interest in an additional three AM and three FM stations if those stations are controlled by minorities or small businesses. The Commission stated by modifying the national ownership rules to include a higher minority/small business limit, it hopes to encourage the entry of new minority and small business entities into broadcasting, as well as the expansion of existing minority and small broadcasting organizations. Like other group owners, a minority entity that has reached the overall national limit will not be permitted to own additional stations outright, but may take a non-controlling attributable interest in three stations per service that are controlled by other minority entities or small businesses.

4. The "small business" definition used for purposes of allowing the acquisition of additional stations will apply to all small businesses which, at the time of application to the Commission, had total annual revenues of less that $500,000 and total assets of less than $1,000,000. The Commission chose to use a purposely conservative definition until it has had some experience with applications under this provision and has had an opportunity to evaluate information from its Small Business Advisory Committee. The asset limit of $1.0 million is an additional safeguard to ensure that a traditionally wealthy business will not be permitted to take advantage of the cap merely because it had a low revenue year. The annual revenues and assets of commonly-controlled businesses will be aggregated for purposes of this definition. Eligible entities will include both organizations and individuals that do not presently have any mass media interests as well as organizations or individuals owning several radio stations or other mass media outlets, as long as they do not exceed the revenue and asset limits.

5. In addition, this item also includes a Further Notice of Proposed Rule Making to explore investment incentive programs for radio broadcasters. (A summary of the Further Notice is published in the **Federal Register** on the same day as this item.)

6. *Local Ownership Rules.* On reconsideration, the Commission revised its local market tiers to reduce from the levels set forth in the Report and Order the maximum number of stations that may be commonly owned in the same local area. The new local ownership rule consists of two tiers; one tier includes those markets with 15 or more commercial radio stations and the other market tier includes those markets with fewer than 15 radio stations. In the larger markets, a single entity will be permitted to own up to two AM and two FM stations, provided that the proposed combination will not lead to excessive concentration in the local market. In the

smaller markets, a single entity will be permitted to own up to three radio stations, no more than two of which may be in the same service, provided that the owner's stations represent less than 50 percent of the total number of stations in the market.

7. A radio market will be defined as that area encompassed by the principal community contours (*i.e.*, predicted or measured 5 mV/m for AM stations and predicted 3.16 mV/m for FM stations) of the mutually overlapping stations proposing to have common ownership. The number of stations in the market will be determined based on the principal community contours of all commercial stations whose principal community contours overlap or intersect the principal community contours of the commonly-owned and mutually overlapping stations. For purposes of counting the number of stations in the market, the Commission will include all operating commercial full-power stations, including daytimers and foreign stations, but will exclude noncommercial stations, translators or stations not operational (*i.e.*, stations for which construction permits have been authorized but that are not yet on the air, or stations that have gone off the air and been silent for more than six months).

8. For purposes of the larger market tier (15 or more stations), excessive concentration will be presumed where the combined audience share of an owner's stations in a market exceeds 25 percent. The Commission stated its belief that widely-used audience survey data, while not exact, are a probative and accessible measure of market power relevant to the Commission's regulatory concerns. The Commission indicated that it has incorporated audience share into the new rules as a screening mechanism to identify potential problems with concentration. To the extent that petitioners are concerned that Arbitron's measuring tools may be too rough-hewn and thus may unfairly foreclose them from acquiring stations due to inaccuracies in the data, applicants will be free to submit additional showings demonstrating compliance with the share limit based on more accurate survey methods or alternative measures of market share.

9. The Commission will continue, with the exceptions described below, to calculate audience share based on metro market data where such data are available. The Commission will require the use of either audience data for the metro market if the contours of both stations at issue are mainly located within a single metro market, or audience data for the counties covered in whole or in part by the principal community contours of the stations at issue. The relevant audience share figures in such cases will include audience statistics either for the metro market or from each county encompassed all or in part by the area covered by the principal community contours of the stations proposing to merge. The Commission stated that it recognized that disclosure of complete underlying survey reports may in some circumstances raise questions as to the confidentiality of some of the data contained therein. Accordingly, it will not require that stations provide the complete underlying survey reports if they report and certify their combined shares and note the source of that information.

10. The rules adopted in the Report and Order required an audience share calculation based on the share among *rated* commercial stations rather than on the share of the entire local market audience. The Commission stated its belief that this extra calculation appears to add an unnecessary complication to the rules and make access to the relevant data more difficult without providing a necessarily more relevant or accurate measure and without any other significant countervailing regulatory benefit. The Commission will therefore amend the rules accordingly. This change will generally not make a major per-station rating difference and will allow parties to use widely reported data generally relied on for other industry purposes.

11. In addition, the Commission will permit parties to submit data that improves upon the accuracy of the regularly available metro market or county data or to make alternative showings where the applicant certifies that regular survey data are not readily available. In markets with 15 or more stations, the applicant will be required to demonstrate in an exhibit to its application for a proposed acquisition that the proposed combination will not result in an overly concentrated market. If audience share data for the market (*e.g.*, from Arbitron, another ratings service or other published source) are readily available, the applicant will be required to provide such information on the resulting market share in the exhibit. A demonstrated combined market share of 25 percent or more will raise a *prima facie* concern that the transaction will lead to excessive concentration. A combination resulting in less than a 25 percent market share will not raise such concerns.

12. In cases where the applicant certifies that market data are not readily available (*i.e.*, not in the applicant's possession, publicly available or obtainable without undue expense), the applicant may substitute other information that can serve as a proxy for such data in an exhibit to its application. Alternative showings of the market share that will result from a proposed acquisition may include the stations' share of market advertising revenues or the market value of such stations relative to the other stations in that market. In addition, it may be possible to demonstrate with a high degree of certainty, based on the number of stations in the market and the nature of stations involved, that no public interest concern associated with a high market share would exist. The Commission stated that while it is clearly not adequate to simply recite data as to the number of local stations in operation, certain types of stations, for example daytime AM stations or relatively low power AM and FM stations, rarely have substantial audience shares in markets with a large number of stations. The Commission stated that while it is providing applicants with some additional flexibility in terms of the specific nature of the data they may present (*i.e.*, either regularly available audience share data or an alternative showing), each applicant will bear the burden of proof in demonstrating that they have complied with the audience share threshold. Applications that do not include the necessary demonstration and that leave the Commission unable to evaluate compliance will be dismissed.

13. In addition, the Commission notes that apparent uncertainty emerges from some parties' pleadings regarding our rules governing the simulcasting of programming as a result of the increased ownership permitted within a market under the new local ownership limits. Simulcasting remains unlimited for stations in different services. For stations in the same service whose principal community contours overlap such that the overlap area constitutes more than 50 percent of either station's principal community contour area, simulcasting may not exceed 25 percent of either station's daily broadcast time. These rules apply both to stations commonly owned and to those separately owned but time brokered.

14. *Joint Ventures—Time Brokerage.* The Commission concluded that the petitioners have raised no new arguments to support reconsideration of time brokerage restrictions adopted in

the Report and Order. The Report and Order restricted local time brokerage by providing that if a station licensee programs more than 15 percent of the time of another station and the principal community contours of the brokering and brokered stations overlap, then the brokered station would be counted against the brokering station's permissible ownership levels. The Report and Order further required that time brokerage contracts be placed in the stations' public inspection files, and that local brokerage agreements that would be attributed to the broker for purposes of the Commission's ownership rules be filed with the Commission within 30 days of execution. Agreements entered into prior to the effective date of the rules will be required to come into compliance with the simulcasting provisions one year following the effective date of the rules, but, with respect to the ownership rules, will be treated in the same manner as are station ownership acquisitions entered into prior to the rules (*i.e.*, termination of the agreement generally will not be required).

15. Finally, the Commission clarified procedures for implementing the time brokerage reporting requirements adopted in the Report and Order. All time brokerage agreements between radio stations must be included in the public inspection files of both the brokering station and the brokered station. Confidential or proprietary information may be redacted where appropriate. These agreements must remain in the stations' public inspection files for the term of the time brokerage contract. Time brokerage agreements in existence on or before the effective date of these rules must be placed in the stations' public inspection files within 30 days of the effective date of these rules. In addition, the brokering station must report the existence of an attributable brokerage agreement on its ownership report (FCC Form 323, at Question 3).

16. A station that is brokering time on another station must also file, within 30 days of execution, a copy of any local time brokerage agreement which would result in the arrangement being counted in determining the brokering licensee's compliance with local and national multiple ownership rules. Such arrangements already in existence must be filed with the Commission within 30 days of the effective date of these rules. Filing of brokerage agreements with the Commission is primarily informational. However, in light of the modifications to the local rules adopted in this Memorandum Opinion and Order, this filing must include, as part of the certification already required, a verification that the arrangement complies with the ownership rules. In those situations where parties are unable to verify the relevant audience share data due to the absence of such information or for other reasons, those parties must first seek a ruling from the Commission, before implementing the time brokerage agreement, that the arrangement will not lead to excessive concentration in the market. Any request for such a ruling should contain the same detailed information regarding market concentration as would be included in an assignment or transfer application (see discussion above) and will be processed following the same procedures that are followed with an assignment or transfer application (*i.e.*, will be put on public notice and be made available for comment in accordance with the transfer or assignment pleading schedules). These requirements relating to time brokerage rulings will become effective November 20, 1992, to allow sufficient time to apply for and receive approval from the Office of Management and Budget.

Final Regulatory Flexibility Analysis

I. Need for and Purpose of this Action

This action is taken to relax the Commission's national and local ownership rules and to refine its policies regarding joint ventures. The Commission believes that this action will strengthen the radio industry.

II. Summary of Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

None.

III. Significant Alternatives Considered and Rejected

First, in the Report and Order in this proceeding, the Commission adopted a 30 AM/30 FM numerical limit for radio ownership. The Commission concluded in this Memorandum Opinion and Order that a slight reduction in the limit would be effective in benefitting the radio industry and the listening public while also guarding against undue market dominance. Second, in the Report and Order in this proceeding, the Commission adopted a local ownership limit consisting of four market size tiers. The Commission concluded in this Memorandum Opinion and Order that a modification of the rule to allow for two tiers would be effective in benefitting the radio industry and the listening public while also guarding against undue market dominance. Finally, petitioners for reconsideration of the Report and Order in this proceeding urged the Commission to adopt more stringent restrictions on time brokerage arrangements between radio stations. The Commission declined to do so in this Memorandum Opinion and Order.

17. *It is therefore Ordered* that, Pursuant to the authority contained in section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 303(r), part 73 of the Commission's Rules, 47 CFR part 73, is amended as set forth below. The rules will become effective upon publication in the **Federal Register**.

18. *It is further ordered* That the stay of the rules adopted in the Report and Order (*See* 57 FR 35763 (August 11, 1992) is lifted as of the effective date of these rules.

19. *It is further ordered* that the petitions for reconsideration filed in this proceeding are granted to the extent indicated herein and are otherwise denied.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communication Commission.

William F. Caton,

Acting Secretary.

Amendatory Text

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

PART 73—[AMENDED]

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

Authority: 47 U.S.C. §§ 154, 303.

2. Section 73.3526 is amended by revising paragraph (a)(12) to read as follows:

§ 73.3526 Local public inspection file of commercial stations.

* * * * *

(a)(12) For commercial radio stations, a copy of every agreement or contract involving time brokerage of the licensee's station or of another station by the licensee, with confidential or proprietary information redacted where appropriate.

* * * * *

3. Section 73. 3555 is amended by revising paragraph (a), revising paragraph (e)(1)(i), adding paragraph (e)(3)(v), revising note 4, and revising the first sentence of notes 5 and 7, to read as follows:

§ 73.3555 Multiple ownership.

(a)(1) *Radio contour overlap rule.* No license for an AM or FM broadcasting station shall be granted to any party

(including all parties under common control) if the grant of such license will result in overlap of the principal community contour of that station and the principal community contour of any other broadcasting station directly or indirectly owned, operated, or controlled by the same party, except that such license may be granted in connection with a transfer or assignment from an existing party with such interests, or in the following circumstances:

(i) In radio markets with 14 or fewer commercial radio stations, a party may own up to 3 commercial radio stations, no more than 2 of which are in the same service (AM or FM), provided that the owned stations, if other than a single AM and FM station combination, represent less than 50 percent of the stations in the market.

(ii) In radio markets with 15 or more commercial radio stations, a party may own up to 2 AM and FM commercial stations, provided, however, that evidence that grant of any application will result in a combined audience share exceeding 25 percent will be considered *prima facie* inconsistent with the public interest.

Note: When evaluating audience share evidence submitted under § 73.3555(a)(1)(ii), the Commission will consider data that eliminates statistical anomalies, provides a better focused survey area or includes revenue data or other relevant information. Where applicants certify that they do not have readily available audience share data, they may substitute other information that can serve as a proxy for each data. See Memorandum Opinion and Order in MM Docket No. 91–140, FCC 92–361 (released Sept. 4, 1992).

(iii) Overlap between two stations in different services is permissible if neither of those two stations overlaps a third station in the same service.

(2)(i) Where the principal community contours of two radio stations overlap and a party (including all parties under common control) with an attributable ownership interest in one such station brokers more than 15 percent of the broadcast time per week of the other such station, that party shall be treated as if it has an interest in the brokered station subject to the limitations set forth in paragraph (a) and (e) of this section. This limitation shall apply regardless of the source of the brokered programming supplied by the party to the brokered station.

(ii) Every time brokerage agreement of the type described in paragraph (a)(2)(i) of this section shall be undertaken only pursuant to a signed written agreement that shall contain a certification by the licensee or permittee of the brokered station verify, that it maintains ultimate control over the station's facilities, including specifically control over station finances, personnel and programming, and by the brokering station that the agreement complies with the provisions of paragraphs (a)(1) and (e)(1) of this section.

(iii) Any party operating in conflict with the requirements of paragraph (a)(2)(ii) of this section on September 16, 1992 shall come into compliance within one year thereafter.

(3) For purposes of this paragraph:

(i) The "principal community contour" for AM stations is the predicted or measured 5 mV/m groundwave contour computed in accordance with § 73.183 or § 73.186 and for FM stations is the predicted 3.16 mV/m contour computed in accordance with § 73.313.

(ii) The number of stations in a radio market, is the number of commercial stations whose principal community contours overlap, in whole or in part, with the principal community contours of the stations in question (*i.e.*, the station for which an authorization is sought and any station in the same service that would be commonly owned whose principal community contour overlaps the principal community contour of that station). In addition, if the area of overlap between the stations in question is overlapped by the principal community contour of a commonly owned station or stations in a different service (AM or FM), the number of stations in the market includes stations whose principal community contours overlap the principal community contours of such commonly owned station or stations in a different service.

(iii) A station's "audience share" is the average number of persons age 12 or older on an average quarter hour basis, Monday–Sunday, 6 a.m.–midnight, who listen to the station, expressed as a percentage of the average number of persons listening to AM and FM stations in that radio metro market or a recognized equivalent, in which a majority of the overlap between the stations in question takes place. The "combined audience share" is the total audience share of all AM or FM stations that would be under common ownership or control following a proposed acquisition. In situations where no metro market or recognized equivalent exists, the relevant audience share data is the data for all counties that are within the principal community contours of the stations in question, in whole or in part.

(iv) "Time brokerage" is the sale by a licensee of discrete blocks of time to a "broker" that supplies the programming to fill that time and sells the commercial spot announcements in it.

* * * * *

(e)(1) * * *

(i) More than 18 AM or more than 18 FM stations, or more than 20 AM or more than 20 FM stations two years after the effective date of this rule, provided, however, that an entity may have an attributable but noncontrolling interest in an additional 3 AM and 3 FM stations that are small business controlled or minority-controlled.

* * * * *

(3) * * *

(v) "Small business" means an individual or business entity which, at the time of application to the Commission had, including all affiliated entities under common control, annual revenues of less than $500,000 and assets of less than $1,000,000.

* * * * *

Note 4: Paragraphs (a) through (e) of this section will not be applied so as to require divestiture, by any licensee, of existing facilities, and will not apply to applications for increased power for Class C stations, to applications for assignment of license or transfer of control filed in accordance with § 73.3540(f) or § 73.3541(b), or to applications for assignment of license or transfer of control to heirs or legatees by will or intestacy if no new or increased overlap would be created between commonly owned, operated or controlled broadcast stations in the same service and if no new encompassment of Communities proscribed in paragraphs (c) and (d) of this section as to commonly owned, operated or controlled broadcast stations or daily newspapers would result. Said paragraphs will apply to all applications for new stations, to all other applications for assignment or transfer, and to all applications for major changes in existing stations except major changes that will result in overlap of contours of broadcast stations in the same service with each other no greater than already existing. (The resulting areas of overlap of contours of such broadcast stations with each other in such major change cases may consist partly or entirely of new terrain. However, if the population in the resulting areas substantially exceeds that in the previously existing overlap areas, the Commission will not grant the application if it finds that to do so would be against the public interest, convenience or necessity.) Commonly owned, operated or controlled broadcast stations with overlapping contours or with community-encompassing contours prohibited by this section may not be assigned or transferred to a single person, group or entity, except as provided above in this note and by § 73.3555(a). If a commonly owned, operated or controlled broadcast station and daily newspaper fall within the encompassing proscription of this section, the station may not be assigned to a single person, group or entity if the newspaper is being

simultaneously sold to such single person, group or entity.

Note 5: Paragraphs (a) through (e) of this section will not be applied to cases involving television stations that are "satellite" operations. * * *

* * * * *

Note 7: The Commission will entertain requests to waive the restrictions of paragraph (c) of this section on a case-by-case basis. * * *

4. Section 73.3556 is amended by revising paragraph (a) and by adding paragraph (c) to read as follows:

§ 73.3556 Duplication of programming on commonly owned or time brokered stations.

(a) No commercial AM or FM radio station shall operate so as to devote more than 25 percent of the total hours in its average broadcast week to programs that duplicate those of any station in the same service (AM or FM) which is commonly owned or with which it has a time brokerage agreement if the principal community contours (predicted or measured 5 mV/m groundwave for AM stations and predicted 3.16 mV/m for FM stations) of the stations overlap and the overlap constitutes more than 50 percent of the total principal community contour service area of either station.

* * * * *

(c) Any party engaged in a time brokerage arrangement which conflicts with the requirements of paragraph (a) of this section on September 16, 1992, shall bring that arrangement into compliance within one year thereafter.

5. Section 73.3613 is amended by revising paragraphs (d) and (e) to read as follows:

§ 73.3613 Filing of contracts.

* * * * *

(d) Time brokerage agreements: Time brokerage agreements involving radio stations, where the licensee (including all parties under common control) is the brokering entity, there is a principal community contour (predicted or measured 5 mV/m groundwave for AM stations and predicted 3.16 mV/m for FM stations) overlap with the brokered station, and more than 15 percent of the time of the brokered station, on a weekly basis, is brokered by that licensee. Confidential or proprietary information may be redacted where appropriate but such information shall be made available for inspection upon request by the FCC.

(e) The following contracts, agreements or understandings need not be filed but shall be kept at the station and made available for inspection upon request by the FCC: contracts relating to the sale of television broadcast time to "time brokers" for resale; subchannel leasing agreements for Subsidiary Communications Authorization operation; franchise/leasing agreements for operation of telecommunications services on the TV vertical blanking interval; time sales contracts with the same sponsor for 4 or more hours per day, except where the length of the events (such as athletic contests, musical programs and special events) broadcast pursuant to the contract is not under control of the station; and contracts with chief operators.

[FR Doc. 92-22349 Filed 9-15-92; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 90

[FCC No. 92-369]

Licensing of Low-Power Medical Devices in the 450-470 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has decided that hospitals and healthcare institutions will no longer be required to separately license low-power medical devices operating on the offset frequencies in the 450-470 MHz band. Instead, they will be permitted to operate such devices under the authority of other licensed radio facilities. This action will reduce the cost and burden associated with the licensing of these devices.

EFFECTIVE DATE: October 16, 1992.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Marty Liebman, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, FCC 92-369, adopted August 13, 1992 and released August 25, 1992. The complete text may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street NW., Suite 640, Washington, DC 20026, telephone (202) 452-1422.

Summary of Order

The 12.5 kHz offset frequencies in the 450-470 MHz band are available for low power operation on a secondary basis to primary operation in the band. Among the users of these frequencies are hospitals and healthcare institutions that operate low-power devices to remotely monitor the vital signs of their patients. Each of these devices must currently be licensed and this requirement imposes a significant burden on both licensees and Commission staff. Consistent with a previous, similar action in the licensing of radar speed detection devices by local government entities, the Commission will no longer require the individual licensing of low-power medical devices on the 450-470 MHz offset frequencies where the hospitals or healthcare institutions utilizing such devices are licensed for other radio facilities. Thus, hospitals or healthcare institutions that have other properly licensed radio transmitters will be authorized to use, under such licenses, multiple, low-power medical devices without the need for frequency coordination or application to the Commission for separate licensing. The operation of these devices will continue to be on a secondary basis to primary operations in the band.

Regulatory Flexibility Act Certification

The Commission has determined that this rule will not have a significant economic impact on a substantial number of small entities. The rule will reduce the number of radio licenses that must be acquired by these entities. While this represents a cost savings, it does not represent a significant economic impact under the Regulatory Flexibility Act.

List of Subjects in 47 CFR Part 90

Communications equipment, Radio.

Amendatory Text

Part 90 of title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 90 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, and 332, unless otherwise noted.

2. Section 90.267 is amended by adding a new paragraph (a)(7) to read as follows:

390.267 Assignment and use of 12.5 kHz frequency offsets.

(a) * * *

(7) A hospital or healthcare institution eligible for licensing under this Section and holding a license to operate a radio station under this Part may operate a medical device with an output power not to exceed 20 milliwatts without specific authorization from the Commission. All licensees operating under this authority must comply with the requirements and limitations set forth in this section.

* * * * *

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 92-22266 Filed 9-15-92; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 228, 232, and 252

Defense Federal Acquisition Regulation Supplement; Subcontractor Payment Protections

AGENCY: Department of Defense (DOD).
ACTION: Final rule.

SUMMARY: The Defense Acquisition Regulations Council has agreed on a final rule that revises the Defense FAR Supplement (DFARS) to provide guidance on the statutory requirement to disclose certain payment and bonding information under DoD contracts.

EFFECTIVE DATE: September 8, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Mens, (703) 697-7266. Please cite DAR Case 9-311.

SUPPLEMENTARY INFORMATION:

A. Background

The rule implements section 806 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Pub. L. 102-190). Background information was published with the proposed rule in the Federal Register on July 1, 1992 (57 FR 29269). As a result of public comments, language was added at 228.106-6, to clarify that the contracting officer will provide the information either orally or in writing, as appropriate; at 232.970-1(a)(1)(i), to add a parenthetical reference to the Prompt Payment Act; at 232.970-1(a) and 232.970-2, to make it clear that the references to "contractor" means "prime contractor"; at 232.970-1(b), to reflect the language of the statute regarding "compliance" and clarify that the two courses of action available to the contracting officer apply to both construction and non-construction contracts; and at 232.970-1(b)(2), to clarify that the reduction or suspension in progress payments must be in accordance with the applicable progress payments clause of the contract.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act applies. A Final Regulatory Flexibility Analysis has been prepared and submitted to the Chief Counsel for Advocacy of the Small Business Administration. The FRFA states that it is impossible to accurately estimate the number of small businesses that may be impacted because it is impossible to accurately determine the number of small businesses that prospectively will hold DoD construction contracts subject to the Miller Act and subsequently, the number of prospective subcontractors or suppliers that will request a copy of the payment bond. However, based on available data, DoD estimates that the final rule will impact less than 20 percent of all small businesses that will hold DoD construction contracts which will be subject to the Miller Act.

A copy of the FRFA may be obtained from: Defense Acquisition Regulations Council, ATTN: Mr. Eric R. Mens, IMD 3D139, OUSD(A), 3062 Defense Pentagon, Washington, DC 20301-3062.

C. Paperwork Reduction Act

The final rule imposes additional recordkeeping requirements, or information collection requirements, or collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et. seq.* OMB has approved this information collection (Control Number 0704-0345).

List of Subjects in 48 CFR Parts 228, 232, and 252

Government procurement.
Claudia L. Naugle,
Executive Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 228, 232, and 252 are amended as follows:

1. The authority citation for 48 CFR parts 228, 232, and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, and Defense FAR Supplement 201.301.

PART 228—BONDS AND INSURANCE

2. Sections 228.106, 228.106-4, 228.106-4-70, 228.106-6, and 228.106-7 are added to read as follows:

228.106 Administration.

228.106-4 Contract clause.

228.106-4-70 Additional contract clause.

Use the clause at 252.228-7006, Prospective Subcontractor Requests for Bonds, in all solicitations and resultant contracts which are subject to the Miller Act (see FAR 28.102-1).

228.106-6 Furnishing information.

Section 806(a)(2) of Public Law 102-190 requires that DoD provide subcontractors information on payment bonds. Upon the written or oral request of a subcontractor/supplier, or prospective subcontractor/supplier, under a contract subject to the Miller Act, the contracting officer shall promptly provide, either orally or in writing, as appropriate, any of the following:

(i) Name and address of the surety or sureties on the payment bond.

(ii) Penal amount of the payment bond.

(iii) Copy of the payment bond. The contracting officer may impose reasonable fees to cover the cost of copying and providing a copy of the payment bond.

228.106-7 Withholding contract payments.

(a) Withholding may be appropriate in other than construction contracts (see 232.970-1(b)).

PART 232—CONTRACT FINANCING

3. Sections 232.970, 232.970-1, and 232.970-2 are added to read as follows:

232.970 Payment of subcontractors.

232.970-1 Subcontractor assertions of nonpayment.

(a) In accordance with Public Law 102-190, title VIII, section 806(a)(4), upon the assertion by a subcontractor or supplier of a DoD contractor that the subcontractor or supplier has not been paid in accordance with the payment terms of the subcontract, purchase order, or other agreement with the prime contractor, the contracting officer may determine—

(1) For a construction contract, whether the contractor has made—

(i) Progress payments to the subcontractor or supplier in compliance with chapter 39 of title 31, United States Code (Prompt Payment Act);

(ii) Final payment to the subcontractor or supplier in compliance with the terms of the subcontract, purchase order, or other agreement with the prime contractor;

(2) For a contract other than construction, whether the contractor has made progress payments, final payments, or other payments to the subcontractor or supplier in compliance with the terms of the subcontract, purchase order, or other agreement with the prime contractor;

(3) For any contract, whether the contractor's certification of payment of a subcontractor or supplier accompanying its payment request to the Government is accurate.

(b) If, in making the determination in paragraphs (a) (1) and (2) of this subsection, the contracting officer finds the prime contractor is not in compliance, the contracting officer may—

(1) Encourage the contractor to make timely payment to the subcontractor or supplier; or

(2) If authorized by the applicable payment clauses, reduce or suspend progress payments to the contractor.

(c) If the contracting officer determines that a certification referred to in (a)(3) of this subsection is inaccurate in any material respect, the contracting officer shall initiate administrative or other remedial action.

232.970-2 Subcontractor requests for information.

(a) In accordance with Public Law 102-190, title VIII, section 806(a)(1), upon the request of a subcontractor or supplier under a DoD contract, the contracting officer shall promptly advise the subcontractor or supplier as to—

(1) Whether the prime contractor has submitted requests for progress payments or other payments under the contract to DoD; and

(2) Whether final payment has been made by the DoD to the prime contractor.

(b) This subsection does not apply to matters that are—

(1) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy; and

(2) Properly classified pursuant to such Executive Order (see 5 U.S.C. 552(b)(1)).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 252.2—Texts of Provisions and Clauses

4. Section 252.228-7006 is added to read as follows:

252.228-7006 Prospective subcontractor requests for bonds.

As prescribed in 228.106-4-70, use the following clause:

Prospective Subcontractor Requests for Bonds (SEP 1992)

In accordance with sections 806(a)(3) of Public Law 102-190, upon the request of a prospective subcontractor or supplier offering to furnish labor or material for the performance of this contract for which a payment bond has been furnished to the Government pursuant to the Miller Act, the Contractor shall promptly provide a copy of such payment bond to the requestor.

(End of clause)

[FR Doc. 92-22318 Filed 9-15-92; 8:45 am]

BILLING CODE 3810-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 525 and 552

[APD 2800.12A CHGE 42]

General Services Administration Acquisition Regulation

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR), chapter 5 (APD 2800.12A), is amended to revise paragraph (b) of section 525.402 to incorporate the change made by Acquisition Circular (AC-90-2) to reflect the results of the General Services Administration Board of Contract Appeals (GSBCA) decision GSBCA No. 10532-P, May 18, 1990; to revise section 525.407 to prescribe a provision and a clause for use in solicitations and contracts subject to the Trade Agreements Act; to add sections 552.225-8 and 552.225-9 to incorporate the text of the provision and clause to be used in lieu of the FAR provision at 52.225-8 and the clause 52.225-9; and to revise section 552.225-72 to incorporate the changes made by AC-91-2. The intended effect is to provide guidance to offerors and GSA contracting activities regarding procurements subject to the Trade Agreements Act.

EFFECTIVE DATE: September 22, 1992.

FOR FURTHER INFORMATION CONTACT: John Joyner, Office of GSA Acquisition Policy, (202) 501-1224.

SUPPLEMENTARY INFORMATION:

A. Public Comments

Temporary regulations were published in the **Federal Register** on November 1, 1990 (AC-90-1, 55 FR 46068) and March 20, 1991 (AC-91-2, 56 FR 11692), which solicited comments from the public. No comments were received from the public, however, comments received from various GSA offices have been considered and where appropriate incorporated in the final rule.

B. Executive Order 12291

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule.

C. Regulatory Flexibility Act

The General Services Administration certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. The rule authorizes a deviation from a FAR provision and clause that will resolve an inconsistency with the current FAR provision and clause based upon the GSBCA's ruling. This rule also provides offerors with the means to offer products from nondesignated countries that may be considered for award where specific circumstances exist and GSA decides to exercise the authority delegated by the U.S. Trade Representative.

D. Paperwork Reduction Act

This rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501).

List of Subjects in 48 CFR Parts 525 and 552

Government procurement.

Accordingly, 48 CFR parts 525 and 552 are amended to read as follows:

1. The authority citation for 48 CFR parts 525 and 552 reads as follows:

Authority: 40 U.S.C. 486(c).

PART 525—FOREIGN ACQUISITION

2. Section 525.402 is amended by revising paragraph (b) to read as follows:

525.402 Policy.

* * * * *

(b) As a result of the General Services Administration Board of Contract Appeals (GSBCA) decision in the protest of International Business Machines Corporation, GSBCA no. 10532-P, May 18, 1990, contracting officers are hereby authorized to deviate from the FAR provision at 52.225-8, Buy American Act-Trade Agreements Act-Balance of Payment Program Certificate and FAR clause at 52.225-9, Buy American Act-Trade Agreements Act-Balance of Payment Program, in solicitations and contracts that are subject to the Trade Agreements Act by incorporating the provision and clause prescribed in 525.407(a).

* * * * *

3. Section 525.407 is revised to read as follows:

525.407 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 552.225-8, Trade Agreements Act Certificate, and the clause at 552.225-9, Trade Agreements Act, in solicitations and contracts subject to the Trade Agreements Act in

lieu of the FAR provision at 52.225–8 and the clause at 52.225–9.

(b) The contracting officer shall insert the clause at 552.225–72, Eligible Products From Nondesignated Countries—Waiver, in solicitations and contracts subject to the Trade Agreements Act.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Sections 552.225–8 and 552.225–9 are added to read as follows:

552.225–8 Trade Agreements Act Certificate.

As prescribed in 525.407(a), insert the following provision:

Trade Agreements Act Certificate (AUG 1992) (Deviation FAR 52.225–8)

(a) The Offeror, by signing this offer, certifies that each end product to be delivered under this contract is a U.S.-made end product, a designated country end product, or a Caribbean Basin country end product as defined in the clause entitled "Trade Agreements Act" at 48 CFR 552.225–9.

(b) Offers will be evaluated in accordance with subpart 25.4 of the Federal Acquisition Regulation except that offers of U.S.-made end products shall be evaluated without the restrictions of the Buy American Act or the Balance of Payments Program.

(End of Provision)

552.225–9 Trade Agreements Act.

As prescribed in 525.407(a), insert the following clause:

Trade Agreements Act (Aug 1992) (Deviation FAR 52.225–9)

(a) This clause implements the Trade Agreements Act of 1979 (19 U.S.C. 2501–2582) by providing a preference for U.S.-made end products, designated country end products, and Caribbean Basin country end products over other products.

Caribbean Basin country end products, as used in this clause, means an article that: (1) Is wholly the growth, product, or manufacture of a Caribbean Basin country (as defined in section 25.401 of the Federal Acquisition Regulation (FAR)), or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term includes service (except transportation services) incidental to its supply provided that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such. The term excludes products that are excluded from duty-free treatment from Caribbean countries under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(b)). These exclusions presently consist of (i) textiles and apparel articles that are subject to textile agreements; (ii) footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel not designated as eligible articles for the purpose of the Generalized System of Preference under title V of the Trade Act of 1974; (iii) tuna, prepared or preserved in any manner in airtight containers; (iv) petroleum, or any product derived from petroleum; and (v) watches and watch parts (including cases, bracelets and straps) of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Tariff Schedule of the United States (TSUS) column 2 rates of duty apply.

Designated country end product, as used in this clause, means an article that (1) is wholly the growth, product, or manufacture of the designated country (as defined in section 25.401 of the Federal Acquisition Regulation (FAR)), or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term includes services (except transportation services) incidental to its supply provided that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such.

End products, as used in this clause, means those articles, materials, and supplies to be acquired under this contract for public use.

U.S.-made end product, as used in this clause, means an article which (1) is wholly the growth, product, or manufacture of the United States, or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

Nondesignated country end products, as used in this clause, means any end product which is not a U.S.-made end product or designated country end product.

United States, as used in this clause, means the United States, its possessions, Puerto Rico, and any other place which is subject to its jurisdiction, but does not include leased bases or trust territories.

(b) The Contractor agrees to deliver under this contract only U.S. made end products, designated country end products, Caribbean Basin country end products, or, if a national interest waiver is granted under section 302 of the Trade Agreements Act of 1979, nondesignated country end products. Only if such waiver is granted may a nondesignated country end product be delivered under this contract(s).

(c) Offers will be evaluated in accordance with the policies and procedures of part 25 of the FAR except that offers of U.S. made end products shall be evaluated without the restrictions of the Buy American Act or the Balance of Payments Program.

(End of Clause)

5. Section 552.225–72 is revised to read as follows:

§ 552.225–72 Eligible Products from Nondesignated Countries—Waiver.

As prescribed in 525.407(b), insert the following clause:

Eligible Products From Nondesignated Countries—Waiver (Aug 1992)

(a) In accordance with the Trade Agreements Act of 1979 and 48 CFR 25.402(b), no eligible product that originates in a nondesignated country may be purchased by a Federal agency. However, this restriction may be waived before award when it is determined to be in the national interest. Accordingly, offers to furnish products originating in a nondesignated country identified in paragraph (c) below, may be submitted in response to this solicitation and will be considered for award if a waiver is obtained from the U.S. Trade Representative or a designee (19 U.S.C. 2512) on the basis that:

(1) No responsive bid or technically acceptable offer from a responsible Offeror is received offering U.S. or designated country end products as defined in the clause entitled "Trade Agreements Act" in this solicitation; or

(2) Responsible offerors do not offer a sufficient quantity to meet the Government's requirements.

(b) The determination to seek a waiver is at the sole discretion of the acquiring activity, and the granting of such waiver will be at the sole discretion of the U.S. Trade Representative or designee (48 CFR 525.402).

(c) The Offeror certifies that the following product(s) is an end product other than an end product of the United States, a designated country or a Caribbean Basin country as such end products are defined in the clause entitled "Trade Agreements Act" in this solicitation:

Line item number	Country of origin

(End of Clause)

Dated: September 1, 1992.

Richard H. Hopf III,

Associate Administrator for Acquisition Policy.

[FR Doc. 92–22228 Filed 9–15–92; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 920407-2159]

Atlantic Tuna Fisheries; Bluefin Tuna

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: NMFS closes the fishery for Atlantic bluefin tuna conducted by vessels permitted in the General category and fishing for large medium and giant Atlantic bluefin tuna. Closure of this segment of the fishery is necessary because it has been determined that the annual quota for this category, minus a 40-metric ton (mt) set-aside amount, will be attained by September 15, 1992. Vessels permitted in the General category may continue to fish for and retain a special 40-mt ton set-aside in the area that includes the waters of Narragansett Bay, Buzzards Bay, Pleasant Bay, and all waters south of a straight line originating at a point on the southeastern shore of Cape Cod at 41° 45'N. latitude (near the north end of Pleasant Bay) and running East 90° true, until 20 mt is harvested and NMFS publishes a notice of closure for that 20-mt allocation. At that time, vessels permitted in the General category may continue to fish for and retain the remaining 20-mt ton set-aside in the area west of a straight line originating at a point on the southern shore of Long Island at 72° 50'W. longitude and running SSE 150° true. The intent of this action is to prevent overharvest of the quota established for this fishery while providing a fishing opportunity in areas south of Cape Cod.

EFFECTIVE DATES: The closure is effective from 0001 hours local time on September 16, 1992, through December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Richard B. Stone, 301-713-2347.

SUPPLEMENTARY INFORMATION: Regulations promulgated under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971-971h) regulating the harvest of Atlantic bluefin tuna by persons and vessels subject to U.S. jurisdiction appear at 50 CFR part 285.

Section 285.22(a) of the regulations provides for an annual quota of 531 mt of large medium and giant Atlantic bluefin tuna to be harvested from the Regulatory Area by vessels permitted in the General category. The Assistant Administrator for Fisheries, NOAA, (Assistant Administrator) is required under § 285.20(b)(1) to monitor the catch and landing statistics, and on the basis of these statistics, to project a date when the total catch of Atlantic bluefin tuna will equal any quota under § 285.22. The Assistant Administrator is further required under § 285.20(b)(1) to prohibit the fishing for, or retention of, Atlantic bluefin tuna by the category of gear subject to the quotas. In the case of the General category, under § 285.22(a) the Assistant Administrator may set aside an allocation for an identified area, not to exceed the greater of 40 mt or the maximum reported landings from the identified area in any of the preceding 3 years. This set-aside is made when the Assistant Administrator has determined, based on landings reports, that fishermen in an identified area will be precluded from harvesting their share of the quota due to variations in seasonable distribution, abundance, or migration patterns and the catch rate. In addition, the governing regulations require the daily catch limit for the identified area to be set at one large medium or giant Atlantic bluefin tuna per day per vessel.

Based on landings reports, the Assistant Administrator has determined that the quota of Atlantic bluefin tuna allocated for the General category, minus a 40-mt set-aside amount for the area identified below, has been attained. Fishing for, or retention of, large medium or giant Atlantic bluefin tuna by vessels in the General category must cease by 0001 hours September 16, 1992, except that vessels permitted in the General category may continue to fish in the area that includes the waters of Narragansett Bay, Buzzards Bay, Pleasant Bay, and all waters south of a straight line originating at a point on the southeastern shore of Cape Cod at 41° 45'N. latitude (near the north end of Pleasant Bay) and running East 90° true, until 20 mt is harvested and NMFS publishes a notice of closure for that 20-mt allocation. At that time, vessels permitted in the General category may continue to fish for and retain the remaining 20-mt of the set-aside in the area west of a straight line originating at a point on the southern shore of Long Island at 72° 50'W. longitude (near the town of Moriches) and running SSE 150° true. The intent of this action is to prevent overharvest of the quota established for this fishery while providing a fishing opportunity in areas south of Cape Cod.

Classification

Notice of this action will be faxed to Atlantic bluefin tuna dealers and fisherman, several industry publications, associations, and state agencies. This action is taken under the authority of 50 CFR 285.20, and is taken in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

Authority: 16 U.S.C. 971 *et seq.*

Dated: September 10, 1992.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-22378 Filed 9-11-92; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 675

[Docket No. 911172-2021]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Appointment of reserve; rescission of prohibition of retention; closure; request for comments.

SUMMARY: NMFS announces that amounts of the operational reserve are needed in the fishery for pollock in the Bering Sea subarea (BS) of the Bering Sea and Aleutian Islands Management Area (BSAI) and in the fishery for Pacific cod in the BSAI. NMFS is rescinding the prohibition of retention of pollock by the offshore component in the BS and is prohibiting that directed fishery. This action is necessary to avoid unnecessary discard of pollock and to allow harvest of the total allowable catch (TAC) of Pacific cod.

DATES: Effective 12 noon, Alaska local time (A.l.t.), September 11, 1992, through 12 midnight, A.l.t., December 31, 1992. Comments may be submitted until September 28, 1992.

ADDRESSES: Comments should be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, Alaska 99802-1668, or be delivered to 9109 Mendenhall Mall Road, Federal Building Annex, Suite 6, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS at 907/586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI Area (FMP) prepared by the North Pacific Fishery Management Council under

authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

Reserve Releases

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 675.20(b)(1)(i), that the initial TAC specified for Pacific cod needs to be supplemented from the non-specific reserve in order to continue operations. Therefore, NMFS apportions 22,000 metric tons (mt) from the reserve to the TAC in the BS, resulting in a revised Pacific cod TAC of 176,700 mt.

The Regional Director has also determined, in accordance with § 675.20(b)(1)(i), that the TAC specified for pollock needs to be supplemented from the non-specific reserve in order to continue operations and avoid unnecessary discard of pollock. Therefore, NMFS apportions 38,500 mt from the reserve to the pollock TAC in the BS, resulting in a revised pollock TAC of 1,241,000 mt. The first pollock season harvest was 534,131 mt, leaving 706,869 mt for the second pollock season. The revised amounts for the second pollock season for the inshore and offshore components are 247,404 mt and 459,465 mt, respectively, in accordance with § 675.20(a)(3)(ii).

Rescission of Prohibited Species Status

NMFS has established a directed fishing allowance of 415,000 mt for the offshore component (57 FR 33904, July 31, 1992). In accordance with § 675.20(c), the offshore component was required to treat pollock as a prohibited species in the BS effective 12 noon, A.l.t., August 17, 1992, (57 FR 37731, August 20, 1992).

Because the pollock allowance for the offshore component is increased, 44,465 mt remains to support anticipated groundfish fisheries. Therefore, NMFS rescinds the prohibition of retention of pollock by the offshore component in the BS effective 12 noon, A.l.t., September 11, 1992.

The Regional Director has also determined, in accordance with § 675.20(a)(8), that the pollock allowance available for the offshore component in the BS will be necessary as bycatch to support other anticipated groundfish fisheries. Consequently, NMFS is prohibiting directed fishing for pollock in the BS by the offshore component effective from 12 noon, A.l.t., September 11, 1992, through 12 midnight, A.l.t., December 31, 1992.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under 50 CFR 675.20, and is in compliance with E.O. 12291.

The Assistant Administrator for Fisheries, NOAA, finds for good cause that providing prior notice and public comment or delaying the effective date of this notice is impracticable, unnecessary, or contrary to the public interest. Without this apportionment, U.S. groundfish fishermen would have to discard bycatches of pollock in the BS, resulting in needless economic waste of valuable fishery resources, and the directed fishery for Pacific cod would have to be closed, causing economic hardship for the industry. Under § 675.20(b)(2), interested persons are invited to submit written comments on this apportionment to the above address until September 28, 1992.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

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

Dated: September 11, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-22379 Filed 9-11-92; 4:03 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 180
Wednesday, September 16, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Removal of Reedville and Cape Charles City as Ports of Entry

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes an amendment to part 101 of the Customs Regulations which would remove Cape Charles City and Reedville, both in Virginia, from the list of ports of entry. Customs has reviewed the history of activity at these ports, and has determined that its resources could be better utilized if these ports in the Norfolk District were removed from the list of ports of entry.

DATES: Comments must be received on or before November 16, 1992.

ADDRESSES: Comments (preferably in triplicate) may be submitted to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, room 2119, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Margaret Reyen, Office of Workforce Effectiveness, Office of Inspection and Control, U.S. Customs Service (202) 566–8157.

SUPPLEMENTARY INFORMATION:

Background

The Customs Service, in its continuing attempt to more efficiently manage its personnel, facilities and resources, as well as improve the service it provides the public, regularly reviews activity levels at its ports of entry and other locations. It then attempts to allocate its limited available resources and employees where they can best manage the workload.

Customs has recently completed a survey of activity within the Norfolk District which has shown that the ports of entry of Reedville, Virginia and Cape Charles City, Virginia have not had any merchandise imported or exported from them for several years. Because there is no vessel activity at these ports, there is no need for Customs officials to be available. Similarly, there is no projected commercial activity which would create a need for Customs services at these ports. Accordingly, Customs is proposing to remove these locations from the listing of ports of entry in § 101.3(b) of the Customs Regulations (19 CFR 101.3(b)).

Pursuant to the requirements of 19 U.S.C. 2075, Customs notified the Senate Finance Committee and the Ways and Means Committee of the House of Representatives of this proposed action in June 1991. No objection to the proposed closures was received from Congress during the prescribed six-month waiting period; accordingly, Customs is proceeding with this Notice of Proposed Rulemaking to the public. Because there has been no Customs activity at either location for many years, it is not anticipated that this proposed change will have any adverse financial impact on either the agency or the community.

If the proposed elimination of the ports is adopted, the listing of Customs regions, districts, and ports of entry in 19 CFR 101.3(b) will be amended accordingly.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m., at the Regulations and Disclosure Law Branch, room 2119, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

Authority: This change is proposed under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66 and 1624.

Regulatory Flexibility Act and Executive Order 12291

Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Although this document is being issued with notice for public comment, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553 because it relates to agency management and organization. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this document relates to agency organization and management, it is not subject to E.O. 12291.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

Michael H. Lane,
Acting Commissioner of Customs.

Approved: August 26, 1992.

Peter K. Nunez,
Assistant Secretary of the Treasury.

[FR Doc. 92–22344 Filed 9–15–92; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS–103–90]

RIN 1545–AP23

Election Out of Subchapter K for Producers of Natural Gas

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations regarding certain requirements that must be met by producers of natural gas subject to a gas balancing agreement in order to elect under section 761(a) to be excluded form the application of subchapter K of chapter 1 of the Internal Revenue Code.

DATES: Written comments must be received by November 16, 1992. A public hearing on these proposed regulations has been scheduled for 10 a.m. on Tuesday, November 16, 1992. Persons wishing to speak at this hearing must

deliver their comments, requests to speak, and outlines of their comments by October 27, 1992.

ADDRESSES: Send comments and requests (with outlines of oral comments) for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (PS–103–90), room 5228, Washington, DC 20044. In the alternative, submissions may be hand-delivered to the Internal Revenue Service, Attn: CC:CORP:T:R (PS–103–90), room 5228, 1111 Constitution Ave., NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Grace Kim, 202–622–3060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information requirement contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information requirement should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collection of information is required by § 1.761–2(d)(5)(i) of the proposed regulations. The Internal Revenue Service requires the information in § 1.761–2(d)(5)(i) of the proposed regulations to ensure that gas producers are in compliance with the general rules for changes in method of accounting and with the rules of § 1.761–2(d) of the proposed regulations. The likely respondents are individuals, businesses, and other for-profit institutions.

These estimates approximate the average time expected to be necessary to collect required information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require more or less time, depending on their particular circumstances.

Estimated total annual reporting burden: 2,500 hours.

The estimated average annual burden associated with the collection of information is .5 hour per respondent.

Estimated total number of respondents: 5,000.

Estimated annual frequency of responses: one time only.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 761 of the Internal Revenue Code (Code). The amendments are to be issued under the authority contained in sections 446(b), 761(a) and 7805 of the Code.

Explanation of Provisions

I. General Background

Section 761(a) of the Code authorizes the Secretary to issue regulations permitting the members of certain unincorporated organizations to elect to have the organization excluded from the application of all or part of subchapter K of chapter 1 of the Code ("subchapter K"). Unincorporated organizations that are used for the joint production, extraction, or use of property, but not for the purpose of selling services or property produced or extracted, are eligible to make the election. However, the election is available only if the income of the members of the organization may be adequately determined without the computation of partnership taxable income. See § 1.761–2 (a)(1) through (a)(3) of the regulations.

Section 1.761–2(a)(3) of the regulations describes certain organizations involved in the joint production, extraction, or use of property that may be excluded from the application of subchapter K. In general, the organizations are those whose members (i) own the property as co-owners, (ii) reserve the right separately to take in kind or dispose of their shares of any property produced, extracted, or used, and (iii) do not jointly sell services or the property produced or extracted. These requirements generally would be met by members of an unincorporated organization that produce natural gas under a joint operating agreement ("JOA").

II. Description of the Gas Balancing Problem and the Service's Proposed Resolution

Co-owners ("producers") of a property producing natural gas enter into a JOA to define the rights and obligations of each producer of the gas in place. Generally, production operations are managed under a JOA. Additionally, the JOA describes each producer's proportionate share of gas as it is produced from the reservoir.

Under a JOA, each producer may take and dispose of its proportionate share of current gas production. When producers take current gas production in proportions differing from the producers' proportions under the JOA, a gas imbalance arises. A producer that takes less than its proportionate share under the JOA of current gas production is referred to as an "underproducer," and a producer that take more than its proportionate share of current gas production is referred to as an "overproducer."

Gas producers that operate under a JOA generally enter into a gas balancing agreement ("GBA") or similar agreement as an addendum to, or part of, the JOA to establish their rights and obligations when a gas imbalance arises. The GBA is primarily an accounting mechanism that defers the underproducer's cotenancy right (established under the JOA and state or common law) to an accounting and current payment for the proceeds of the underproducer's gas that is sold by the overproducer, that is, the overproduced gas. A typical GBA gives the overproducer the right to take and dispose of the overproduced gas. Further, it entitles the underproducer to recoup the amount of the overproduced gas at a later time either from the volume of the gas remaining in the reservoir or by a cash balancing payment. In addition, a GBA typically requires that upon exhaustion of the reservoir any remaining gas imbalance be accounted for through a cash balancing payment to the underproducer to reflect the underproducer's lost share of total production.

Under current industry practice, producers account for sales of gas subject to balancing under either of two accounting methods: (1) The entitlements method, under which a producer reports income currently only for its proportionate share under the JOA of current gas production regardless of the gas that it actually markets; and (2) the sales method, under which a producer reports income currently for the gas that it actually markets and for any balancing payments received. It is common for producers operating under the same GBA not to use the same method to account for gas sales.

Under existing accounting practices, income from sales of gas subject to balancing might not be recognized when the sale of the gas occurs and might remain unrecognized until balancing occurs. For example, if the overproducer uses the entitlements method of accounting, the overproducer does not currently recognize the income from its sales of overproduced gas. If the underproducer under the same JOA uses the sales method of accounting, the underproducer does not currently recognize the income from its gas subject to balancing until the

underproducer receives a balancing payment from the overproducer. When balancing does not occur until the reservoir is exhausted, recognition of the income from the overproduced gas might be deferred for a prolonged period of time after the sale of the overproduced gas.

This deferred income recognition is made possible because co-owners of a gas producing property treat their partnership as eligible to elect out of subchapter K. Without the section 761 election, these co-owners, constitution a partnership, would have to use the same method of accounting for gas sales and thus would not be able to defer recognizing income from gas sales by using different methods to account for the overproduced gas.

Under section 761 of the Code, the Service has broad authority to regulate the availability of, and conditions for, the section 761 election. The Service believes that the section 761 election was not intended, and should not be used, to allow co-owners of a gas producing property to defer income for substantial periods of time. Additionally, the Service believes that allowing co-producers to use differing methods of accounting that permit prolonged deferral is inconsistent with the rule in section 761 that permits the election-out only for unincorporated organizations whose members can adequately compute income without the necessity of computing partnership taxable income. Moreover, under section 446(b), the Service has broad regulatory authority to prescribe methods of accounting to ensure a clear reflection of income. Accordingly, the Service proposes to eliminate this potential for prolonged income deferral under its authority to regulate the section 761 election and to prescribe methods of accounting.

In developing these regulations, the Service considered numerous suggestions from industry representatives. The Service has concluded that co-owners of a gas producing property that account for gas imbalances under a GBA should continue to be permitted to elect out of subchapter K. However, the Service believes that additional rules are needed under section 761 to eliminate the potential for prolonged deferral of income. The Service intends for these rules to be consistent with the existing election-out requirements under section 761, and not to be unduly disruptive to existing business practices.

Accordingly, the Service proposes to amend the regulations under section 761, as described below, to modify the specific methods of accounting for gas imbalances that may be used by co-owners of a gas producing property that seek to make or maintain an election under section 761.

III. Description of the New Provisions

A. Permissible Gas Balancing Methods

Under the proposed regulations, for taxable years beginning on or after September 16, 1992, in order to make or maintain an election out of subchapter K, all parties to the same GBA (including a similar agreement) must use the same permissible gas balancing method to account for their sales of gas and for certain deductions and credits arising from those sales. For this purpose, the permissible gas balancing methods are (i) the "annual gas balancing method," as described in the proposed regulations, and (ii) the "cumulative gas balancing method," as described in the proposed regulations. The proposed regulations further provide that, unless all the producers operating under the same GBA agree in writing to use the annual gas balancing method, the producers must use the cumulative gas balancing method.

B. Change in Method of Accounting and Section 481(a) Adjustment

The annual gas balancing method and the cumulative gas balancing method are methods of accounting for purposes of section 446 of the Code and the regulations thereunder. Thus, a change to or from either of these methods constitutes a change in method of accounting that requires the prior consent of the Commissioner. Under the proposed regulations, producers of natural gas operating under the same JOA and accounting for gas imbalances under in GBA in effect on the effective date of the regulations, upon complying with certain rules relating to timing and procedures, are granted the Commissioner's consent to change to one of the two specified methods for their first taxable year beginning on or after the effective date ("year of change"). A change in method of accounting under this provision of the proposed regulations is not subject to a user fee.

Additionally, the proposed regulations provide that, upon a change to either new method, a section 481(a) adjustment must be taken into account to prevent the omission or duplication of income. Generally, the section 481(a) adjustment relating to a GBA is equal to the difference between the amount of income reported under the producer's former method of accounting for all taxable years prior to the year of change and the amount of income that would have been reported if the producer's new method had been used in those years. Under the proposed regulations, the section 481(a) adjustment, whether positive or negative, generally is taken into account ratably over 6 taxable years beginning with the year of change (the "section 481(a) adjustment period").

Special rules are provided for producers that change to the annual gas balancing method and that make or receive certain balancing payments during or after the section 481(a) adjustment period. *Example 6* of § 1.761–2(d)(6) of the proposed regulations illustrates the application of these rules.

C. Description of the Annual Gas Balancing Method

The annual gas balancing method ("annual method") is a method of accounting for gas sales and for certain deductions and credits arising from those sales that takes into account each producer's ownership rights and obligations, as described in the JOA and the GBA, with respect to the producer's current proportionate share of gas as it is produced from the reservoir. Under the annual method, an overproducer is required annually to make a balancing payment to the underproducer to eliminate any gas imbalance remaining at the end of the overproducer's taxable year. The overproducer must make the balancing payment by the due date of its tax return for its taxable year (including extensions) during which it sold the overproduced gas.

In reporting income from sales of gas under the annual method, each producer must include all of the income from its sales of gas, including sales of any overproduced gas. However, for purposes of sections 613 and 613A, in computing its "gross income from the property," the overproducer does not include any amount relating to the sale of overproduced gas, and in computing "taxable income from the property" the overproducer does not deduct the amount of any balancing payment relating to the sale of overproduced gas.

An overproducer that makes the required balancing payment under the annual method deducts the amount of that payment from its gross income for the appropriate year under its overall method of accounting (*i.e.*, cash or accrual).

An underproducer receiving a balancing payment under the annual method must treat that payment as proceeds from the sale of its gas and must include that payment in gross income for the appropriate year under its overall method of accounting.

Each producer deducts its proportionate share of production expenses, as provided in the JOA, under its regular method of accounting for such expenses.

In addition, each producer computes its depletion deduction and any available production credit (*e.g.*, the credit under section 29 of the Code for producing fuel from a nonconventional source) on its proportionate share of production as provided in the JOA.

D. Description of the Cumulative Gas Balancing Method

The cumulative gas balancing method ("cumulative method") is a method of accounting for income from gas sales and for certain related deductions and credits that treats each producer subject to the same gas balancing agreement as the sole owner of its percentage share of the total gas in the reservoir and that disregards the ownership arrangement described in the JOA and GBA for gas as it is produced from the reservoir. Each producer is considered to be taking exclusively its share of the total gas in the reservoir as long as the gas remaining in the reservoir is sufficient to satisfy the ownership rights of the other producers in their percentage shares of the total gas in the reservoir. While each producer is taking its share of the total gas in the reservoir, each producer is taxed and computes an allowance for depletion and a production credit, if available, based on the total volume of its sales. Each producer deducts its proportionate share of production expenses, as provided in the JOA, using its regular method of accounting for such expenses.

After a producer has taken its entire share of the total gas in the reservoir, the producer ("taking producer") is considered to be taking from the other co-producers' ("nontaking producers") total share of gas. However, because the taking producer retains the proceeds from the sale of gas, subject to an obligation to pay the nontaking producers for the sale of their gas, the taking producer is required to include the sales proceeds in gross income for that year. To eliminate the potential for prolonged income deferral from current gas sales, the taking producer is permitted a deduction, with respect to its obligation to pay the nontaking producers, only for the taxable year in which it actually makes the payment. Thus, the taking producer is not allowed a current deduction for any accrued liability to pay the nontaking producers for the sale of their gas.

Consistent with the treatment of the taking producer, a nontaking producer does not include in gross income any amount relating to sales of its gas by the taking producer until the nontaking producer receives a payment from the taking producer for the sale of its gas. The nontaking producer must treat the payment as proceeds from the sale of its gas and must include the payment in gross income in the taxable year received.

The proposed regulations contain special rules for determining the amount of any production credit (if available) and depletion deductions allowable to producers using the cumulative method. Generally, a producer is allowed a production credit and a deduction for depletion only for sales of its gas (as determined under the cumulative method) in the taxable year that the amounts relating to the sales are included in the producer's gross income. Thus, a taking producer may not claim a production credit or an allowance for depletion for sales of a coproducer's gas. Additionally, a nontaking producer claims a production credit and an allowance or depletion relating to sales of its gas by the taking producer only for the taxable year that the nontaking producer includes a payment from the taking producer in gross income.

The Service understands that in certain circumstances a producer may not be able to reasonably determine exactly when the producer is no longer taking its gas and has begun taking a co-producer's gas. Thus, if a taking producer claims an allowance for depletion and a production credit on its sales of a co-producer's gas under a reasonable, but mistaken, belief that it is still producing from its percentage share of the total gas in the reservoir, the Service will not disallow the depletion deduction or the production credit.

In addition, rules are provided to take into account, in the taxable year that the taking producer makes a payment to a co-producer for sales of the co-producer's gas, any depletion deduction and production credits relating to sales of the co-producer's gas.

The proposed regulations provide that, when the taking producer makes a payment to a co-producer for sales of the co-producer's gas, the taking producer must reduce the deduction allowable for making the payment by the amount of any depletion deductions previously allowed for sales of the co-producer's gas. Additionally, if the percentage limitation of section 613A(d)(1) applied to disallow a depletion deduction for a previous year, the taking producer also must reduce the amount of any carried over depletion deduction allowable in the year of the payment or in a future year by the portion of the deduction, if any, that relates to a co-producer's gas.

When the taking producer makes a payment to a co-producer for sales of the co-producer's gas, the taking producer must add to its tax for the taxable year in which it makes the payment the amount of any production credit allowed for sales of the co-producer's gas to the extent that the credit actually reduced the taking producer's tax. Additionally, the taking producer must reduce the amount of the producer's minimum tax credit allowable by reason of section 53(d)(1)(B)(iii) in the year of the payment or in a future year by the portion of the credit, if any, that relates to a co-producer's gas.

The proposed regulations also contain an anti-abuse rule to prevent gas producers from using the cumulative method to improperly shift income, deductions, or credits with a principal purpose of avoiding tax. The cumulative method is intended to allow producers affected by production imbalances to continue to conduct their operations under their existing business arrangements. However, the service does not intend the cumulative method to foster the arranging of production for tax avoidance purpose.

Accordingly, if the Service determines that, based on an examination of all the facts and circumstances, co-producers under the cumulative method have arranged or altered their taking or production, as compared to the ownership percentages under the JOA, with a principal purpose of shifting the income, deductions, or credits relating to that production to avoid tax, the Service will revoke the producers' section 761 election for that year and for subsequent years. Examples 4 and 5 of § 1.76–2(d)(6) of the proposed regulations describe situations in which the anti-abuse rule would and would not apply.

IV. Effective Date

This amendment is proposed to apply to producers that are members of unincorporated organizations that produce natural gas under JOAs and that account for gas imbalances under GBAs or similar agreements in effect on or after September 16, 1992, for taxable year beginning on or after such date.

Comments and Public Hearing

Before the adoption of these proposed regulations, consideration will be given to any written comments that are timely submitted (preferably an original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A

public hearing will be held at 10 a.m. on Tuesday, November 17, 1992, in the I.R.S. Commissioner's Conference Room, room 3313 of the Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. Outlines of comments from persons wishing to speak at this hearing must be received by October 27, 1992.

Special Analyses

The Service has concluded that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administration Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

Drafting Information

The principal author of these regulations in H. Grace Kim of the Office of Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR 1.761–1 through 1.761–2

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, title 26, chapter I, part 1 is proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * Section 1.761–2 also issued under 26 U.S.C. 446(b) and 26 U.S.C. 761(a). * * *

Par. 2. Section 1.761–2 is amended as follows:

1. The section heading for § 1.761–2 is revised.

2. A new sentence is added to the end of paragraph (a)(3).

3. Paragraph (d) is redesignated as paragraph (e).

4. New paragraph (d) is added.

5. The revised and added provisions read as follows:

§ 1.761–2 Exclusion of certain unincorporated organizations from the application of all or part of subchapter K of chapter 1 of the Internal Revenue Code.

(a) * * *

(3) * * * In addition, this paragraph (a)(3) does not apply to any unincorporated organization that produces natural gas under a joint operating agreement and that accounts for gas imbalances under a gas balancing agreement (as described in paragraph (d)(1) of this section) that is in effect on or after September 16, 1992, unless all members of the unincorporated organization comply with the provisions of paragraph (d) of this section.

* * * * *

(d) *Rules for gas producers subject to gas balancing agreements*—(1) *Gas balancing agreements.* A gas balancing agreement is an addendum to, or part of, a joint operating agreement entered into by co-producers of a natural gas reservoir. The joint operating agreement determines, among other things, each producer's proportionate share of the natural gas as it is produced from the reservoir, together with the associated production expenses. A gas imbalance arises when a producer is unable to take its proportionate share of current gas production under the joint operating agreement ("underproducer") and another producer takes more than its proportionate share of current production ("overproducer"). The gas balancing agreement describes the rights and obligations among the co-producers when a gas imbalance arises. It customarily provides that the overproducer may take the amount of the gas imbalance ("overproduced gas") and that the underproducer is entitled to recoup the overproduced gas either from the volume of the gas remaining in the reservoir or by a cash balancing payment as determined under the gas balancing agreement. Any agreement similar to a gas balancing agreement is treated as a gas balancing agreement for purposes of this § 1.761–2.

(2) *Permissible gas balancing methods*—(i) *General requirements.* All producers of natural gas operating under the same joint operating agreement that account for gas imbalances under a gas balancing agreement must use the same permissible gas balancing method to account for sales of gas and for certain related deduction and credits. The permissible gas balancing methods for purposes of this paragraph (d)(2)(i) are the annual gas balancing method and the cumulative gas balancing method. Co-producers must use the cumulative gas balancing method unless they agree in writing to use the annual gas balancing method.

(ii) *Change in method of accounting.* The annual gas balancing method and the cumulative gas balancing method are methods of accounting. Accordingly, a change to or from either of these methods is a change in method of accounting that requires the consent of the Commissioner. See section 446(e) and § 1.446–1(e). Producers that are subject to a gas balancing agreement in effect on September 16, 1992, must change their method of accounting for sales of gas and certain related deductions and credits with respect to each agreement to either of the permissible methods under the rules of paragraph (d)(5)(i) of this section. For each gas balancing agreement entered into on or after September 16, 1992, co-producers may adopt either of the permissible methods by using the method on their timely filed return for the first taxable year beginning on or after such date.

(3) *Annual gas balancing method*—(i) *In general.* The annual gas balancing method ("annual method") is a method of accounting for gas sales and certain related deductions and credits that takes into account each producer's ownership rights and obligations, as described in the joint operating agreement and the gas balancing agreement, with respect to the producer's current proportionate share of gas as it is produced from the reservoir. Under the annual method, gas imbalances for the taxable year must be eliminated on an annual basis.

(ii) *Requirements*—(A) *Reporting of income from sales of gas.* Under the annual method, each producer must include the amount of its sales of gas produced under the joint operating agreement, including overproduced gas, in gross income for the appropriate year under this overall method of accounting (*i.e.*, cash or accrual). However, in computing "gross income from the property" for purposes of sections 613 and 613A, an overproducer does not include in gross income any amount relating to the sale of overproduced gas.

(B) *Required balancing payment by overproducer.* Any gas imbalance remaining at the end of the taxable year of an overproducer must be eliminated by a balancing payment from the overproducer to the underproducer by the due date of the overproducer's tax return for that taxable year (including extensions). The balancing payment

may be made in cash, gas, or other property.

(C) *Deduction by overproducer of balancing payment.* An overproducer deducts the amount of a balancing payment from gross income for the appropriate year under its overall method of accounting. In computing "taxable income from the property" for purposes of sections 613 and 613A, the amount of the balancing payment is not deducted.

(D) *Reporting of income by underproducer for balancing payment.* An underproducer receiving a balancing payment must treat the amount of that payment as proceeds from the sale of its gas and must include that amount in gross income for the appropriate year under its overall method of accounting.

(E) *Computation of production credits and depletion deductions.* Each producer must compute for its taxable year a production credit (*e.g.*, the credit under section 29 for producing fuel from a nonconventional source), if available, and an allowance for depletion as provided in part I of subchapter I of chapter 1 of the Internal Revenue Code only on its proportionate share of production and income as provided in the joint operating agreement. Thus, an overproducer may not claim a production credit or an allowance for depletion on its sale of overproduced gas, but an underproducer claims a production credit and an allowance for depletion on the amount of any balancing payment in the taxable year that the amount is included in the underproducer's gross income.

(F) *Reporting of production expenses.* Each producer deducts for its taxable year its proportionate share of production expenses, as provided in the joint operating agreement, under its regular method of accounting for the expenses.

(4) *Cumulative gas balancing method*—(i) *In general.* The cumulative gas balancing method ("cumulative method") is a method of accounting for income from gas sales and for certain related deductions and credits that treats such producer subject to the same gas balancing agreement as the sole owner of its percentage share of the total gas in the reservoir and that disregards the ownership arrangement described in the joint operating agreement and the gas balancing agreement for gas as it is produced from the reservoir. Each producer is considered to be taking only its share of the total gas in the reservoir as long as the gas remaining in the reservoir is sufficient to satisfy the ownership rights of the co-producers in their percentage shares of the total gas in the reservoir. After a producer has taken its entire share of the total gas in the reservoir, any additional gas taken by that producer ("taking producer") is treated as having been taken from the co-producers' share of the total gas in the reservoir. The effect of being treated as a taking producer under the cumulative method is that the taking producer generally may not claim an allowance for depletion and a production credit on its sales of the co-producers' percentage shares of the total gas in the reservoir.

(ii) *Requirements*—(A) *Reporting of income from sales of gas.* Under the cumulative method, each co-producer must include in gross income under its overall method of accounting the amount of its sales from all gas produced from the reservoir, including sales of gas taken from a co-producer's share of the gas in the reservoir.

(B) *Reporting of deduction of taking producer.* A taking producer deducts the amount of a payment made to a co-producer for sales of the co-producer's gas, but only for the taxable year that the payment is made. Thus, an accrual method taking producer is not permitted a deduction for any obligation that it has to pay a co-producer for sales of the co-producer's gas until a payment is made. See paragraph (d)(4)(iii)(B) of this section for a rule requiring a reduction of the amount of the deduction described in this paragraph (d)(4)(ii)(B) if the taking producer had claimed a depletion deduction relating to those sales.

(C) *Reporting of income by other co-producers.* A co-producer that is entitled to receive a payment from a taking producer must include the amount of the payment in gross income as proceeds from the sale of its gas only for the taxable year that the payment is actually received, regardless of its overall method of accounting.

(D) *Reporting of production expenses.* Each co-producer deducts its proportionate share of production expenses, as provided in the joint operating agreement, under its regular method of accounting for the expenses.

(iii) *Special rules for production credits and depletion deductions under the cumulative method*—(A) *In general.* Under the cumulative method, a producer's depletion allowance and production credit for a taxable year are based on the producer's income from gas sales and production of gas from the producer's percentage share of the total gas in the reservoir, and are not based on the producer's current proportionate share of income and production as determined under the joint operating agreement. Thus, in general, a taking producer is not allowed a production credit or an allowance for depletion on its sales of gas in excess of its percentage share of the total gas in the reservoir. However, the Service will not disallow depletion deductions or production credits claimed by a taking producer on a co-producer's gas if the taking producer had a reasonable but mistaken belief that the deductions or credits were claimed with respect to the taking producer's percentage share of total gas in the reservoir. The reasonableness of the mistaken belief is determined at the time of filing the return claiming the deductions or credits. See paragraphs (d)(4)(iii)(B) and (d)(4)(iii)(C) of this section for the treatment of a depletion deduction and a production credit claimed by a taking producer on a co-producer's gas. A co-producer receiving a payment for sales of its gas from a taking producer claims a production credit and an allowance for depletion relating to those sales only for the taxable year that the amount of the payment is included in its gross income.

(B) *Reduction of taking producer's payment deduction for depletion claimed on a co-producer's gas.* If a taking producer claims an allowance for depletion on a co-producer's gas, the taking producer must reduce its deduction claimed in a later year for making a payment to a co-producer for sales of the co-producer's gas by the amount of any depletion deduction allowed on the gas sales to which the payment relates. If the percentage limitation of section 613A(d)(1) applied to disallow a depletion deduction for a previous year, the taking producer also must reduce the amount of any carried over depletion deduction allowable in the year of the payment or in a future year by the portion of the deduction, if any, that relates to a co-producer's gas.

(C) *Addition to tax of taking producer for production credit claimed on a co-producer's gas.* If a taking producer claims a production credit on a co-producer's gas, the taking producer must add to its tax for the taxable year that it makes a payment to a co-producer for sales of the co-producer's gas any production credit allowed in an earlier taxable year on the gas sales to which the payment relates, but only to the extent that the credit allowed actually reduced the taking producer's tax in any earlier year. The taking producer also must reduce the amount of the producer's minimum tax credit allowable by reason of section 53(d)(1)(B)(iii) in the year of the payment or in a future year by the portion of the credit, if any, that relates to a co-producer's gas.

(iv) *Anti-abuse rule.* If the Commissioner determines that co-producers using the cumulative method have arranged or altered their taking of production for a taxable year with a principal purpose of shifting the income, deductions, or credits relating to that production to avoid tax, the producers' election to be excluded from all or part of subchapter K will be revoked for that year and for subsequent years. In determining that a principal purpose was to avoid tax, the Commissioner will examine all the facts and circumstances surrounding the use by the producers of the cumulative method. See *Examples 4* and *5* of paragraph (d)(6) of this section.

(5) *Transitional rules for producers subject to a gas balancing agreement in effect on September 16, 1992.*—(i) *Automatic consent to change in method of accounting.* A producer subject to one or more gas balancing agreements in effect on September 16, 1992 is granted the consent of the Commissioner to change its method of accounting with respect to each agreement to either the annual method or the cumulative method, provided the producer—

(A) Makes the change on its timely filed return for its first taxable year beginning on or after September 16, 1992 ("year of change");

(B) Attaches a completed and signed Form 3115 to the producer's tax return for the year of change;

(C) Attaches to the Form 3115 a separate statement listing those gas balancing agreements for which the producer is changing to the annual method and those gas balancing agreements for which the producer is changing to the cumulative method; and

(D) Attaches an agreement, in the case of a change to the annual method, signed by all of the co-producers to use that method.

(ii) *Application of section 481(a)*—(A) *In general.* A change in method of accounting under paragraph (d)(5)(i) of this section is a change in method of accounting to which the provisions of section 481(a) apply. Thus, a section 481(a) adjustment must be taken into account in the manner provided by this paragraph (d)(5)(ii) to prevent the omission or duplication of income. The section 481(a) adjustment of a producer relating to a gas balancing agreement is computed as of the first day of the producer's year of change for that gas balancing agreement and is equal to the difference between the amount of income reported under the producer's former method of accounting for all taxable years prior to the year of change and the amount of income that would have been reported if the producer's new method had been used in all those taxable years. In the case of a change to the annual method, in computing the amount of income that would have been reported if the producer's new method had been used in the prior years, the overproducer does not accrue any deduction and the underproducer does not accrue any income under paragraphs (d)(3)(ii) (C) and (D) of this section, respectively, for payments made by the extended due date of the tax return for the taxable year immediately preceding the year of change relating to any gas imbalance remaining at the end of the taxable year immediately preceding the year of change. The section 481(a) adjustment is taken into account in the manner specified in paragraph (d)(5)(ii)(B) of this section.

(B) *Section 481(a) adjustment period.* Except as provided in paragraph (d)(5)(iii)(B) of this section, a producer's section 481(a) adjustment, whether positive or negative, is taken into account in computing taxable income ratably over the 6-taxable-year period beginning with the year of change ("the section 481(a) adjustment period"). If the producer has been in existence less than 6 taxable years, the adjustment is taken into account over the number of years the producer has been in existence. If the producer ceases to engage in the trade or business that gave rise to the section 481(a) adjustment at any time during the section 481(a) adjustment period, the entire remaining balance of the section 481(a) adjustment relating to that trade or business must be taken into account in the year of the cessation. Solely for purposes of this paragraph (d)(5)(ii)(B), production under each joint operating agreement constitutes a separate trade or business. The determination as to whether the producer ceases to engage in its trade or business is to be made under the principles of § 1.446-1(e)(3)(ii) and its underlying administrative procedures. For example, the permanent cessation of production under a producer's joint operating agreement and gas balancing agreement constitutes the cessation of a trade or business of the producer. Accordingly, for the year that production under a joint operating agreement and gas balancing agreement permanently ceases, the remaining balance of the section 481(a) adjustment relating to the joint operating agreement and the gas balancing agreement must be taken into account.

(iii) *Special rules for producers that change to the annual method*—(A) *Computation of gas imbalances remaining at the end of each taxable year.* In applying the annual method of paragraph (d)(3) of this section, the gas imbalances remaining at the end of each taxable year are computed without regard to gas imbalance existing as of the close of the taxable year immediately preceding the year of change.

(B) *Treatment of balancing payment.* An overproducer that changes to the annual method with respect to a gas balancing agreement and that makes a balancing payment relating to a gas imbalance existing under the gas balancing agreement as of the beginning of the year of change ("prior year gas imbalance") deducts the amount of the payment for the taxable year in which the payment is made. Similarly, an underproducer that changes to the annual method with respect to a gas balancing agreement and that receives a balancing payment relating to a prior year gas imbalance must include the amount of the payment in gross income for the taxable year in which the payment is received.

(C) *Acceleration of section 481 adjustment under certain circumstances.* Under paragraph (d)(5)(ii)(A) of this section, a portion of the section 481(a) adjustment of a producer changing to the annual method may relate to a prior year gas imbalance under a gas balancing agreement. Under paragraph (d)(5)(ii)(B) of this section, the producer generally must take into account the section 481(a) adjustment ratably over the section 481(a) adjustment period. However, if a producer makes (or receives) a balancing payment relating to the prior year gas imbalance in a taxable year within the section 481(a) adjustment period, the producer must accelerate in that taxable year any remaining section 481(a) adjustment relating to the prior year gas imbalance to the extent that the cumulative balancing payments relating to the prior year gas imbalance exceed the cumulative section 481(a) adjustment relating to the prior year gas imbalance taken into account as of the end of that year. Thus, in computing taxable income for the year the payment is made (or received), the producer must take into account any accelerated portion of the section 481(a) adjustment in addition to that year's section 481(a) adjustment. The producer's section 481(a) adjustment relating to the prior year gas imbalance remaining after the acceleration is taken into account in computing taxable income ratably over the remaining years in the producer's section 481(a) adjustment period. See *Example 6* of paragraph (d)(6) of this section.

(6) *Examples.* The following examples illustrate the application of the rules of

paragraphs (d)(2) through (d)(5) of this section.

Example 1. (i) L, a corporation using the cash receipts and disbursements method of accounting, and M, a corporation using an accrual method, file returns on a calendar year basis. On December 1, 1992, L and M enter into a joint operating agreement (JOA) to produce natural gas as an unincorporated organization from a reservoir located in State Y. The JOA allocates reservoir production 60 percent to L and 40 percent to M. L and M enter into a gas balancing agreement (GBA) as an addendum to the JOA. L and M agree in writing to use the annual method to account for gas sales from the reservoir. L and M elect under section 761(a) and this section to exclude the organization from the application of subchapter K.

(ii) State Y sets a monthly production allowable of 100 million cubic feet (mmcf) of natural gas for the reservoir, and gas production under the JOA begins on January 1, 1993. Each month in 1993, L is able to sell 60 mmcf of gas, but M is able to sell only 20 mmcf of gas. Thus, in 1993, the reservoir produces only 80 percent of its monthly production allowable, that is, 80 mmcf per month, for a total of 960 mmcf.

(iii) For 1993, under the JOA, L's proportionate share of gas produced from the reservoir is 576 mmcf (60 percent of 960 mmcf), and M's proportionate share is 384 mmcf (40 percent of 960 mmcf). Because L's sales exceeded L's proportionate share, L overproduced 144 mmcf (720 mmcf minus 576 mmcf) for 1993 and M underproduced by the same amount (384 mmcf minus 240 mmcf). On March 14, 1994, L makes a cash balancing payment to M for 144 mmcf of gas at the value established under the GBA.

(iv) For 1993, L must include in gas income the amount relating to its total sales of 720 mmcf. M must include in gross income the amount relating to gas sales of 384 mmcf (240 mmcf of M's own 1993 gas sales, and 144 mmcf for which M received a balancing payment from L on March 14, 1994, and that is includible in 1993 under M's accrual method). Because L uses the cash method of accounting, L deducts from its 1994 gross income the amount of L's balancing payment for 144 mmcf. For 1993, under paragraph (d)(3)(ii)(E) of this section, both L and M compute an allowance for depletion based upon their proportionate share of current production as provided in the JOA (that is, based upon 576 mmcf and 384 mmcf for L and M, respectively).

Example 2. (i) L, a corporation using the cash receipts and disbursements method of accounting, and M, a corporation using an accrual method, file returns on a calender year basis. On December 1, 1992, L and M enter into a JOA to produce natural gas as an unincorporated organization from a reservoir located in State Y. The JOA allocates reservoir production 60 percent to L and 40 percent to M. L and M enter into a GBA as an addendum to the JOA. L and M agree to use the cumulative method to account for gas sales from the reservoir and elect under section 761(a) and this section to exclude the organization from the application of subchapter K. Production from the reservoir is eligible for the section 29 credit for producing fuel from a nonconventional source. L and M produce and sell the following amounts of natural gas (in mmcf) until 1998 during which year production from the reservoir ceases:

1993	
L	720
M	240
1994	
L	480
M	60
1995	
L	600
M	120
1996	
L	0
M	160
1997	
L	0
M	80
1998	
L	0
M	40

(ii) By the end of 1994, neither L nor M has fully produced its percentage share of the total gas in the reservoir. In 1995, L produces a total of 600 mmcf of gas at the rate of 50 mmcf per month. Prior to filing its return for 1995, L determines that it fully produced its percentage share of gas in the reservoir as of June 30, 1995. Pursuant to the GBA executed by L and M, at the end of 1998, L pays M for the 300 mmcf of M's gas (as determined under the cumulative method) that L sold in the last half of 1995.

(iii) For 1993, L and M must include in their gross income the amounts relating to gas sales of 720 mmcf and 240 mmcf, respectively. For 1994, L and M must include the amounts relating to gas sales of 480 mmcf and 60 mmcf, respectively. For both 1993 and 1994, L and M compute an allowance for depletion and a section 29 credit based upon gas taken and sold by each from the reservoir for each taxable year.

(iv) For 1995, L and M must include in gross income the amounts relating to their gas sales of 600 mmcf and 120 mmcf, respectively. Under paragraph (d)(4)(iii)(A) of this section, L computes an allowance for depletion and the section 29 credit based only on production from L's proportionate share of gas in the reservoir (that is, based on L's production through June 30, 1995). Accordingly, for 1995, L claims depletion and the section 29 credit only with respect to 300 mmcf of gas (50 mmcf per month × 6 months). For 1995, because M has not fully produced from its percentage share of the total gas in the reservoir as of the end of 1995, M claims depletion and the section 29 credit on the 120 mmcf that M produced in 1995.

(v) In 1996 and 1997, M must include in gross income the amounts relating to M's sales of gas, that is, 160 mmcf for 1996 and 80 mmcf for 1997. For 1998, M must include in gross income the amount relating to sales of 340 mmcf of gas, which consists of its own sales of 40 mmcf plus the payment for 300 mmcf of gas that L made to M for having sold from M's share of the total gas in the reservoir during the last half of 1995. Because M produced from its percentage share of the total gas in the reservoir during 1996, 1997 and 1998, M claims a depletion deduction and a section 29 credit on its income and production for those years, that is, 160 for 1996, 80 mmcf for 1997, and 40 mmcf for 1998. Additionally, for 1998, M claims depletion and the section 29 credit relating to the payment that M received from L for the 300 mmcf of M's gas that L sold in the last half of 1995. Under paragraph (d)(4)(ii)(B) of this section, L's deduction for its payment to M for the 300 mmcf of M's gas that L sold in 1995 is allowable only for 1998.

Example 3. (i) L, a corporation using the cash receipts and disbursements method of accounting, and M, a corporation using an accrual method, file returns on a calendar year basis. On December 1, 1992, L and M enter into a JOA to produce natural gas as an unincorporated organization from a reservoir located in State Y. The JOA allocates reservoir production 60 percent to L and 40 percent to M. L and M enter into a GBA as an addendum to the JOA. L and M agree to use the cumulative method to account for gas sales from the reservoir and elect under section 761(a) and this section to exclude the organization from the application of subchapter K. Production from the reservoir is eligible for the section 29 credit for producing fuel from a nonconventional source. L and M produce and sell the following amounts of natural gas (in mmcf) until 1998 during which year production from the reservoir ceases:

1993	
L	720
M	240
1994	
L	480
M	60
1995	
L	600
M	120
1996	
L	60
M	60
1997	
L	60
M	60
1998	
L	0
M	40

(ii) In addition, L does not realize until December 31, 1997, that L fully produced its percentage share of the total gas in the reservoir as of June 30, 1995. At the time of filing its returns for 1995 and 1996, L reasonably believes that during 1995 and 1996, respectively, it did not fully produce its percentage share of the total gas in the reservoir. Thus, L claims depletion and the section 29 credit for its total sales of 600 mmcf in 1995 and 60 mmcf in 1996. Pursuant to the GBA executed by L and M, L pays M at the end of 1998 for the 420 mmcf of M's gas (as determined under the cumulative method) that L sold (300 mmcf in the last half of 1995, 60 mmcf in 1996, and 60 mmcf in 1997).

(iii) In 1995 and 1996, L and M include in gross income the amounts relating to their respective sales of gas, that is, for L 600 mmcf

for 1995 and 60 mmcf for 1996, and for M 120 mmcf for 1995 and 60 mmcf for 1996.

(iv) For 1997, L must include in gross income the amount of its sales of 60 mmcf, but may not claim depletion or the section 29 credit on those sales. For 1997, M must include in gross income the amount of its sales of 60 mmcf and claims depletion and the section 29 credit with respect to those 60 mmcf.

(v) For 1998, M must include in gross income the amount relating to gas sales of 460 mmcf, that is, the amount of M's own gas sales of 40 mmcf and the amount of the payment received from L for the 420 mmcf of M's gas that L sold (consisting of 300 mmcf in 1995, 60 mmcf in 1996, and 60 mmcf in 1997). Under paragraph (d)(4)(iii)(A) of this section, M computes a depletion deduction and a production credit relating to the amount of M's actual gas sales for 1998 and the payment received from L, that is, relating to a total of 460 mmcf of gas (M's sales of 40 mmcf for 1998, plus L's payment for 420 mmcf of gas). Under paragraph (d)(4)(ii)(B) of this section, L's deduction for making its payment to M for 420 mmcf of gas is allowable only for 1998. Under paragraph (d)(4)(iii)(B) of this section, L must reduce its deduction by the amount of the depletion deductions allowed on its sales of M's gas, that is, relating to 360 mmcf of gas (300 mmcf for 1995 and 60 mmcf for 1996). In addition, under paragraph (d)(4)(iii)(C) of this section, L must increase its tax for 1998 by the amount of any section 29 credit L claimed on its sales of M's gas, but only to the extent that the credit claimed actually reduced L's tax in any earlier year.

Example 4. (i) C and D enter into a JOA and a GBA on December 1, 1992, for gas production from a reservoir. The JOA allocates production at 50 percent to C and 50 percent to D. C and D agree in writing to use the cumulative method to account for gas sales. Additionally, C and D elect under section 761(a) and this section to exclude their organization from the application of subchapter K. C and D arrange to sell all their production under annually renewable contracts. In 1993, C and D each sell 480 mmcf of gas from the reservoir.

(ii) In November, 1993, D is notified that its contract with its purchaser will not be renewed for 1994. D is unable to find a new purchaser for its gas for 1994. In December 1993, D notifies C that it will not be taking production from the reservoir in 1994. Pursuant to the GBA, C then contracts with its current gas purchaser to sell an additional 20 mmcf per month in 1994. Accordingly, C sells 720 mmcf in 1994 (60 mmcf per month × 12 months). Under the facts described in this example, a principal purpose of altering the taking of production is not to avoid tax. Accordingly, the producers' election under section 761(a) will not be revoked by reason of altering the taking of production.

Example 5. The facts are the same as in *Example 4*(i). For 1994, C anticipates that C's regular tax (reduced by the credits allowable under sections 27 and 28) will not exceed C's tentative minimum tax. Accordingly, under section 29(b)(6), C's credit allowed under section 29(a) for sales of its gas will be zero. For 1995, C anticipates that its credit allowed under section 29(a) will not be limited by section 29(b)(6). On the other hand, D anticipates that any credit it may claim under section 29(a) for 1994, even including a credit based on sales of C's share of current production under the JOA, will not be limited by section 29(b)(6). However, for 1995, D anticipates that its credit under section 29(a) will be limited by section 29(b)(6). On January 1, 1994, C and D agree that D will contract with its purchaser to sell the entire 960 mmcf produced from the reservoir in 1994 and that C will contract with its purchaser to sell the entire 960 mmcf produced from the reservoir in 1995. Under these facts, a principal purpose of altering the taking of production is to avoid tax. Accordingly, the producers' election under section 761(a) will be revoked for 1994 and for subsequent years.

Example 6. (i) R and G, both calendar year taxpayers, are subject to a GBA on September 16, 1992, and agree in writing that each will change its method of accounting with respect to the GBA to the annual method. A 300 mmcf gas imbalance amounting to $300x ("prior year gas imbalance") exists at the end of 1992, the taxable year immediately preceding the year of the change in method of accounting by R and G to the annual method. R is the overproducer and G is the underproducer. R's section 481(a) adjustment relating to the prior year gas imbalance is positive $300x, and G's section 481(a) adjustment is negative $300x. In the absence of any balancing payments relating to the prior year gas imbalance during the 6-year section 481(a) adjustment period (1993 through 1998), R and G must take into account, for each year in the section 481(a) adjustment period, positive $50x and negative $50x, respectively, beginning with the 1993 taxable year.

(ii) R makes a $180x balancing payment to G for 180 mmcf in 1995, the third year of the section 481(a) adjustment period. Under paragraph (d)(5)(iii)(B) of this section, R deducts $180x for 1995, the year that R makes the payment, and G must include $180x in gross income for 1995, the year that G receives the payment. Under paragraph (d)(5)(iii)(C) of this section, in computing taxable income for 1995, R and G each must take into account $30x of their remaining section 481(a) adjustment (in addition to the $50x section 481(a) adjustment for 1995), because the cumulative balancing payments relating to their prior year gas imbalance as of the end of 1995 ($180x) exceed the cumulative section 481(a) adjustment relating to that imbalance as of the end of 1995 ($150x) by $30x. The section 481(a) adjustment of R and G relating to the prior year gas imbalance and remaining as of the beginning of 1996 (positive $120 for R and negative $120 for G) is taken into account ratably over the remaining section 481(a) adjustment period (1996 through 1998). Thus, for each of 1996, 1997, and 1998, the portion of the section 481(a) adjustment of R and G relating to the prior year gas imbalance is positive $40 and negative $40, respectively. The section 481(a) adjustments (in $) for R and G relating to the prior year gas imbalance are taken into account as follows:

1993	
R	+50x
G	−50x
1994	
R	+50x
G	−50x
1995	
R	+80x
	(+50x+30x)
G	−80x
	(−50x−30x)
1996	
R	+40x
G	−40x
1997	
R	+40x
G	−40x
1998	
R	+40x
G	−40x

(iii) In 1999, after the section 481(a) adjustment period expires, R makes a balancing payment of $120x to G for the remaining 120 mmcf of the prior year gas imbalance. R deducts the amount of that payment only for 1999, the taxable year in which R makes the payment. G must include the amount of the payment in gross income for 1999, the taxable year in which G receives the payment.

(7) *Effective date.* The provisions of this paragraph (d) apply to any producer that is a member of an unincorporated organization that produces natural gas under a joint operating agreement and that accounts for gas imbalances under a gas balancing agreement in effect on or after September 16, 1992, for taxable years beginning on or after such date.

* * * * *

Phil Brand,

Acting Commissioner of Internal Revenue.

[FR Doc. 92-22000 Filed 9-15-92; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 1

[PS-103-90]

RIN 1545-AP23

Election Out of Subchapter K for Producers of Natural Gas; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations regarding certain requirements that must be met by producers of natural gas subject to a gas balancing agreement in order to elect under section 761(a) to be excluded from the application of subchapter K of chapter 1 of the Internal Revenue Code.

DATES: The public hearing will be held on Tuesday, November 17, 1992, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Tuesday, October 27, 1992.

ADDRESSES: The public hearing will be held in the IRS Commissioner's Conference Room, room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R [PS–103–90], room 5228, Washington, DC. 20044.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–622–6803 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 761 of the Internal Revenue Code. These regulations appear in the proposed rules section of this issue of the **Federal Register**.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Tuesday, October 17, 1992, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue:

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92–22294 Filed 9–15–92; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 920775–2175]

RIN 0651–AA44

Changes in Patent Drawing Standards

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Patent and Trademark Office (Office) is proposing to amend the rules of practice regarding patent drawings to adopt international standards and to eliminate unnecessary requirements.

The Office proposes to amend the rules to: (1) Revise § 1.84 to provide clarification and adopt international standards; (2) delete § 1.88; (3) delete in § 1.123 the reference to changes by bonded draftsmen since the Office will no longer release drawings from patent applications; (4) revise § 1.152 for design drawings to include the option of submitting black and white photographs in lieu of black ink drawings; and (5) revise § 1.165 for plant patent drawings to eliminate the acceptability of mounted photographs.

DATES: Written comments must be received on or before October 16, 1992 to ensure consideration. An oral hearing will not be conducted.

ADDRESSES: Address written comments to Office of the Assistant Commissioner for Public Services and Administration, Commissioner of Patents and Trademarks, Washington, DC 20231, marked to the attention of Richard A. Bawcombe. Comments may also be sent by facsimile transmission to the attention of Richard A. Bawcombe at (703) 305–8294.

FOR FURTHER INFORMATION CONTACT: Richard A. Bawcombe by telephone at (703) 305–8594 or by mail marked to his attention and addressed to Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: Drawings acceptable for patent applications filed outside of the United States are not always acceptable when filed in a patent application filed in the United States. Therefore, the rules relating to drawing requirements are proposed to be amended to enable the Office, when appropriate, to accept drawings that are capable of clear reproduction for the printing of any resulting patent. Drawings in compliance with the present § 1.84 will be in compliance with proposed § 1.84.

Discussion of Specific Sections to be Changed or Added

Section 1.17(h) is proposed to be amended to include the appropriate processing fee for accepting color drawings or photographs in utility patent applications as set forth in § 1.84.

Section 1.19(a)(3) is proposed to be amended to change the citation of § 1.84(p) to § 1.84(a)(2) so that § 1.19(a)(4), which sets the fee for submitting color drawings, refers to the proper paragraph of § 1.84 that discusses color drawings.

Section 1.71(d) is proposed to be amended to change the citation of § 1.84(o) to § 1.84(s) because § 1.84(s) specifies how mask work notices should be placed on the drawings.

Section 1.84 is proposed to be revised as follows:

(a) Drawings. This paragraph is proposed to classify drawings into two categories, i.e., black ink and color and delete the limitation that the use of white pigment to cover lines is not normally acceptable. The black ink drawing requirements are proposed to be amended to allow computer-generated drawings to be accepted subject to the same standards applied to pen and ink drawings. Color drawing requirements would be moved from § 1.84(p) to proposed § 1.84(a). Color drawings may be acceptable upon the granting of a petition filed under this paragraph explaining why the color drawings are necessary. A petition is required because the special handling necessary for color drawings is time consuming and the Office cannot permit such a special procedure except in exceptional circumstances. Since utility patents are not printed in color, 5 sets of color drawings are necessary for proper distribution within the Office. One set will be attached to the Letters Patent for routing to the applicant. The remaining four sets will be attached to patent copies for routing to (1) the patent file, (2) the Office of Administrative Services for archival storage at Boyers, Pennsylvania, (3) the plant patent search room for archival storage at the Office, and (4) the Office of Patent and Trademark Information Services for copying purposes.

(b) Photographs. This paragraph is proposed to permit the acceptance of photographs (limited to a single photograph per sheet), upon granting of an applicant's petition. The Office proposes to accept black and white and color photographs or photomicrographs (not photolithographs or other

reproductions of photographs made by using screens) developed on double weight photographic paper in lieu of ink drawings. Mounted photographs would not be acceptable. The photographs must be of sufficient quality so that all details in the drawing are reproducible in the printed patent.

(c) Identification of drawings. This paragraph is proposed to be changed and broadened to permit an applicant to provide proper identification information on the reverse side of each sheet of drawings. The identification information allows the Office to match drawing sheets with the proper application. The identification information should include the application number, if known, or the title of the invention, inventor's name, docket number (if any), and name and telephone number of the person to call if the drawings cannot be matched to the proper patent application. The Office will not object if identifying information is not present; however, if the drawings become separated, the Office will not be able to match those drawings to the application. This paragraph is restructured from current § 1.84(1) and revised to state that the preferred placement of the information is on the back side of the drawing sheets.

(d) Graphic forms in drawings. This paragraph is proposed to set standards for chemical and mathematical formulae to align Office standards for formulae, tables, and waveforms with international standards.

(e) Type of paper. This paragraph is proposed as a revision of current § 1.84(a) to set forth the requirement for the type of paper to be used for drawings, including the type of paper for photographs.

(f) Size of paper. This paragraph is proposed to clarify Office requirements set forth in current § 1.84(b) and to provide that color drawings and photographs must be 21.0 cm. by 29.7 cm. (DIN size 4A). Other drawings may be any of 3 sizes: 21.0 cm. by 29.7 cm. (DIN size 4A), 21.6 cm. by 33.1 cm. (8 ½ by 13 inches), or 21.6 cm. by 35.6 cm. (9 ½ by 14 inches).

(g) Margins. This paragraph is restructured from current § 1.84(b) to indicate how the size of the paper changes the margin requirements. The Office will accept 3 sizes of paper, however, the sight (i.e. the usable surface) is the same for 2 of the paper sizes, i.e., 21.6 cm. by 33.1 cm. (8 ½ by 13 inches), or 21.6 cm. by 35.6 cm. (8 ½ by 14 inches).

(h) Views. This paragraph is proposed to reformat current § 1.84(i) to provide a logical arrangement of the different views provided in the rules, to revise the standards for purposes of clarification, to include the standard for waveforms to show the relative timing, to provide clearer language relative to hatching shown on drawings, to set forth the standard for depicting hatching in sectional view as regularly-spaced parallel oblique strokes which precludes use of cross-hatching strokes, and to include requirements pertaining to alternate positions. In addition, both Roman and Arabic numerals would be acceptable to designate the section being illustrated.

(i) Arrangement of views. This paragraph is proposed to be relocated from current § 1.84(j) and to be revised to incorporate international standards. In addition, this paragraph is proposed to be changed and broadened to provide placement of words on drawings, as set forth in proposed § 1.84(i). One view is not to be superimposed within the outline of another. The changes expand the possibilities for presenting graphs to conform to standard scientific conventions, while using a format which is compatible with automated patent searching displays. See 1121 Off. Gaz. Pat. Office 54 (Dec. 25, 1990) and 1129 Off. Gaz. Pat. Office 22 (Aug. 13, 1991).

(j) View for Official Gazette. This paragraph is proposed to be relocated from current § 1.84(k).

(k) Scale. This paragraph is proposed to be relocated from current § 1.84(e) and § 1.84(i) and to be revised to indicate that the words "actual size" or "scale ½" on the drawings are not permitted since the meaning is lost in reduction/enlargement; and to provide that elements of the same view must be in proportion to each other, unless a difference in proportion is indispensable for the clarity of the view. As a preferred alternative to a difference in proportion within one view for the purpose of achieving the necessary clarity, a supplementary view may be added giving a larger-scale illustration of an element from the initial view. When a supplementary view is included, it is recommended that the enlarged element shown in the second view be surrounded by a finely drawn or "dot-dash" circle in the first view pinpointing its location, without obscuring the view.

(l) Character of lines, numbers, and letters. This paragraph is proposed to be relocated from current § 1.84(c) and to be revised to show that lines and strokes of different thicknesses may be used in the same drawing where different thicknesses have different meanings. In addition, this paragraph is proposed to be changed and broadened to indicate that all drawings must be made by a process which will give them satisfactory reproduction characteristics.

(m) Shading. This paragraph is proposed to be changed and broadened to expand definitions for shading and to delete the limitation that drawings transmitted to the Office should be sent flat, protected by a sheet of heavy binder's board, or may be rolled for transmission in a suitable mailing tube. This proposed change would provide the individual practitioner with greater discretion on how to send drawings. In addition, this paragraph is proposed to be relocated from current § 1.84(d) to separate shading requirements from hatching requirements by stating that shading may be used to indicate the surface or shape of spherical, cylindrical, and conical elements of an object, and that spaced lines are preferred for shading purposes. Solid black areas are not permitted, except when used to represent bar graphs or color.

(n) Symbols. This paragraph is proposed to be relocated from current § 1.84(g) to separate symbols requirements from legends requirements and to enlarge the number of acceptable symbols. Known devices should be illustrated by symbols which have a universally-recognized meaning, and which are generally accepted in the art, provided no further detail is essential for understanding the subject matter of the claimed invention. All symbols must be approved by the examiner. Other symbols may be used if they are not likely to be confused with existing conventional symbols and if they are readily identifiable.

(o) Legends. This paragraph is proposed to be relocated from current § 1.84(g) to separate legends requirements from symbols requirements and to be revised to integrate international standards. Where text matter is deemed indispensable for understanding the drawing, a minimum of words should be used. Words should not be used to describe the figure itself, such as "this is a bar graph." All text legends must be approved by the examiner.

(p) Numbers, letters, and reference characters. This paragraph is proposed to be relocated from current § 1.84(f) and to be revised to include numbers and letters in the heading formerly designated "reference characters." This section has been reformatted into five subsections and revised to integrate international standards, where possible. Although the Latin alphabet is used in the international standard, the Office takes the view that the English alphabet is more universally acceptable for

letters, except where another alphabet is customarily used, such as the Greek alphabet to indicate angles, wavelengths, and mathematical formulas. In addition, the characters used must be oriented in the same direction as the view so as to avoid having to rotate the sheet. Reference characters should be so arranged to follow the profile of the object depicted.

(q) Lead lines. This paragraph is proposed to integrate international standards, to incorporate brief language which appears in current § 1.84(f), and to change and expand the definition for lead lines. Lead lines are those lines between the reference characters and the details referred to, and they must be executed in the same way as other lines in drawing.

(r) Arrows. This paragraph is proposed to be relocated from current § 1.84(g) and to be revised to indicate the meaning of the use of arrows, and to show that they may be used at the end of lead lines only if their meaning is clear.

(s) Copyright or mask work notice. This paragraph is proposed to be relocated from current § 1.84(o).

(t) Numbering of sheets of drawings. This paragraph is proposed to be relocated from current § 1.84(n) and to be changed and broadened to allow for the placement of sheet numbers within the sight of the drawing. It is preferable that the sheets be numbered with two Arabic numerals placed on either side of an oblique line, with the first number being the sheet number and the second the total number of sheets of drawings.

(u) Numbering of views. This paragraph is proposed to be relocated from current § 1.84(i) and, for clarity, to be separately identified in this new section. Use of the abbreviation "FIG." must precede all view numbers.

(v) Security markings. This paragraph is proposed to be relocated from current § 1.84(l) to provide that security markings may be placed on the drawings if they are outside the sight and preferably centered in the top margin.

(w) Corrections. This paragraph is proposed to provide that any corrections made on drawings submitted to the Office must be durable and permanent. The language is revised from current § 1.84(a) which prohibits the use of white pigment to cover lines.

(x) Holes. This paragraph is proposed to be relocated from current § 1.84(b) to permit two holes to be punched in the top margin of the drawings with their centerlines spaced 7.0 cm. (2¾ inches) apart.

Section 1.88 is proposed to be removed and reserved since the changes effective January 1, 1991, in § 1.85(b) make the regulation regarding the transfer of drawings unnecessary. Since the Office no longer releases drawings from patent applications, generally applicants are retaining the master copy of the drawings. Accordingly, applicants can easily file a copy of drawings in an application and therefore eliminate the need for the Office to transfer drawings. Any situations which present a hardship to applicants may be accommodated by the filing of a petition under § 1.182 requesting the transfer of the drawings.

Section 1.123 prescribes procedures for amending drawings. With the adoption of new rules for amending drawings effective January 1, 1989, the Office no longer requires the submission of formal drawings upon filing a patent application. See 1097 Off. Gaz. Pat. Office 36 (Dec. 13, 1988). Since corrections are the responsibility of the applicant, the original drawing(s) should be retained by the applicant for future correction, if necessary.

As a result of adoption of the new rules in 1989 relating to drawings, the Office will no longer release to applicants, bonded drafting companies or others, drawings from patent applications. Effective January 1, 1991, § 1.85(b) prohibits release of drawings from all patent applications. Accordingly, it is proposed that the reference to changes by bonded draftsmen be deleted from § 1.123.

Section 1.152 is proposed to be revised to provide that photographs and ink drawings must not be combined in one design application. The reason for this requirement is to avoid inconsistencies between the photograph and the drawing, and further eliminate views that may distort the proportionate relationship between the corresponding elements on the drawing and the photograph. It is also proposed that all design photographs be limited to the design claimed and not include environmental structure. It is proposed that color drawings and color photographs not be permissible in design patent applications. Solid black surface shading is inappropriate on a design drawing, but is acceptable when used to represent color contrast.

Section 1.165 is proposed to be revised to provide that plant patent drawings must comply with the requirements of § 1.84. It is proposed that the current exception that plant patent drawings do not automatically require view numbers and reference characters be maintained. It is also proposed that mounted color photographs would not be acceptable in plant patent applications.

Other Considerations

The proposed rule change is in conformity with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), Executive Orders 12291 and 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that these proposed rule changes will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The principal impact of these proposed changes is to revise and reformat the drawing standards to adopt international standards, to the extent possible, and to facilitate access to sections through inclusion of pertinent subsection headings, which should be helpful to small entities.

The Office has determined that this proposed rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individuals, industries, Federal, state or local government agencies, or geographic regions because most of the proposed changes reduce procedural burdens. There will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Office has also determined that this notice has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

These proposed rule changes contain a collection of information requirements subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., which has previously been approved by the Office of Management and Budget under Control No. 0651–0011.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Authority delegation (Government agencies), Courts, Freedom of Information, Inventions and patents, Lawyers, Small businesses.

For the reasons set out in the preamble, and pursuant to the authority contained in 35 U.S.C. § 6, the Office proposes to amend 37 CFR Part 1 as follows, wherein deletions are indicated by brackets ([ ]), and additions are

indicated by arrows (> <), except for § 1.84 where the entire section has been revised:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 would continue to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.17(h) is proposed to be revised to read as follows:

§ 1.17 Patent application processing fees.

* * * * *

(h) For filing a petition to the Commissioner under a section of this part listed below which refers to this paragraph: $130.00.

§ 1.47—for filing by other than all the inventors or a person not the inventor.

§ 1.48—for correction of inventorship.

>§ 1.84—for accepting color drawings or photographs.<

§ 1.182—for decision on questions not specifically provided for.

§ 1.183—to suspend the rules.

§ 1.295—for review of refusal to publish a statutory invention registration.

§ 1.377—for review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of patent.

§ 1.378(e)—for reconsideration of decision on petition refusing to accept delayed payment of maintenance fee in expired patent.

§ 1.644(e)—for petition in an interference.

§ 1.644(f)—for request for reconsideration of a decision on petition in an interference.

§ 1.666(c)—for late filing of interference settlement agreement.

§§ 5.12, 5.13, & 5.14—for expedited handling of a foreign filing license.

§ 5.15—for changing the scope of a license.

§ 5.25—for retroactive license.

* * * * *

3. Section 1.19(a)(3) is proposed to be revised to read as follows:

§ 1.19 Document supply fees.

* * * * *

(a) *Uncertified copies of patents:*

* * * * *

(3) Copy of a utility patent or statutory invention registration containing color drawing (see § 1.84([p]>a)(2<): $24.00.

* * * * *

4. Section 1.71(d) is proposed to be revised to read as follows:

§ 1.71 Detailed description and specification of the invention.

* * * * *

(d) A copyright or mask work notice may be placed in a design or utility patent application adjacent to copyright and mask work material contained therein. The notice may appear at any appropriate portion of the patent application disclosure. For notices in drawings, see § 1.84([o]>s<). The content of the notice must be limited to only those elements >provided for< [required] by law. For example, "©1983 John Doe" (17 U.S.C. 401) and "*M* John Doe" (17 U.S.C. 909) would be properly limited and, under current statutes, legally sufficient notices of copyright and mask work, respectively. Inclusion of a copyright or mask work notice will be permitted only if the authorization language set forth in paragraph (e) of this section is included at the beginning (preferably as the first paragraph) of the specification.

* * * * *

5. Section 1.84 is proposed to be revised to read as follows:

§ 1.84. Standards for drawings.

>(a) *Drawings.* There are two acceptable categories for presenting drawings in utility patent applications:

(1) *Black ink.* Black and white drawings are normally required. India ink, or its equivalent in quality, must be used for drawings to secure black solid lines.

(2) *Color.* On rare occasions, color drawings may be necessary as the only practical medium by which to disclose the subject matter sought to be patented in utility patent applications or to be the subject matter of a Statutory Invention Registration (SIR). The Patent and Trademark Office will accept color drawings in utility patent applications and SIR's only after granting a petition filed under this paragraph explaining why the color drawings are necessary. Any such petition must include the following:

(i) The appropriate fee set forth in § 1.17(h);

(ii) Five (5) sets of color drawings on 21.0 by 29.7 cm. (DIN size A4) sheets; and

(iii) If the specification does not address color drawings, the following language is to be inserted as the first paragraph in that portion of the specification relating to the brief description of the drawing:

The file of this patent contains at least one drawing executed in color. Copies of this patent with color drawing(s) will be provided by the Patent and Trademark Office upon request and payment of the necessary fee.

If the above language is not in the specification, a proposed amendment to insert the language must accompany the petition.

(b) *Photographs*—(1) *Black and white.* Photographs are not ordinarily permitted in utility and design patent applications. However, the Office will accept photographs in utility and design patent applications only after granting a petition, filed under this paragraph which requests that photographs be accepted. Any such petition must include the following:

(i) The appropriate fee set forth in § 1.17(h); and

(ii) Five (5) sets of photographs on 21.0 by 29.7 cm. (DIN size A4) sheets.

Photographs must be developed on double weight photographic paper. Mounted photographs are not acceptable. No more than one photograph per sheet will be permitted. The photographs must be of sufficient quality so that all details in the drawing are reproducible in the printed patent.

(2) *Color.* Color photographs will be accepted in utility patent applications if the conditions for accepting color drawings have been satisfied. See paragraph (a)(2) of this section.

(c) *Identification of drawings.* Identifying indicia, if provided, should include the application number or the title of the invention, inventor's name, docket number (if any), and the name and telephone number of a person to call. This information should be placed on the back of each sheet of drawings a minimum distance of 1.5 cm. (⅝ inch) down from the top of the page.

(d) *Graphic forms in drawings.* Chemical or mathematical formulae, tables, and waveforms may be submitted as drawings, and are subject to the same requirements as drawings. Each chemical or mathematical formula must be labeled as a separate figure, using brackets when necessary, to show that information is properly integrated. Each group of waveforms must be presented as a single figure, using a common vertical axis with time extending along the horizontal axis. Each individual waveform discussed in the specification must be identified with a separate letter designation adjacent to the vertical axis.

(e) *Type of paper.* Drawings submitted to the Office must be made upon paper which is flexible, strong, white, smooth, non-shiny, and durable. All sheets must be free from cracks, creases, and folds. Only one side of the sheet shall be used for the drawing. Each sheet must be reasonably free from erasures and must

be free from alterations, overwritings, and interlineations. Photographs must be on double weight photographic paper. See paragraph (b) of this section for other requirements for photographs.

(f) *Size of paper.* All drawing sheets in an application must be the same size, except that color drawings or photographs which are required to be DIN size A4 may differ in size from the other sheets. One of the shorter sides of the sheet is regarded as its top. The size of the sheets on which drawings are made must be:

(1) 21.6 cm. by 35.6 cm. (8½ by 14 inches),

(2) 21.6 cm. by 33.1 cm. (8½ by 13 inches), or

(3) 21.0 cm. by 29.7 cm. (DIN size A4).

(g) *Margins.* The sheets must not contain frames around the sight, i.e., the usable surface.

(1) On 21.6 cm. by 35.6 cm. (8½ by 14 inch) drawing sheets, each sheet must include a top margin of 5.1 cm. (2 inches), and bottom and side margins of 6.4 mm. (¼ inch) from the edges, thereby leaving a sight precisely 20.3 cm. by 29.8 cm. (8 by 11¾ inches).

(2) On 21.6 cm. by 33.1 cm. (8½ by 13 inch) drawing sheets, each sheet must include a top margin of 2.5 cm. (1 inch) and bottom and side margins of 6.4 mm. (¼ inch) from the edges, thereby leaving a sight precisely 20.3 cm. by 29.8 cm. (8 by 11¾ inches).

(3) On 21.0 cm. by 29.7 cm. (DIN size A4) drawing sheets, each sheet must include a top margin of at least 2.5 cm., a left side margin of 2.5 cm., a right side margin of 1.5 cm., and a bottom margin of 1.0 cm., thereby leaving a sight precisely 17.0 cm. by 26.2 cm.

(h) *Views.* The drawing must contain as many views as necessary to show the invention. The views may be plan, elevation, section, or perspective views; and detail views of portions of elements, on a larger scale, if necessary, may also be used. All views of the drawing must be grouped together and arranged on the sheet(s) without wasting space, preferably in an upright position, clearly separated from one another, and must not be included in the sheets containing the specifications, claims, or abstract. Views must not be connected by projection lines and must not contain center lines. Waveforms of electrical signals may be connected by dashed lines to show the relative timing of the waveforms.

(1) *Exploded views.* Exploded views, with the separated parts of the same view embraced by a bracket, to show the relationship or order of assembly of various parts are permissible. When an exploded view is shown in a figure which is on the me sheet as another figure, the exploded view should be placed, in brackets.

(2) *Partial views.* When necessary, a view of a large machine or device in its entirety may be broken into partial views on a single sheet, or extended over several sheets if there is no loss in facility of understanding the view. Partial views drawn on separate sheets must always be capable of being linked edge to edge so that no partial view contains parts of another partial view. A smaller scale view should be included showing the whole formed by the partial views and indicating the positions of the parts shown. When a portion of a view is enlarged for magnifications purposes, the view and the enlarged view must each be labeled as separate views.

(i) Where views on two or more sheets form in effect a single complete view, the views on the several sheets must be so arranged that the complete figure can be assembled without concealing any part of any of the views appearing on the various sheets.

(ii) A very long view may be divided into several parts placed one above the other on a single sheet. However, the relationship between the difference parts must be clear and unambiguous.

(3) *Sectional views.* The plane upon which a sectional view is taken should be indicated on the view from which the section is cut by a broken line, the ends of which should be designated by Arabic or Roman numerals corresponding to the view number of the sectional view, and have arrows applied to indicate the direction of sight. Hatching must be used to indicate section portions of an object, and must be made by regularly spaced oblique parallel lines spaced sufficiently apart to enable the lines to be distinguished without difficulty. Hatching should not impede the clear reading of the reference characters and lead lines. If it is not possible to place reference characters outside the hatched area, the hatching may be broken off wherever reference characters are inserted. Hatching must be at a substantial angle to the surrounding axes or principal lines, preferably 45°. A cross-section must be set out and drawn to show all of the materials as they are shown in the view from which the cross-section was taken. The parts in cross-section must show proper material(s) by hatching with regularly spaced parallel oblique strokes, the space between strokes being chosen on the basis of the total area to be hatched. The various parts of a cross-section of the same item should be hatched in the same manner and should accurately and graphically indicate the nature of the material(s) that is illustrated in cross section. The hatching of juxtaposed different elements must be angled in a different way. In the case of large areas, hatching may be confined to an edging drawn around the inside of the outline of the area to be hatched. Different types of hatching should have different conventional meanings as regards the nature of a material seen in cross-section.

(4) *Alternate position.* A moved position may be shown by a broken line superimposed upon a suitable view if this can be done without crowding; otherwise, a separate view must be used for this purpose.

(5) *Modified forms.* Modified forms of construction must be shown in separate views.

(i) *Arrangement of views.* One view must not be placed upon another or within the outline of another. All views on the same sheet should stand in the same direction and, if possible, stand so that they can be read with the sheet held in an upright position. If views longer than the width of the sheet are necessary for the clearest illustration of the invention, the sheet may be turned on its side so that the top of the sheet, with the appropriate top margin to be used as the heading space, is on the right-hand side. Words must appear in a horizontal, left-to-right fashion when the page is either upright or turned so that the top becomes thee right side, except for graphs utilizing standard scientific convention to denote the axis of abscissas (of X) and the axis of ordinates (of Y).

(j) *View for Official Gazette.* One of the views should be suitable for publication in the Official Gazette as the illustration of the invention.

(k)*Scale.* (1) The scale to which a drawing is made must be large enough to show the mechanism without crowding when the drawing is reduced in size to two-thirds in reproduction. Views of portions of the mechanism on a larger scale should be used when necessary to show details clearly. Two or more sheets may be used if one does not give sufficient room. The number of sheets should be kept to a minimum.

(2) When approved by the examiner, the scale of the drawing may be graphically represented. Indications such as "actual size" or "scale ½" on the drawings, are not permitted, since these lose their meaning with reproduction in a different format.

(3) Elements of the same view must be in proportion to each other, unless a difference in proportion is indispensable for the clarity of the view. Instead of showing elements in different proportion, a supplementary view may

be added giving a larger-scale illustration of the element of the initial view. It is recommended that the enlarged element shown in the second view by surrounded by a finely drawn or "dot-dash" circle in the first view pinpointing its location without obscuring the view.

(l) *Character of lines, numbers, and letters.* All drawings must be made by a process which will give them satisfactory reproduction characteristics. Every line, number, and letter must be durable, clean, sharp, black (except for color drawings), sufficiently dense and dark, and uniformly thick and well-defined. The weight of all lines and letters must be heavy enough to permit adequate reproduction. This direction applies to all lines however fine, to shading, and to lines representing cut surfaces in sectional views. Lines and strokes of different thicknesses may be used in the same drawing where different thicknesses have a different meaning.

(m) *Shading.* The use of shading in views is encouraged if it aids in understanding the invention and if it does not reduce legibility. Shading is used to indicate the surface or shape of spherical, cylindrical, and conical elements of an object. Flat parts may also be lightly shaded. Such shading is preferred in the case of parts shown in perspective, but not for cross-sections. Spaced lines for shading are preferred. These lines must be thin, as few in number as practicable, and they must contrast with the rest of the drawings. As a substitute for shading, heavy lines on the shade side of objects can be used except where they superimpose on each other or obscure reference characters. Light should come from the upper left corner at an angle of 45°. Surface delineations should preferably be shown by proper shading. Solid black shading areas are not permitted, except when used to represent bar graphs or color.

(n) *Symbols.* Graphical drawing symbols may be used for conventional elements when appropriate, subject to approval by the Office. The elements for which such symbols and labeled representations are used must be adequately identified in the specification. Known devices should be illustrated by symbols which have a universally-recognized conventional meaning and are generally accepted in the art provided no further detail is essential for understanding the subject matter of the claimed invention. Other symbols may be used if they are not likely to be confused with existing conventional symbols, and if they are readily identifiable.

(o) *Legends.* Suitable descriptive legends may be used, subject to approval by the Office. They should contain as few words as possible.

(p) *Numbers, letters, and reference characters.* (1) Reference characters (numerals are preferred), sheet numbers, and view numbers must be plain and legible, and must not be used in association with brackets, inverted commas, or enclosed within outlines, e.g., encircled. They must be oriented in the same direction as the view so as to avoid having to rotate the sheet. Reference characters should be arranged to follow the profile of the object depicted.

(2) The English alphabet must be used for letters, except where another alphabet is customarily used, such as the Greek alphabet to indicate angles, wavelengths, and mathematical formulas.

(3) Numbers, letters, and reference characters must measure at least 3.2 mm. (⅛ inch) in height. They should not be placed in the drawing so as to interfere with its comprehension. Therefore, they should not cross or mingle with the lines. They should not be placed upon hatched or shaded surfaces. When necessary, a blank space may be left in the hatching or shading where the character occurs so that it appears perfectly distinct.

(4) The same part of an invention appearing in more than one view of the drawing must always be designated by the same reference character, and the same reference character must never be used to designate different parts.

(5) Reference characters not mentioned in the description shall not appear in the drawings. Reference characters mentioned in the description must appear in the drawings.

(q) *Lead lines.* Lead lines are those lines between the reference characters and the details referred to. Such lines may be straight or curved and should be as short as possible. They must originate in the immediate proximity of the reference character and extend to the feature indicated. Lead lines must not cross each other. Lead lines are required for each reference character except for those which indicate the surface or cross-section on which they are placed. Such a reference character must be underlined to make it clear that a lead line has not been left out by mistake. Lead lines must be executed in the same way as lines in the drawing.

(r) *Arrows.* Arrows may be used at the ends of lines, provided that their meaning is clear, as follows:

(1) On a lead line, a freestanding arrow to indicate the entire section towards which it points;

(2) On a lead line, an arrow touching a line to indicate the surface shown by the line looking along the direction of the arrow; or

(3) To show the direction of movement.

(s) *Copy or Mask Work Notice.* A copyright or mask work notice may appear in the drawing, but must be placed within the sight of the drawing immediately below the figure representing the copyright or mask work material and be limited to letters having a print size of 3.2 mm. to 6.4 mm. (⅛ to ¼ inches) high. The content of the notice must be limited to only those elements provided for by law. For example, "©1983 John Doe" (17 U.S.C. 401) and "*M* John Doe" (17 U.S.C. 909) would be properly limited and, under current statutes, legally sufficient notices of copyright and mask work, respectively. Inclusion of a copyright or mask work notice will be permitted only if the authorization language set forth in § 1.71(e) is included at the beginning (preferably) as the first paragraph) of the specification.

(t) *Numbering of sheets of drawings.* The sheets of drawings should be numbered in consecutive Arabic numerals within the sight as defined in paragraph (g) of this section. These numbers, if present, must be placed in the middle of the top of the sheet, but not in the margin. The numbers can be placed on the right-hand side if the drawing extends too close to the middle of the top edge of the usable surface. The drawing sheet numbering must be clear and larger than the numbers used as reference characters to avoid confusion. Sheets of drawings must be paginated from 1 onward. The number of each sheet should be shown by 2 Arabic numerals placed on either side of an oblique line, with the first being the sheet number, and the second being the total number of sheets of drawings, with no other marking.

(u) *Numbering of views.* (1) The different views must be numbered in Arabic numerals consecutively, starting with 1, independent of the numbering of the sheets and, if possible, in the order in which they appear on the drawing sheet(s). Partial views intended to form one complete view, on one or several sheets, must be identified by the same number followed by a capital letter. View numbers must be preceded by the abbreviation "FIG." Where a single view is used to illustrate the claimed invention, it must not be numbered and

the abbreviation "FIG." must not appear.

(2) Numbers and letters identifying the views must be simple and clear and must not be used in association with brackets, circles, or inverted commas. The view numbers must be larger than the numbers used for reference characters.

(v) *Security markings.* Authorized security markings may be placed on the drawings provided they are outside the sight, preferably centered in the top margin.

(w) *Corrections.* Any corrections on drawings submitted to the Office must be durable and permanent.

(x) *Holes.* The drawing sheets may be provided with 2 holes in the top margin. The holes should be equally spaced from the respective side edges, and their centerlines should be spaced 7.0 cm. (2¾ inches) apart. (See § 1.152 for design drawings, § 1.165 for plant drawings, and § 1.174 for reissue drawings.)<

6. Section 1.88 is proposed to be removed and reserved as follows:

§ 1.88 >[Reserved]< [Use of old drawings.]

[If the drawings of new application are to be identical with the drawings of a previous application of the applicant on file in the Office, or with part of such drawings, the old drawings or any sheets thereof may be used if the prior application is, or is about to be, abandoned, or if the sheets to be used are cancelled in the prior application. The new application must be accompanied by a letter requesting the transfer of the drawings, which should be completely identified.]

7. Section 1.123 is proposed to be revised to read as follows:

§ 1.123 Amendments to the drawing.

No change in the drawing may be made except by permission of the Office. Permissible changes in the construction shown in any drawing may be made only by [bonded draftsmen, at applicant's expense, or by] the submission of >a< substitute [drawings] >drawing< by applicant. A sketch in permanent ink showing proposed changes, to become part of the record, must be filed for approval by the examiner and should be a separate paper.

8. Section 1.152 is proposed to be revised to read as follows:

§ 1.152 >Design< Drawing.

The design must be represented by a drawing >that complies< [made in conformity] with the >requirements of § 1.84< [rules laid down for drawings of mechanical inventions]>,< and must contain a sufficient number of views to constitute a complete disclosure of the appearance of the article. Appropriate surface shading must be used to show the character or contour of the surfaces represented. >Solid black surface shading is not permitted except when used to represent color contrast.< Broken lines may be used to show visible environmental structure, but may not be used to show hidden planes and surfaces which cannot be seen through opaque materials. >Alternate positions of a design component, illustrated by full and broken lines in the same view are not permitted in a design drawing. Photographs and ink drawings must not be combined in one application. Photographs submitted in lieu of ink drawings in design patent applications must comply with § 1.84(b) and must not disclose environmental structure but must be limited to the design claimed. Color drawings and color photographs are not permitted in design patent applications.<

9. Section 1.165 is proposed to be revised to read as follows:

§ 1.165 >Plant< Drawings.

(a) Plant patent drawings [are not mechanical drawings and] should be artistically and competently executed [. Figure] >and must comply with the requirements of § 1.84. View< numbers and reference characters need not be employed unless required by the examiner. The drawing must disclose all the distinctive characteristics of the plant capable of visual representation.

(b) The drawing may be in color and when color is a distinguishing characteristic of the new variety, the drawing must be in color. Two copies of color drawings >or color photographs< must be submitted. [Color drawings may be made either in permanent water color or oil, or in lieu thereof may be photographs made by color photography or properly colored on sensitized paper. Permanently mounted color photographs are acceptable. The paper in any case must correspond in size, weight and quality to the paper required for other drawings. See § 1.84.]

Dated: September 9, 1992.

Douglas B. Comer,

Acting Assistant Secretary and Acting Commissioner of Patents and Trademarks.

[FR Doc. 92-22312 Filed 9-15-92; 8:45 am]

BILLING CODE 3510-16-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300259; FRL-4077-8]

RIN 2070-AC18

Alkyl Acrylate/Methacrylate Copolymers; Tolerance Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that an exemption from the requirement of a tolerance be established for residues of certain copolymers when used as inert ingredients (controlled-release agents) in pesticide formulations applied to growing crops, raw agricultural commodities, and animals. This proposed regulation was requested by Landec Corp.

DATES: Comments, identified by the document control number [OPP-300259], must be received on or before October 16, 1992.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part of 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 will be included in the public docket by the EPA without prior notice. The public docket is available for public inspection in Rm. 1128 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: Kerry B. Leifer, Registration Support Branch, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 711I, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-5180.

SUPPLEMENTARY INFORMATION: At the request of Landec Corp., 3603 Haven

Ave., Menlo Park, CA 94025, the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), proposes to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for residues of tetradecyl acrylate-acrylic acid copolymer, hexadecyl acrylate-acrylic acid copolymer, octadecyl acrylate-acrylic acid copolymer, docosyl methacrylate-acrylic acid copolymer, hexadecyl acrylate-butyl acrylate-acrylic acid copolymer, hexadecyl acrylate-dodecyl acrylate-acrylic acid copolymer, octadecyl methacrylate-butyl acrylate-acrylic acid copolymer, octadecyl methacrylate-hexyl acrylate-acrylic acid copolymer, octadecyl acrylate-dodecyl acrylate-acrylic acid copolymer, octadecyl methacrylate-dodecyl methacrylate-acrylic acid copolymer, and docosyl methacrylate-octadecyl methacrylate-acrylic acid copolymer when used as inert ingredients (controlled-release agents) in pesticide formulations applied to growing crops, raw agricultural commodities after harvest, and animals.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 152.3(m), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be biologically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency established data requirements which will be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. Exemptions from some or all of the requirements may be granted if it can be determined that the inert ingredient will present minimal or no risk. The Agency has decided that the data normally required to support the proposed tolerance exemptions for alkyl acrylate/methacrylate copolymers will not need to be submitted. The rationale for this decision is described below.

In the case of certain chemical substances which are defined as "polymers" the Agency has established a set of criteria which identify categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) limit potential risks by identifying polymers that are relatively unreactive and stable compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk. The alkyl acrylate/methacrylate copolymers conform to the definition of a polymer given in 40 CFR 723.250(b)(11) and meet the following criteria which are used to identify low-risk polymers:

1. The number average molecular weight of a representative alkyl acrylate/methacrylate copolymer (hexadecyl acrylate-dodecyl acrylate-acrylic acid copolymer) is approximately 20,000. Substances with molecular weights greater than 400 are generally not readily absorbed through the intact skin, and substances with molecular weights greater than 1,000 are generally not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through the skin or GI tract are generally incapable of eliciting a toxic response.

2. Alkyl acrylate/methacrylate copolymers are not cationic polymers, nor are they reasonably anticipated to become cationic polymers in a natural aquatic environment.

3. Alkyl acrylate/methacrylate copolymers do not contain less than 32.0 percent by weight of the atomic element carbon.

4. Alkyl acrylate/methacrylate copolymers contain as an integral part of their composition the atomic elements carbon, hydrogen, nitrogen, and oxygen.

5. Alkyl acrylate/methacrylate copolymers do not contain as an integral part of their composition, except as impurities, any elements other than those listed in 40 CFR 723.250(d)(3)(ii).

6. Alkyl acrylate/methacrylate copolymers are not biopolymers, synthetic equivalents of a biopolymer, or derivatives or modifications of a biopolymer that are substantially intact.

7. Alkyl acrylate/methacrylate copolymers are not manufactured from reactants containing, other than as impurities, halogen atoms or cyano groups.

8. Alkyl acrylate/methacrylate copolymers do not contain reactive functional groups that are intended or reasonably expected to undergo further reaction.

9. Alkyl acrylate/methacrylate copolymers are not designed or reasonably expected to substantially degrade, decompose, or depolymerize.

Based upon the above information and review of its use, EPA has found that, when used in accordance with good agricultural practice, these ingredients are useful and do not pose a risk to human health. Because a tolerance for these ingredients is not needed to protect the public health, EPA proposes that the exemptions from the requirement of a 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 document 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, [OPP-300259]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 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, recording and recordkeeping requirements.

Dated: August 25, 1992.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be 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 subpart D, by adding new § 180.1112, to read as follows:

§ 180.1112 Alkyl acrylate/methacrylate copolymers; exemptions from the requirement of a tolerance.

Tetradecyl acrylate-acrylic acid copolymer, hexadecyl acrylate-acrylic acid copolymer, octadecyl acrylate-acrylic acid copolymer, docosyl methacrylate-acrylic acid copolymer, hexadecyl acrylate-butyl acrylate-acrylic acid copolymer, hexadecyl acrylate-dodecyl acrylate-acrylic acid copolymer, octadecyl methacrylate-butyl acrylate-acrylic acid copolymer, octadecyl methacrylate-hexyl acrylate-acrylic acid copolymer, octadecyl acrylate-dodecyl acrylate-acrylic acid copolymer, octadecyl methacrylate-dodecyl acrylate-acrylic acid copolymer, octadecyl methacrylate-dodecyl methacrylate-acrylic acid copolymer, and docosyl methacrylate-octadecyl methacrylate-acrylic acid copolymer, minimum average molecular weight 20,000, are exempted from the requirement of a tolerance when used as inert ingredients (controlled-release agents) in pesticide formulations applied to growing crops, raw agricultural commodities after harvest, or animals.

[FR Doc. 92-22254 Filed 9-15-92; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Part 180

[PP 8E3628/P550; FRL-4161-5]

RIN 2070-AC18

Pesticide Tolerance for 2-(2-Chlorophenyl)Methyl-4,4-Dimethyl-3-Isoxazolidinone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for residues of the herbicide 2-(2-chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone (also referred to as clomazone) in or on the raw agricultural commodity sweet potato. The proposed regulation to establish a maximum permissible level for residues of the herbicide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATES: Comments, identified by the document control number [PP 8E3628/P550], must be received on or before October 16, 1992.

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. 1128, 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. 1128 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 Hwy., Arlington, VA 22202, (703)-305-5310.

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) 8E3628 to EPA on behalf of the Agricultural Experiment Stations of Georgia, Louisiana, North Carolina, and Oklahoma.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a), propose the establishment of a tolerance for residues of the herbicide 2-(2-chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone in or on the raw agricultural commodity sweet potato at 0.05 part per million (ppm). The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerance include:

1. A 1-year feeding study in dogs fed diets containing 100, 500, 2,500, and 5,000 ppm with a no-observed-effect level (NOEL) of 500 (equivalent to 12.5 milligrams (mg)/kilogram (kg) day) based on increased absolute and relative liver weights in male and female dogs.

2. A development toxicity study in rats with NOEL's for maternal and fetotoxic effects of 100 mg/kg/day, and no developmental toxicity observed at the highest dose level tested (600 mg/kg/day).

3. A developmental toxicity study in rabbits given gavage doses of 30, 240, and 700 mg/kg/day with NOEL's for maternal toxicity and fetotoxic effects of 240 mg/kg/day based on decreased weight gain and an increase in the number of resorptions. There was no developmental toxicity observed under the conditions of the study.

4. A 2-year feeding/carcinogenicity study in rats fed diets containing 20, 100, 500, 1,000, and 2,000 ppm with a systemic NOEL of 100 ppm (equivalent to 4.3 mg/kg/day) based on elevated cholesterol, in absolute and relative liver weights, and in the incidence of liver cytomegaly. There were no carcinogenic effects observed under the conditions of the study at any dosage level tested.

5. A 2-year feeding/carcinogenicity study in mice fed diets containing 20, 100, 500, 1,000 and 2,000 ppm with a NOEL of 100 ppm (equivalent to 15 mg/kg/day) for systemic effects based on an increase in white blood cell count. The study was negative for carcinogenic effects at all dosage levels tested.

6. Mutagenic studies: including unscheduled DNA synthesis, negative; reverse mutation (two studies in *Salmonella*), both negative with/without activation; point mutation (CHO/HGPT), weakly positive without activation; and in vivo cytogenetic (chromosomal aberration), negative for mutagenicity.

The reference dose (RfD), based on the 2-year feeding study in rats (NOEL of 4.3 mg/kg/day) and using an uncertainty factor of 100, is calculated to be 0.043 mg/kg of body weight (bw)/day. The theoretical maximum residue contribution (TMRC) from existing tolerances is calculated to be 0.000028 mg/kg/day for the overall U.S. population. Published tolerances and the proposed tolerance for sweet potato utilize less than 1.0 percent of the RfD.

The nature of the residue in plants is adequately understood. An adequate analytical method, gas-liquid chromatography using a nitrogen/phosphorus detector, is available for enforcement purposes. Prior to its publication in the Pesticide Analytical Manual (PAM), Vol. II, the enforcement methodology is being made available in the interim to anyone who is interested in pesticide residue enforcement when requested from: By mail, Calvin Furlow, Public Response and Program Resource Branch, Field Operations Division (H-7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Crystal Mall #2, Rm. 1128, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-5232.

No secondary residues are expected to occur in meat, milk, poultry, or eggs since sweet potato is not considered a livestock feed item. There are presently 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 180.425 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 document 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 8E3628/P550]. 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: August 28, 1992.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be 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 180.425 is amended in the table therein by adding, and alphabetically inserting, the raw agricultural commodity sweet potato, to read as follows:

§ 180.425 2-(2-Chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone; tolerances for residues.

* * * * *

Commodity	Parts per million
* * * * * * *	
Sweet potato	0.05

[FR Doc. 92-22255 Filed 9-15-92; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[OPP-300263; FRL-4159-7]

RIN 2070-AC18

D & C Red No. 33; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that an exemption from the requirement of a tolerance be established for residues of D & C Red No. 33 (5-amino-4-hydroxy-3-phenylazo-2,7-naphthalene disulfonic acid, disodium salt; CAS Registry No. 3567-66-6) when used as an inert ingredient (dye) in pesticide formulations applied to growing crops only. This proposed regulation was requested by the BASF Corp.

DATES: Comments, identified by the document control number [OPP-300263], must be received on or before October 16, 1992.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part of 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 will be included in the public docket by the EPA without prior notice. The public docket is available for public inspection in Rm. 1128 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: Connie Welch, Registration Support Branch, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 711I, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-7252.

SUPPLEMENTARY INFORMATION: At the request of BASF Corp., Agricultural Chemicals Division, P.O. Box 13528, Research Triangle Park, NC 27709-3528, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), the Administrator proposes to amend 40 CFR 180.1001(d) by establishing an exemption from the requirement of a tolerance for residues of D & C Red No. 33 (5-amino-4-hydroxy-3-phenylazo-2,7-naphthalene disulfonic acid, disodium salt; CAS Registry No. 3567-66-6) when used as an inert ingredient (dye) in pesticide formulations applied to growing crops only.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and

hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency established data requirements which will be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. Exemptions from some or all of the requirements may be granted if it can be determined that the inert ingredient will present minimal or no risk.

The Agency has decided that the data normally required to support the proposed tolerance exemption for D & C Red No. 33 will not need to be submitted. The rationale for this decision is described below.

1. Based upon an extensive review of numerous toxicological studies, the U.S. Food and Drug Administration (FDA) permanently listed D & C Red No. 33 as safe for general use in drugs and cosmetics, with the exception of those used within the area of the eye (53 FR 33110; August 30, 1988).

2. D & C Red No. 33 is approved by the FDA for use as a color additive in oral drugs other than mouthwashes and dentrifices, in amounts not to exceed 0.75 milligram per daily dose of the drug under 21 CFR 74.1333.

3. D & C Red No. 33 is approved by the FDA for use as a color additive for externally applied drugs, mouthwashes, and dentifices in amounts consistent with current good manufacturing practices under 21 CFR 74.1333.

4. D & C Red No. 33 is approved by the FDA for use as a color additive for cosmetic lip products in amounts not to exceed 3 percent total color by weight of the finished cosmetic products under 21 CFR 74.2333.

5. The U.S. Food and Drug Administration has specified the manufacturing process and established specification limits for carcinogenic impurities for use of this dye in drug and cosmetic formulations under 21 CFR 74.1333.

6. The manufacturing process and limits for impurities contained in D & C Red No. 33 must conform to the specifications listed in 21 CFR 74.1333 for use in pesticide formulations applied to growing crops only.

Based upon the above information and review of its use, EPA has found that, when used in accordance with good agricultural practice, this ingredient is useful and a tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemption from the requirement of a 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 that contains any of the ingredients listed herein may request within 30 days after publication of this document 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, [OPP-300263]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 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 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, Recording and recordkeeping requirements.

Dated: August 26, 1992.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be 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 180.1001(d) is amended by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
* * * * * * *		
D & C Red No. 33 (CAS Registry No. 3567-66-6); meeting the specifications listed in 21 CFR 74.1333..	.....	Dye
* * * * * * *		

* * * * *

[FR Doc. 92-22256 Filed 9-15-92; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3800

[WO-600-4143-09]

Intent To Prepare Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an environmental impact statement and to request comments on the scope of the environmental impact statement.

SUMMARY: The Bureau of Land Management (BLM) is preparing to draft an environmental impact statement (EIS) relating to a proposed revision of the regulations for administration of operations under the Mining Law of 1872. This notice solicits comments and suggestions as to the scope of the EIS.

ADDRESSES: Director (680), Bureau of Land Management, room 3538, Main Interior Bldg., 1849 C Street, NW., Washington, DC 20240. Scoping comments must be received no later than 30 days from the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Jack Mills, Environmental Coordinator, Federal Building, 2800 Cottage Way, E-2841, Sacramento, CA 95825; telephone (916) 978-4722.

SUPPLEMENTARY INFORMATION: The EIS will analyze the impact of the regulations in 43 CFR subpart 3809 for administration of operations under the 1872 mining law. The proposed action would: (a) Require plans of operation in sensitive areas that are identified in land use plans, where occupancy occurs, or where leaching or the use of certain chemicals will take place; (b) add a penalty section; (c) modify the notice-level time frame to allow for on-site visits by BLM; (d) provide for decisions by the authorized officer to remain in effect pending appeal; (e) make mandatory the filing of a reclamation plan; (f) classify use of suction dredges of 4 inches or less as casual use; and (g) establish the deadline for duration of active notices and plans.

The EIS process will be coordinated with the Bureau's rulemaking process. Concurrently, BLM will release the draft EIS for public review and will publish the proposed rule in the **Federal Register**. The EIS will analyze the alternatives and in doing so will consider the input of the workshops and the written comments. The proposed revised regulations and the EIS will be available simultaneously.

Alternatives to be analyzed in the EIS include: Continuation of the existing 43 CFR subpart 3809 regulations (the No Action alternative), and an alternative that eliminates entirely the current 5-acre exemption for filing a plan of operations.

The proposed action involves the Public Lands subject to the 1872 mining law, primarily in the western states including Alaska. Social and economic impacts on the minerals industry and on affected communities; impacts on cultural resources and Native American values; and impacts on wildlife and fish, plants, recreation use and opportunities, visual resources, air, soil, water, and wilderness will be examined.

No meetings are planned for scoping purpose. Input from a series of public workshops that were conducted by BLM in Anchorage, Spokane, Denver, and Reno during December, 1991, will be used to help scope the EIS. The workshops and a public comment period were provided for the purpose of determining the strengths and weaknesses of the 43 CFR subpart 3809 regulations and whether or not the regulations should be revised. The Director subsequently decided to revise the regulations based on all input. Comments from the workshops and the written comments will be used to help scope the EIS. Anyone wishing to provide additional comments on the scope of the EIS may submit written comments to the Bureau.

Adam A. Sokoloski,

Deputy Director for Energy and Mineral Resources.

[FR Doc. 92-22322 Filed 9-15-92; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-140, FCC 92-361]

Revision of Radio Rules and Policies

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This further notice of proposed rule making in MM Docket No. 91-140 seeks further comment on development of an investment incentives program for radio broadcasters. The Commission notes that evidence submitted in this proceeding suggests that some parties, particularly minorities and small businesses, have had difficulty acquiring the resources to become station owners. The intended effect of this further notice of proposed rule making is to strengthen the radio service as a whole by allowing minority owners, new entrants and small businesses to take advantage of certain efficiencies that may be associated with group ownership.

DATES: Initial comments due October 30, 1992; reply comments due November 15, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jane Hinckley Halprin, Mass Media Bureau, Policy and Rules Division, (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's further notice of proposed rule making in MM Docket No. 91-140, adopted August 5, 1992, and released September 4, 1992.

The complete text of this further notice of proposed rule making, which was adopted in conjunction with memorandum opinion and order in MM Docket No. 91-140, is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, Downtown Copy Center, at (202) 452-1422, 1919 M Street, NW., room 246, Washington, DC 20554.

Synopsis of Further Notice of Proposed Rule Making

1. To explore alternative means of facilitating the introduction of minority owners, new entrants and small businesses generally into the broadcasting field, the Commission adopted a further notice of proposed rule making. The Commission sought comment on a proposal that would permit a group owner to own or have a controlling interest in some number of stations beyond the otherwise applicable national limits if it establishes and successfully implements a broadcast ownership "incubator" program designed to ease entry barriers and provide assistance to small businesses or individuals seeking to enter the radio field. Such a program would permit a group owner to acquire an attributable interest (including a controlling interest) in stations above the otherwise applicable ownership limit upon a prior demonstration that it has in place a small business investment incentives program involving a meaningful and ongoing commitment to

increasing pluralism in radio station ownership and stimulating investment in the radio industry. These programs would be designed to aid small businesses, including in particular minority owned businesses, that have limited access to capital and limited broadcast business experience, and that have expressed an interest in station ownership.

2. The Commission sought comment on what should constitute a qualifying incentives program. The Commission stated that, without attempting to limit additional creative mechanisms that may be developed, some general guidelines and examples of qualifying programs can be provided. For example, a group owner might create an SBA-like program which offers to eligible participants: (1) Management or technical assistance; (2) loan guarantees; (3) direct financial assistance through loans or equity investment; (4) training; and (5) business planning assistance. Alternatively, a group owner could enter into a joint venture with an established Small Business or Minority Enterprise Small Business Investment Company (SBIC or MESBIC) to accomplish the intended objective. The Commission also might consider an administrative relationship between the stations' owners. The Commission observed that if properly structured, such an arrangement might both provide a greater incentive for investment in the operations of hitherto untested owners as well as allow these owners to enjoy some of the administrative efficiencies associated with group ownership.

3. The Commission proposes that terminating the program or ceasing its implementation could result in the expanded ownership limit being withdrawn. The Commission invites commenting parties to suggest variants on the proposal or alternative means of accomplishing the same objective. Comment is invited, in particular, on: (1) The number of stations above the regular limit that might be obtainable through this process; (2) the nature of a program that might be approved, including the amount and types of financial assistance involved, particularly in relation to the financial size of the group owner involved, and the extent to which training and management and technical assistance should be a component of any program; (3) how such a program should be integrated with the "investment incentive" provisions of the rules already adopted; and (4) the best means of identifying and defining the beneficiaries of such a program. The Commission will also ask its Small Business Advisory Committee to address this and alternative proposals in this area. Parties wishing to address proposals of this type beyond the immediate area of radio ownership or that have alternative suggestions of broader coverage are invited to file such comments in the Commission's general video marketplace rulemaking proceeding, notice of proposed rule making in MM Docket No. 91–221, 7 FCC Rcd 4111 (1992), by October 30, 1992.

Initial Regulatory Flexibility Analysis

As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in the further notice of proposed rule making. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the further notice of proposed rule making, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of the further notice of proposed rule making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. 601, *et seq.* (1980).

I. *Reason for this action:* The further notice of proposed rule making was adopted to explore ways to encourage investment in broadcasters that are small businesses.

II. *Objective of this action:* The actions proposed in the further notice of proposed rule making are intended to encourage entities to establish "incubator" programs designed to ease entry barriers and provide assistance to small businesses or individuals seeking to enter the radio industry.

III. *Legal basis:* Authority for the actions proposed in the further notice of proposed rule making may be found in sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154 and 303.

IV. *Reporting, recordkeeping and other compliance requirements inherent in the proposed rule:* None.

V. *Federal rules which overlap, duplicate or conflict with the proposed rule:* none.

VI. *Description, potential impact and number of small entities involved:* Incubator programs would be specifically designed to aid small businesses, including in particular minority owned businesses, that have limited access to capital and limited business experience, and that have expressed an interest in station ownership. Approximately 11,000 existing radio broadcasters of all sizes may be affected by the proposals contained in the further notice of proposed rule making.

VII. *Any significant alternatives minimizing the impact on small entities consistent with stated objectives:* All the proposals included in the further notice of proposed rule making are aimed at assisting small entities gain entry into the radio industry.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 92–22073 Filed 9–15–92; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1105 and 1150

[Ex Parte No. 392 (Sub-Nos. 2 and 3)]

Class Exemption for the Construction of Connecting Track and Class Exemption for Rail Construction

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Proposed Exemptions and Rulemakings.

SUMMARY: The Commission is requesting comments on whether our regulations should be amended to include two new class exemptions for rail construction and operation. The Commission also requests comments addressing the applicability of 49 U.S.C. 10901 and the possible application of the proposed exemptions to construction of conventional, high speed, or magnetic levitation (MagLev) passenger lines. Our goal is to reduce regulatory burdens, thus facilitating new railroad construction, and increasing competition.

DATES: Comments are due by October 16, 1992.

ADDRESSES: Send an original and 10 copies to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 927–5660. (TDD for hearing impaired (202) 927–5721.)

SUPPLEMENTARY INFORMATION: These exemption proposals have been held in abeyance for several years while the Commission revised the environmental regulations at 49 CFR part 1105. We are proposing new rules, set forth below, which are designed to expedite construction requests, as well as comply with the environmental regulations.

We believe that exemption for rail construction is in the public interest, and that the only obstacle, certain environmental requirements, can be satisfied by the procedures set fourth below. These exemptions would facilitate investment initiatives and expand rail service. Captive shippers could benefit by being able to obtain competitive rail service.

We are concerned, however, that in order to comply with the requirements of the environmental laws, the procedures for these class exemptions may be so involved that they are not an improvement over the current procedure for processing individual construction exemption requests. We seek comments on the proposed rules set out below and whether they will indeed reduce regulatory burdens, or whether it would be better to continue with the current procedure for processing individual exemptions. We also seek to determine whether the proposed exemptions could be useful in encouraging the development of high speed passenger rail transportation by lessening the regulatory burden imposed upon sponsors of new construction of passenger lines. Although Congress has not yet determined whether construction involving new passenger train technologies is or should be subject to regulation by the Commission or other federal agencies, consideration of the usefulness of the proposed exemptions may provide some insight. Accordingly, we also request comments addressing (1) the applicability of section 10901 and the Commission's environmental rule to construction of conventional, high speed, or MagLev passenger lines; (2) the applicability of the exemption criteria of 49 U.S.C. 10505 to such projects; (3) the potential application and usefulness of the proposed exemptions to such projects; and (4) any other matters that interested parties believe are pertinent to the proposed exemptions as they relate to the construction of passenger rail lines.

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 927-7428. (Assistance for the hearing impaired is available through TDD services (202) 927-5721.)

The Commission certifies that, if promulgated, the proposed rules will not have a significant economic impact on a substantial number of small entities. Adopting these class exemptions should have a positive impact on small carriers by reducing regulatory barriers to rail construction.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects

49 CFR Part 1105

Environmental impact statements, Reporting and recordkeeping requirements.

49 CFR Part 1150

Administrative practice and procedure, Railroads.

Decided: August 13, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, parts 1105 and 1150 of the Code of Federal Regulations are proposed to be amended as follows:

PART 1105—PROCEDURES FOR IMPLEMENTATION OF ENVIRONMENTAL LAWS

1. The authority citation for part 1105 would continue to read as follows:

Authority: 49 U.S.C. 10321, 10505, 10901, 10903–10906, and 11343; 16 U.S.C. 470f, 1451, and 1531; 42 U.S.C. 4332 and 6362(b); and 5 U.S.C. 553 and 559.

2. In § 1105.7, paragraph (c), a new sentence is proposed to be added, before the last sentence of that paragraph to read as follows:

§ 1105.7 Environmental reports.

* * * * *

(c) * * * In a proceeding under the class exemption for the construction and operation of connecting track under 49 CFR 1150.36, or the class exemption for other rail constructions and operations under 49 CFR 1150.37, petitioner shall certify that it has notified the appropriate State Public Service Commissions, State Departments of Transportation (or equivalent agency) and the State Clearinghouses at least 20 days prior to filing a notice of exemption. * * *

* * * * *

PART 1150—CERTIFICATE TO CONSTRUCT, ACQUIRE, OR OPERATE RAILROAD LINES

3. The authority citation for part 1150 would continue to read as follows:

Authority: 49 U.S.C. 10321, 10901, and 10505; 5 U.S.C. 553 and 559.

§ 1150.31 [Amended]

4. The heading of § 1150.31 is proposed to be revised to read as follows: "Scope of Acquisition and Operation Exemption."

§§ 1150.32, 1150.33, 1150.34 and 1150.35 [Amended]

5. In the headings of §§ 1150.32, 1150.33, 1150.34, and 1150.35 remove the word "transactions" and add in its place the words "Acquisitions and Operations."

6. A new § 1150.36 is proposed to be added to read as follows:

§ 1150.36 Exempt construction of connecting track.

(a) *Scope.* This exemption applies to proceedings involving the construction and operation of connecting lines of railroad within existing rail rights-of-way, or on land owned by connecting railroads, under 49 U.S.C. 10901(a), (b), and (c). See 49 CFR 1105.6(b)(1), defining connecting track. This exemption is designed to expedite and facilitate connecting track construction while ensuring full and timely environmental review. The Commission has found that its prior review of connecting track construction and operation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101a; and that continued regulation under 49 U.S.C. 10901 is not necessary to protect shippers from an abuse of market power. 49 U.S.C. 10505. To use this class exemption, a prefiling notice, Environmental Report and Notice of Exemption must be filed following the procedures in § 1150.36 (b) and (c).

(b) *Environmental requirements.* The environmental regulations at 49 CFR part 1105 must be complied with fully. An Environmental Report containing the information specified at 49 CFR 1105.7(e), as well as a historic report under 49 CFR 1105.8(d), must be filed either before or at the same time as the notice of exemption is filed. See 49 CFR 1105.7(a). The entity seeking the exemption authority also must serve copies of the Environmental Report on the agencies listed at 49 CFR 1105.7(b). Since the Environmental Report must include a certification that appropriate agencies have been consulted in its preparation (49 CFR 1105.7(c)), parties shall begin environmental and historic

consultations well before the notice of exemption is filed. Environmental requirements may be waived or modified where a petitioner demonstrates in writing that such action is appropriate. See 49 CFR part 1105. It is to the advantage of parties to consult with the Commission's Section of Energy and Environment ("SEE") at the earliest possible date to began environmental review.

(c) *Procedures and dates.* (1) At least 20 days prior to the filing of a notice of exemption with the Commission, the party seeking the exemption authority must notify in writing: The State Public Service Commission, the State Department of Transportation (or equivalent agency), and the State Clearinghouse (if there is no clearinghouse, the State Environmental Protection Agency), of each State involved. The pre-filing notice shall include: The name and address of the railroad (or other entity proposing to construct the line) and the proposed operator; a complete description of the proposed construction and operation, including a map; an indication that the class exemption procedure is being used; and the approximate date that construction is proposed to begin. This prefiling notice also shall include a certification that the petitioner will comply with the Commission's Environmental regulations, codified at 49 CFR part 1105, and a statement that those regulations generally require the Commission to:

(i) Prepare an Environmental Assessment ("EA") (or Environmental Impact Statement ("EIS"), if necessary),

(ii) Make the document (EA or EIS, as appropriate) available to the parties (and to the public, upon request to the Commission's Section of Energy and Environment ("SEE") and,

(iii) Accept for filing and consideration comments on the environmental document as well as petitions for stay and reconsideration.

(2) Petitioner must file a verified Notice of Exemption with the Commission at least 90 days before the construction is proposed to begin. In addition to the information contained in § 1150.36(c)(1), the notice shall include a statement certifying compliance with the environmental rules at 49 CFR part 1105 and the prefiling notice requirements of 49 CFR 1150.36(c)(1).

(3) The Commission, through the Director of the Office of Proceedings, shall publish notice in the **Federal Register** describing the construction project and inviting comments within 20 days after the notice of exemption is received. SEE then will prepare an EA (or, if necessary an EIS). The EA generally will be made available 15 days after the **Federal Register** notice. It will be served on all parties and appropriate agencies. Others may request a copy from SEE. The deadline for submission of comments on the EA will generally be within 30 days of its availability (49 CFR 1105.10(b)). If an EIS is prepared, the time frames and procedures set forth in 49 CFR 1105.10(a) generally will apply.

(4) The Commission's environmental document (together with any comments and SEE's recommendations) shall be used in deciding whether to allow the particular construction project to proceed under the class exemption and whether to impose appropriate mitigating conditions upon its use (including use of an environmentally preferable route). The Commission may decide on the "no-build" alternative, where it concludes that a party has demonstrated that the need for a particular line is outweighed by adverse environmental consequences and that therefore the *status quo* should be retained.

(5) No construction may begin until the Commission has completed its environmental review and issued a final decision.

(6) Petitions to stay the effective date of the notice of exemption on other than environmental grounds must be filed within 10 days of the **Federal Register** publication. Petitions to stay the effective date of the notice on environmental and/or historic preservation grounds may be filed at any time but must be filed sufficiently in advance of the effective date to allow the Commission to consider and act on the petition before the notice becomes effective. Petitions for reconsideration must be filed within 20 days of the **Federal Register** publication.

(7) The exemption will be effective 70 days after publication in the **Federal Register**, unless stayed. If the notice of exemption contains false or misleading information, the exemption is void *ab initio* and the Commission shall summarily reject the exemption notice.

(8) Where significant environmental issues have been raised, the Commission shall issue on or before the effective date of the exemption a final decision allowing appropriate mitigating conditions or taking other appropriate action such as selecting the "no build" alternative.

(9) Where there has been full environmental review and *no* environmental issues have been raised, the Commission, through the Director of the Office of Proceedings, shall issue, on or before the effective date of the exemption, a final decision consisting of a Finding of No Significant Impact ("FONSI") to show that the environmental record has been considered (49 CFR 1105.10(g)).

(10) The Commission, on its own motion, will stay the effective date of individual notices of exemption when an informed decision on environmental issues cannot be made prior to the date that the exemption authority would otherwise become effective. Stays will be granted initially for a period of 60 days to permit resolution of environmental issues and issuance of a final decision. The Commission expects that this 60-day period will usually be sufficient for these purposes unless preparation of an EIS is required. If, however, environmental issues remain unresolved upon the expiration of this period the Commission, upon its own motion, or the request of a party to the case, will extend the stay, as necessary to permit completion of environmental review and issuance of a final decision. The Commission's order will specify the duration of each extension of the initial stay period. In cases requiring the preparation of an EIS, the Commission will extend the stay for a period sufficient to permit compliance with the procedural deadlines established by the Commission's environmental regulations.

(d) *Third-party consultants.* An environmental and historic report required under 49 CFR 1107.5 and 8 will not be required where a petitioner engages a consultant who is approved by SEE and acts under SEE's direction and supervision in preparing the EA or EIS. In such a case, the third-party consultant must act on behalf of the Commission, working under SEE's direction to collect the environmental information that is needed and to compile it into a draft EA or EIS, which is prepared under SEE's direction and then submitted to SEE for its final review and approval. See 49 CFR 1105.10(d).

7. A new § 1150.37 is proposed to be added to read as follows:

§ 1150.37 Other exempt rail construction.

(a) *Scope.* This exemption applies to all rail construction and operation proceedings under 49 U.S.C. 10901 (a), (b), and (c), except those involving the construction and operation of connecting track under 49 CFR 1150.36. This exemption is designed to expedite and facilitate these rail constructions and operations while ensuring full and timely environmental review. The Commission has found that its prior review of proposals for construction and operation of rail lines is not necessary to carry out the rail transportation policy

of 49 U.S.C. 10101a; and that continued regulation under 49 U.S.C. 10901 is not necessary to protect shippers from an abuse of market power. 49 U.S.C. 10505. To use this class exemption, a prefiling notice, Environmental Report, and Notice of Exemption must be filed following the procedures in section 1150.37 (b) and (c).

(b) *Environmental requirements.* The environmental regulations at 49 CFR part 1105 must be complied with fully. The environmental rules provide that rail constructions normally require an Environmental Impact Statement ("EIS") (49 CFR 1105.6(a)) and a 6 month prefiling notification (49 CFR 1105.10(a)(1)). Parties seeking a waiver from these provisions must file a request for reclassification demonstrating that their particular proposal is not likely to have significant environmental impacts sufficient to require an EIS and/or a request for waiver of the 6 month prefiling notice requirement (49 CFR 1105.6(d); 1105.10(c)). Parties also may seek a waiver from other requirements in the environmental rules by demonstrating in writing that such action is appropriate. See 49 CFR part 1105. Such requests must be filed well in advance of the filing of the Notice of Exemption. It is to the advantage of parties to consult with the Commission's Section of Energy and Environment ("SEE") at the earliest possible date to begin environmental review.

(c) *Procedures and dates.* (1) At least 20 days prior to the filing of a notice of exemption with the Commission, the party seeking the exemption authority must notify in writing: the State Public Service Commission, the State Department of Transportation (or equivalent agency), and the State Clearinghouse (if there is no clearinghouse, the State Environmental Protection Agency), of each State involved. The pre-filing notice shall include: the name and address of the railroad (or other entity proposing to construct the line) and the proposed operator; a complete description of the proposed construction and operation, including a map; an indication that the class exemption procedure is being used; and the approximate date that construction is proposed to begin. This prefiling notice also shall include a certification that the petitioner will comply with the Commission's Environmental regulations, codified at 49 CFR part 1105, and a statement that those regulations generally require the Commission to:

(i) Prepare an Environmental Assessment ("EA") (or Environmental Impact Statement ("EIS"), if necessary),

(ii) Make the document (EA or EIS, as appropriate) available to the parties (and to the public, upon request to the Commission's Section of Energy and Environment ("SEE") and,

(iii) Accept for filing and consideration comments on the environmental document as well as petitions for stay and reconsideration.

(2) To use the class exemption petitioner must file a verified Notice of Exemption with the Commission. The notice should be filed at the earliest possible date in advance of the date construction is proposed to begin. In addition to the information contained in Section 1150.36(c)(1), the notice shall include a statement certifying compliance with the environmental rules at 49 CFR part 1105 and the prefiling notice requirement in 49 CFR 1150.37(c)(1).

(3) An environmental report containing the information specified at 49 CFR 1105.7(e) and a historic report under 49 CFR 1105.8(d) must be filed either before or at the same time as the Notice of Exemption is filed. The petitioner must comply with the service and consultation requirements at 49 CFR 1105.7 (b) and (c).

(4) The Commission, through the Director of the Office of Proceedings, shall publish notice in the **Federal Register** describing the construction project and inviting comments within 30 days after the notice of exemption is received. The environmental review under this class exemption will generally be an EIS. See 49 CFR 1105.6(a). In the preparation of an EIS, the procedures and time frames set forth at 49 CFR 1105.10(a) will generally apply. If the petitioner demonstrates to the Commission under 49 CFR 1105.6(d) that only an EA is sufficient, then the time frames and procedures set forth in 49 CFR 1105.10(b) generally will apply.

(5) The Commission's environmental document (together with any comments and SEE's recommendations) shall be used in deciding whether to allow the particular construction project to proceed under the class exemption and whether to impose appropriate mitigating conditions upon its use (including use of an environmentally preferable route). The Commission may decide on the "no-build" alternative, where it concludes that a party has demonstrated that the need for a particular line is outweighed by adverse environmental consequences and that therefore the *status quo* should be retained.

(6) The notice of exemption will not be effective, and construction may not begin, until completion of the Commission's environmental review and issuance of a final Commission decision.

(7) Petitions to stay the effective date of the notice of exemption on other than environmental grounds must be filed within 10 days of the **Federal Register** publication. Petitions to stay the effective date of the notice on environmental and/or historic preservation grounds may be filed at any time but must be filed early enough to allow the Commission to consider and act on the petition before the notice of exemption becomes effective. Petitions for reconsideration must be filed within 20 days of the **Federal Register** publication if an EA is prepared. If an EIS is prepared, the time frames and procedures of 49 CFR 1105.10(a) will apply. If the notice of exemption contains false or misleading information, the exemption is void *ab initio* and the Commission shall summarily reject the exemption notice.

(8) The Commission, on its own motion, will withhold a decision, stay the effective date of an individual notice of exemption, or impose appropriate conditions upon any authority granted, when an environmental issue has not yet been resolved.

(9) Where there has been full environmental review and *no* environmental issues have been raised, the Commission, through the Director of the Office of Proceedings shall issue, on or before the effective date of the exemption, a final decision consisting of a Finding of No Significant Impact ("FONSI") to show that the environmental record has been considered (49 CFR 1105.10(g)).

(d) *Third-party consultants.* The environmental and historic report required under 49 CFR 1105.7 and 1105.8 will not be required where a petitioner engages a consultant who is approved by SEE and acts under SEE's direction and supervision in preparing the EIS or EA. In such a case, the third-party consultant must act on behalf of the Commission, working under SEE's direction to collect the environmental information that is needed and to compile it into a draft EA or EIS, which is then prepared under SEE's direction and submitted to SEE for its final review and approval. See 49 CFR 1105.10(d).

[FR Doc. 92–22367 Filed 9–15–92; 8:45 am]
BILLING CODE 7035–01–M

Notices

Federal Register
Vol. 57, No. 180
Wednesday, September 16, 1992

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

Upper Swiftwater Timber Sale: Nez Perce National Forest; Idaho County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement to analyze and disclose the environmental impacts of a proposal to harvest timber and construct and reconstruct roads in the Swiftwater Creek drainage located about 24 air miles northeast of Grangeville, Idaho. This EIS will tier to the Nez Perce Forest Land and Resource Management Plan and EIS, which provide overall guidance for achieving the desired forest condition of the area. The purpose of the proposed action is to help satisfy short-term demands for timber and to move toward an equal distribution of timber age classes on suitable lands.

DATES: Written comments and suggestions should be received on or before October 16, 1992.

ADDRESSES: Send written comments to Cynthia Lane, District Ranger, Selway Ranger District, HC 75, Box 91, Kooskia, Idaho 83539.

FOR FURTHER INFORMATION CONTACT: Jerry Bird, Planning Assistant, (208) 926–4258.

SUPPLEMENTARY INFORMATION: On December 11, 1991, the Nez Perce National Forest issued a decision notice on an environmental assessment (EA) for the Upper Swiftwater timber sale. Three organizations subsequently appealed this decision to the Regional Forester under 36 CFR part 217. The decision was reversed by the Regional Forester on May 8, 1992.

These three appeals demonstrated that the environmental effects of the Upper Swiftwater timber sale are controversial and are likely to become highly controversial. Therefore, as required by 36 CFR 1508.27(b)(4), preparation of an environmental impact statement (EIS) is necessary.

The timber sale under consideration would occur within a 4,000-acre analysis area entirely within the Swiftwater Creek watershed. The analysis area adjoins the Selway Recreation River corridor on the northeast. The proposed action would harvest about 8.9 million board feet from about 309 acres. About 1.0 miles of new road would be constructed and 1.6 miles of existing road would be reconstructed.

The principal environmental issues identified to date are related to:

1. Impacts on view-sheds seen from the Selway River road;

2. Impacts on elk summer and winter habitat; including impacts of road construction, road use restrictions, and road obliteration;

3. Impacts on fish habitat and water quality, including impacts on the threatened Snake River fall chinook salmon, impacts on other sensitive fish species, and achievement of an upward trend in fish habitat conditions;

4. Impacts on threatened, endangered, and sensitive species other than fish species, including the goshawk and several sensitive plant species which are known to occur in the analysis area.

Although not an environmental issue, timber sale revenues versus timber sale costs, including road costs, is a relevant issue which will be important to a decision.

Eight alternatives to the proposed action were considered in the Upper Swiftwater EA. Three of these alternatives were eliminated from detailed study. In those alternatives studied in detail, tractor, skyline, and helicopter logging systems were considered. Different roading schemes were evaluated. Different ratios of harvest on elk summer range and elk winter range were investigated. Different rates of upward trend in fish habitat condition were established.

All of the alternatives contained in the EA will be reconsidered in the EIS. They may be modified, and additional alternatives may be added. Toward that end, additional comments or questions are now being solicited. While public participation in this analysis is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the draft EIS, which is expected to be filed with the EPA and available for public review in November, 1992. A 45-day comment period will follow publication of a Notice of Availability of the draft EIS in the **Federal Register**. The comments received will be analyzed and considered in preparation of a final EIS, which is expected to be filed in March, 1993. The final EIS will be followed by a Record of Decision, in which an alternative from the final EIS will be selected for implementation.

The Forest Service believes it is important at this early stage to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EISs 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, 513 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *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). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

I am the responsible official for this environmental impact statement.

Dated: September 4, 1992.

Michael King,

Forest Supervisor, Nez Perce National Forest, Route 2, Box 475, Grangeville ID 83530.

[FR Doc. 92–22047 Filed 9–15–92; 8:45 am]

BILLING CODE 3410–11–M

Rural Electrification Administration

Fall River Rural Electric Cooperative, Inc.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), and REA Environmental Policies and Procedures (7 CFR part 1794), has made a finding of no significant impact (FONSI) with respect to a project proposed by Fall River Rural Electric Cooperative, Inc. (Fall River), of Ashton, Idaho. The proposed project consists of constructing a hydroelectric generating plant of 4.8 megawatts at the Island Park Dam, an existing dam operated by the Bureau of Reclamation and the Fremont Madison Irrigation District in Fremont County, Idaho. The FONSI is based on an environmental assessment (EA) prepared by the Federal Energy Regulatory Commission (FERC). REA made an independent evaluation of the impacts resulting from the proposed construction and concurs with its scope and content. In accordance with REA Environmental Policies and Procedures, 7 CFR Subpart I, Adoption of Environmental Documents, REA has adopted the FERC EA as its EA for the project.

FOR FURTHER INFORMATION CONTACT: Lawrence R. Wolfe, Chief, Environmental Compliance Branch, Electric Staff Division,Room 1246, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 720–1784.

Copies of the EA and FONSI are available for review at, or can be obtained from, REA at the address provided herein or from Mr. Dee M. Reynolds, Manager, Fall River Rural Electric Cooperative, Inc., 614 Main Street, Ashton, Idaho 83420, telephone (208) 652–7431.

SUPPLEMENTARY INFORMATION: REA has reviewed the FERC EA and has determined that it represents an accurate assessment of the scope and level of environmental impacts of the proposed project. The FERC EA, which includes input from certain Federal and state agencies, has been adopted by REA to serve as its EA.

REA has determined that the FERC EA adequately considered the potential impacts of the proposed project and concluded that approval of the project would not result in a major Federal action significantly affecting the quality of the human environment. REA determined that the proposed project will have no effect on cultural resources, important farmland, floodplains, wetlands, water quality, threatened or endangered species, or critical habitat. REA has identified no other potential significant impact resulting from construction and operation of the proposed hydroelectric generating plant.

Alternatives examined for the proposed project included no action and denial of license by FERC to build the project. REA determined that the proposed project is an environmentally acceptable alternative that meets Fall River's need with a minimum of adverse environmental impact. REA has concluded that project approval would not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, the preparation of an environmental impact statement is not necessary.

In accordance with their regulations, FERC published notices and requested comments on the application submitted by Fall River. All comments received were adequately addressed in the FERC EA. The notices published by FERC meet the REA notice requirements contained in 7 CFR Part 1794.62. On October 19, 1988, FERC issued a license to Fall River to build the proposed project.

Dated: September 8, 1992.

George E. Pratt,

Deputy Administrator Program Operations.

[FR Doc 92–22355 Filed 9–15–92; 8:45 am]

BILLING CODE 3410–15–F

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Malcolm Baldrige National Quality Award's Panel of Judges

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Panel of Judges of the Malcolm Baldrige National Quality Award will meet on Wednesday, October 7, 1992, from 8:30 a.m. to 5:30 p.m.; on Thursday, October 8, 1992, from 8 a.m. to 5:30 p.m.; and on Friday, October 9, 1992, from 8 a.m. to 2 p.m. The Panel of Judges is composed of nine members prominent in the field of quality management and appointed by the Director of the National Institute of Standards and Technology.

DATES: The meeting will convene October 7, 1992, at 8:30 a.m. and adjourn at 2 p.m. on October 9, 1992. The meeting will be closed on October 7 from 8:30 a.m. to 5:30 p.m., and on October 8 from 8 a.m. to 5:30 p.m. The meeting will be open to the public on October 9 from 8 a.m. to 2 p.m..

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Curt W. Reimann, Director for Quality Programs, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2036.

SUPPLEMENTARY INFORMATION: The purpose of the meeting on October 7–8, 1992, is to review site visit reports and to process related reports on the 1992 feedback and will involve review of individual proposals. The discussion on October 7–8, 1992, beginning at 8:30 a.m. on October 7, 1992, and ending at 5:30 p.m. on October 8, 1992, will be closed. The purpose of the meeting on October 9, 1992, is to review the August 5–6, 1992, minutes; discuss the roles of the National Institute of Standards and Technology and the Panel of Judges; begin planning for 1993 with discussions on Examiner software, technology transfer, Examiner selection process, estimate of applicants for 1993, and the application guidelines; new business; review of action items; and plan the agenda for the February meeting.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on March 27, 1992, that the meeting of the Panel of Judges will be closed pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by section 5(c) of the Government in the Sunshine Act, Public Law 94–409. The meeting, which involves examination of records and discussion of Award applicant data, may be closed to the public in accordance with section 552b(c)(4) of title 5, United States Code, since the meeting is likely to disclose trade

secrets and commercial or financial information obtained from a person which is privileged or confidential.

Date: September 10, 1992.

John Lyons,

Director.

[FR Doc. 92-22393 Filed 9-15-92; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Statement of Organization, Practices and Procedures

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of revision to statement of organization, practices and procedures.

SUMMARY: Pursuant to section 302(f)(6) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. 1801 *et seq.*, each Regional Fishery Management Council (Council) is responsible for carrying out its functions under the Magnuson Act, in accordance with such uniform standards as are prescribed by the Secretary of Commerce (Secretary). Further, each Council must make available to the public a statement of its organization, practices and procedures (SOPP).

On January 6, 1992, NOAA published in the **Federal Register** (57 FR 375) a final rule that revised the regulations (50 CFR parts 601 and 605) and guidelines concerning the operations of the Councils under the Magnuson Act. The final rule, effective February 5, 1992, implemented parts of sections 108 and 109 of Public Law 101-627, the Fishery Conservation Amendments of 1990, which amended and reauthorized the Magnuson Act through September 30, 1993.

In accordance with the above-mentioned final rule, the Caribbean Fishery Management Council (Caribbean Council) has revised its SOPP, which was originally published in the **Federal Register** on October 13, 1977. Interested parties may obtain a copy of the Caribbean Council's revised SOPP by contacting Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, Suite 1108, Banco de Ponce Building, Hato Rey, Puerto Rico 00918-2577; telephone (809) 753-6910.

Dated: September 9, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-22297 Filed 9-15-92; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Licensing information may be obtained by writing to: National Technical Information Service, Center for Utilization of Federal Technology—Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151 or by telephoning (703) 487-4732. All patent applications may be purchased, specifying the serial number listed below, by writing NTIS, 5285 Port Royal Road, Springfield, Virginia 22161 or by telephone the NTIS Sales Desk at (703) 487-4650. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Acting Director, Office of Federal Patent Licensing

Department of Health and Human Services

7-210,00—(U.S. 5,108,708) Aliquot Collection Adapter for HPLC Automatic Injector Enabling Simultaneous Sample Analysis and Sample Collection

7-261,014—(U.S. 5,106,731) Kaposi's Sarcoma Endothelia Cells and Growth Factor

7-386,114—(U.S. 5,104,898) Method of Preventing Graft Rejection in Solid Organ Transplantation

7-356,528—(U.S. 5,126,132) Tumor Infiltrating Lymphocytes as a Treatment Modality for Human Cancer

7-430,049—(U.S. 5,128,254) A cDNA Encoding the Long Isoform of the Rate D2 Dopamine Receptor: Expression of Receptor Protein in Plasmid-Transfected Cell Lines

7-454,171—(U.S. 5,104,792) Novel Method For Amplifying Unknown Nucleic Acid Sequences

7-485,871—(U.S. 5,126,251) Stable Mammalian Cell Line Expressing A Bacteriophage RNA Polymerase

7-691,894—(U.S. 5,105,585) Dust Emissions Control Mechanism for Hand Sanders

Department of Interior

7-596,669—(U.S. 5,104,551) Method of Flocculating Clay-Containing Waste Slurries

7-618,196—(U.S. 5,113,923) Method for Determining the Moten Pool Configuration in Melting of Metals

7-696,805—(U.S. 5,110,546) Method for Locating Metallic Nitride Inclusions in Metallic Alloy Ingots

7-734,002—(U.S. 5,127,769) Thrust Bolting: Roof Bolt Support Apparatus

7-832,833—Fish Egg and Larvae Collection System

7-834,401—Bonded-Sand/Loose-Sand Composite Mold

7-844,057—Disposable Device for Delivery of Accurate and Filtered Liquid Samples

7-862,164—Enzymatic Reduction & Precipitation of Uranium

7-874,139—Process for Mitigating Corrosion and Increasing the Conductivity of Steel Studs in Soderberg Anodes of Aluminum Reduction Cells.

Department of Agriculture

6-526,751—(U.S. 4,541,231) Process for Reinforced Yarn With Glass Fiber Core

7-351,347—(U.S. 5,104,789) Monoclonal Antibodies Which Discriminate Between Strains of Citrus Tristeza Virus

7-447,352—(U.S. 5,125,279) System for Analyzing Cotton

7-551,100—(U.S. 5,106,637) Laser Treatment of Livestock Feeds

7-552,381—(U.S. 5,103,522) Sequential Oxidative and Reductive Bleaching in a Multicomponent Single Liquor System

7-608,786—(U.S. 5,112,637) Extraction of Cossypol from Cottonseed

7-694,589—(U.S. 5,101,672) System for Analyzing Entrained Solids Such as Cotton or Seed

7-724,722—Marek's Disease Virus Gene Encoding pp38 Phosphoprotein

7-832,196—Chemical Pulping Process Employing Separate Alkali and Peroxymonosulfate Treatments

7-839,000—Pressure and Depth Control in Agricultural Implement

7–855,804—Plasmid-DNA Based Probes & Procedures for Rapid and Specific Detection of *Xanthomonas Campestris* pv. *Citri*
7–855,805—A method of Rapid Fat and Oil Splitting Using a Lipase Catalyst Found in Seeds
7–857,060—Method of Removing Color from kraft Wood Pulps
7–857,146—Method and Apparatus for Evaluating the Drying Properties of Un-dried Wood
7–863,274—Temperature Adaptable Glyoxal-Modified Fibers and Method of Preparing Same
7–880,912—Industrial Alkaline Protease from Shipworm Bacterium
7–883,434—Steinernema Sp. Nematode for Suppression of Helicoverpa Zea and Spodoptera Frugiperda
7–883,749—Cytotoxic Proteins from the Yeast Pichia Acaciae
7–909,263—Portable Water Bag
7-912,391—Method and Apparatus for *in-Situ* Evaluation of Wooden Members

[FR Doc. 92–22333 Filed 9–15–92; 8:45 am]
BILLING CODE 3510–04–M

Prospective Grant of Co-Exclusive Patent License

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of a co-exclusive license in the United States to practice the invention embodied in U.S. Patent Application 7–429,326, titled "Polymer Bead Containing Immobilized Metal Extractant," to either Ashtabula Trading Company, having a place of business in Ashtabula, OH, or Enviro-Dewatering & Recovery, Inc., having a place of business in Charlotte, NC. The patent rights in this invention have been assigned to the United States of America.

The prospective co-exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective co-exclusive license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establish that the grant of the license to either company would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The invention covers spherical polymeric beads having internal pore structures containing extractant material capable of sorbing toxic metals, a process for producing such beads and a method for removing toxic metal wastes dissolved in dilute aqueous streams.

The availability of the invention for licensing was published in the **Federal Register**, Vol. 55, No. 138, p. 29255 (July 18, 1990). A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning 703/487–4650 or by writing the Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Neil L. Mark, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151. Properly filed competing applications received by the NTIS in response to this notice will be considered as objections to the grant of the contemplated license.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 92–22334 Filed 9–15–92; 8:45 am]
BILLING CODE 3510–04–M

Patent and Trademark Office

Public Advisory Committee for Trademark Affairs; Meeting

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the open meeting of the Public Advisory Committee for Trademark Affairs.

DATES: The Public Advisory Committee for Trademark Affairs will meet from 10 a.m. until 4 p.m. on October 27, 1992.

PLACE: U.S. Patent and Trademark Office, 2121 Crystal Drive, Crystal Park 2, room 912, Arlington, Virginia.

STATUS: The meeting will be open to public observation; seating will be available for the public on a first-come-first-served basis. Members of the public will be permitted to make oral comments of three (3) minutes each. Written comments and suggestions will be accepted before or after the meeting on any of the matters discussed. Copies of the minutes will be available upon request.

MATTERS TO BE CONSIDERED: The agenda for the meeting is as follows:

(1) Finance
(2) Automation
(3) Strategic Planning
(4) Current Trademark Office Practice Issues
(5) International Trademark Law.

CONTACT PERSON FOR MORE INFORMATION: For further information, contact Lynne Beresford, Office of the Assistant Commissioner for Trademarks, Building CPK2, room 910, Patent and Trademark Office, Washington, DC 20231. Telephone: (703) 305–9464.

Dated: September 3, 1992.

Douglas B. Comer,

Acting Assistant Secretary and Acting Commissioner of Patents and Trademarks.

[FR Doc. 92–22384 Filed 9–15–92; 8:45 am]
BILLING CODE 3510–16–M

COUNCIL ON ENVIRONMENTAL QUALITY

National Acid Precipitation Assessment Program Oversight Review Board

AGENCY: Council on Environmental Quality, Executive Office of the President, the National Acid Precipitation Assessment Program Oversight Review Board.

ACTION: Establishment of an advisory committee known as the National Acid Precipitation Assessment Program Oversight Review Board.

SUMMARY: The National Acid Precipitation Assessment Program (NAPAP) is administered by a federal interagency Acid Precipitation Task Force. The task force, which is chaired by the Chairman of the Council on Environmental Quality (CEQ), has determined that NAPAP's work will be enhanced by the creation of an advisory committee to provide advice to NAPAP regarding the quality, scientific integrity credibility, scope, and practicality of NAPAP's research, monitoring, and assessment program. This advisory committee will be known as the NAPAP Oversight Review Board (ORB).

The ORB will consist of up to ten members appointed by the CEQ Chairman in consultation with the interagency task force. Each ORB member will be a person who, as a result of his or her training and experience, is exceptionally well-qualified to analyze, interpret, and appraise scientific and technical information over a broad range of issues relevant to the purpose and responsibility of NAPAP. The ORB will report and provide recommendations to the CEQ Chairman in his capacity as chairman of the task force.

In his capacity as chair of the Acid Precipitation Task Force, CEQ Chairman Deland has determined that the

establishment of the ORB is necessary and in the public interest.

FOR FURTHER INFORMATION CONTACT: Dr. Charles Herrick, Associate Director for Environmental Trends, Council on Environmental Quality, 722 Jackson Place, NW., Washington, DC 20503. Telephone: 202/395–5750.

David B. Struhs,

Chief of Staff, Council on Environmental Quality.

[FR Doc. 92–22317 Filed 9–15–92; 8:45 am]

BILLING CODE 3125–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Wednesday, 23 September 1992.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Warner Kramer, AGED Secretariat, 2011 Crystal Drive, suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military proposes to initiate with industry, universities or in their laboratories. The microelectronics area includes such programs on semiconductor materials, integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. 92–463, as amended, (5 U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: 10 September 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–22326 Filed 9–15–92; 8:45 am]

BILLING CODE 3810–01–M

Nuclear Failsafe and Risk Reduction Advisory Committee; Meeting

AGENCY: Nuclear Failsafe and Risk Reduction Advisory Committee, DOD.

ACTION: Cancellation.

SUMMARY: The Federal Advisory Committee meeting scheduled September 18, 1992 (57 FR 38487, August 25, 1992) is hereby canceled. The meeting will be rescheduled in the future.

Dated: September 10, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–22325 Filed 9–15–92; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

Performance Review Boards; List of Members

Below is a list of additional individuals who are eligible to serve on the Performance Review Boards for the Department of the Air Force in accordance with the Air Force Senior Executive Appraisal and Award System.

Secretariat

Mr. John W. Beach
Mr. Robert D. Stuart

Air Staff

Brig. Gen. Stephen C. Mannell

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92–22327 Filed 9–15–92; 8:45 am]

BILLING CODE 3910–01–M

Department of the Navy

Privacy Act of 1974; Amend Record Systems

AGENCY: Department of the Navy, DOD.

ACTION: Amend record systems.

SUMMARY: The Department of the Navy proposes to amend two existing systems of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendments will be effective on October 16, 1992 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Head, PA/FOIA Branch, Office of the Chief of Naval Operations (OP–09B30), Department of the Navy, The Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn Aitken at (703) 614–2004.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, were published in the **Federal Register** as follows:

51 FR 12908, April 16, 1986
51 FR 18086, May 16, 1986 (DON Compilation changes follow)
51 FR 19884, June 3, 1986
51 FR 30377, August 26, 1986
51 FR 30393, August 26, 1986
51 FR 45931, December 23, 1986
52 FR 2147, January 20, 1987
52 FR 2149, January 20, 1987
52 FR 8500, March 18, 1987
52 FR 15530, April 29, 1987
52 FR 22671, June 15, 1987
52 FR 45846, December 2, 1987
53 FR 17240, May 16, 1988
53 FR 21512, June 8, 1988
53 FR 25363, July 6, 1988
53 FR 39499, October 7, 1988
53 FR 41224, October 20, 1988
54 FR 8322, February 28, 1989
54 FR 14378, April 11, 1989
54 FR 32682, August 9, 1989
54 FR 40160, September 29, 1989
54 FR 41495, October 10, 1989
54 FR 43453, October 25, 1989
54 FR 45781, October 31, 1989
54 FR 48131, November 21, 1989
54 FR 51784, December 18, 1989
54 FR 52976, December 26, 1989
55 FR 21910, May 30, 1990 (Updated Mailing Addresses)
55 FR 37930, September 14, 1990
55 FR 42758, October 23, 1990
55 FR 47508, November 14, 1990
55 FR 48678, November 21, 1990
55 FR 53167, December 27, 1991
56 FR 424, January 4, 1991
56 FR 12721, March 27, 1991
56 FR 27503, June 14, 1991
55 FR 28144, June 19, 1991
56 FR 31394, July 10, 1991 (DOD Updated Indexes)
56 FR 40877, August 16, 1991
56 FR 46167, September 10, 1991
56 FR 59217, November 25, 1991
56 FR 63503, December 4, 1991
57 FR 2719, January 23, 1992
57 FR 2726, January 23, 1992
57 FR 2898, January 24, 1992
57 FR 5430, February 14, 1992
57 FR 9246, March 17, 1992
57 FR 12914, April 14, 1992
57 FR 14698, April 22, 1992
57 FR 18472, April 30, 1992
57 FR 26422, June 10, 1992
57 FR 26821, June 16, 1992

57 FR 28499, June 25, 1992
57 FR 28502, June 25, 1992
57 FR 31700, July 17, 1992
57 FR 33326, July 28, 1992
57 FR 34127, August 3, 1992
57 FR 37791, August 20, 1992

The amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of altered systems reports. The specific changes to the systems of records are set forth below followed by the systems of records notices published in their entirety, as amended.

Dated: September 9, 1992.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01070-12

SYSTEM NAME:

Administrative Files System, (51 FR 18091, May 16, 1986).

CHANGES:

SYSTEM NAME:

At beginning of entry, add "NISCOM".

SYSTEM LOCATION:

Delete entry and replace with "Primary - Naval Investigative Service Command, Washington, DC 20388-5000.

Decentralized Segments - Naval Investigative Service Regional Offices (NISROs) retain duplicate copies of certain segments of the administrative files. Official mailing addresses are published as an appendix to the Navy's compilation of system of records notices."

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Personnel and Resource Information System - contains personnel management information/statistical information on Naval Investigative Service (NIS) personnel.

Special Agent Career Development Files - contains correspondence unique to the NIS Special Agent, including annual physical examinations, assignment preferences, and special qualifications, which has a bearing on world-wide assignability, promotion, and general career assessment.

Weapons and Equipment Files - identifies credential numbers, badges, PSP pins, and weapons assigned to authorized NIS personnel.

Personnel Security Clearance File - identifies the classified material access level and date of last security clearance for assigned civilian and military personnel of NIS.

Personnel Utilization Data File - provides statistical information regarding the manner by which available NIS manhours are expended in the execution of its assigned investigative and counterintelligence mission. The file is formed by the submission (monthly) of individual manhour diaries. All assigned personnel input to this system; their manhours are categorized by function.

Freedom of Information Act and Privacy Act Requests File - contains correspondence and responses made to requests for information pursuant to the Freedom of Information Act and the Privacy Act of 1974."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

At end of entry, add "Executive Order 9397."

PURPOSE(S):

Delete entry and replace with "The Personnel and Resource Information System is used to prepare all personnel documents and personnel statistical studies. It provides such information as the average grade, the total number and composition of personnel at each NIS component, and the past assignments of personnel. It is used on a daily basis by personnel in the formation and execution of staffing actions for the various NIS components, information verification of employee's tenure, and the compilation of necessary statistical studies.

Special Agent Career Development Files are used for in-house agency decisions regarding reassignment, promotion, career training, and long-range development. They form in-house agency repository for both adverse and favorable documents regarding Special Agents. The files have a long-range function, that of forming the basis for law enforcement retirement service certification. Though part of the file is duplicated in the official file maintained by the Civilian Personnel Office, the Special Agent Career Development File is considered privileged information and its contents are not released outside NIS. Within NIS, the files are maintained and controlled exclusively within the Career Services Division, NISCOM, and by assigned personnel of that Division. The files are released for review only to senior management personnel of NISCOM.

Weapons and Equipment Files are used to identify and inventory credentials, weapons, badges, and handcuffs issued to authorized NIS personnel.

Personnel Security Clearance Files are used to informally verify and authenticate security clearances issued to NIS personnel. The file has a daily working purpose of acting as a check sheet for the updating of security clearances. It is used by the Commander, NISCOM to certify the access level of certain assigned NIS personnel to other Navy commands as well as civilian contractors. Personnel Utilization Data File is used to make analyses which modify the staffing levels at various NIS components based on the actual work level. It further provides a tool to NIS management to gauge the efficiency of all components by comparing their workload with the amount of manhours available.

The records in this system may be used by other DOD components requiring confirmation of security clearance levels and for statistical purposes.

Freedom of Information Act and Privacy Act Request Files are used to record actions taken on requests/appeals/amendments."

* * * * *

STORAGE:

Delete entry and replace with "Automated and paper records."

RETRIEVABILITY:

Delete entry and replace with "For the Special Agent Career Development File - name only.

For the Weapons and Equipment File by name or by item number (i.e., badge, credential, weapon, handcuff serial number).

For the Personnel and Resource Information System - by name and Social Security Number or by individual data characteristic, such as GS-grade level, duty-station, special qualifications, or language qualifications.

For the Personnel Utilization Data File - normally accessed and retrieved by location and functional category of employment (i.e., Special Agent, clerical, etc.). The capability exists, however, to retrieve by Social Security Number. The Personnel Security Classification File, which is a subordinate file to the Personnel and Resource Information System, is accessed by name and Social Security Number.

For the Freedom of Information Act and Privacy Act Requests File - by name and year request was made."

SAFEGUARDS:

Delete entry and replace with "Files are protected by limited controlled access, safes, locked cabinets, and locked doors. Visitor control and

security computer software measures (where applicable) are utilized."

RETENTION AND DISPOSAL:

Delete entry and replace with "Personnel indexed in the Personnel and Resource Information System and the Personnel Security Clearance Files are deleted from the magnetic tape data storage upon termination of employment. Residual paper records are retained from two to five years and then destroyed.

Personnel indexed in the Weapons and Equipment Files are deleted as assigned equipment is accounted for or returned. Residual paper printouts are destroyed at least semi-annually.

The Special Agent Career Development Files are semi-permanent and are retained, at least in essential skeletal format, indefinitely.

Personnel indexed in the Freedom of Information Act and Privacy Act Requests File are deleted after two years if their request was granted or no record found and six years if the request was denied in whole or in part."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Commander, Naval Investigative Service Command, Washington, DC 20388–5000."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Naval Investigative Service Command, Washington, DC 20388–5000. Individuals submitting requests should provide their full name, date of birth, Social Security Number, and dates of employment or assignment with NIS.

In the case of personal visits, individuals requesting access to files in this system will be required to present reasonable proof of identity to minimally include a driver's license or similar document at least one of which must bear a current photograph and be able to provide (orally) some element of unique identifying data such as name of spouse or a past duty station with NIS."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commander, Naval Investigative Service Command, Washington, DC 20388–5000. Individuals submitting requests should provide their full name, date of birth, Social Security Number, and dates of employment or assignment with NIS.

In the case of personal visits, individuals requesting access to files in this system will be required to present reasonable proof of identity to minimally include a drivers' license or similar document at least one of which must bear a current photograph and be able to provide (orally) some element of unique identifying data such as name of spouse or a past duty station with NIS."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager."

RECORD SOURCE CATEGORIES:

Delete entry and replace with "Information for the Personnel and Resource Information System and the Personnel Utilization Data System is obtained from the individual employee, who is the prime source of information both for initial access to the files as well as for the periodic update.

Information for the Personnel Security Clearance File information is obtained from the Personnel and Resource Information System.

The information for the Weapons and Equipment Files is obtained from personnel charged with the issuance of various items inventoried therein (with verification by the personnel to whom the items are issued.)

Information for the Special Agent Career Development File is obtained from the individuals' supervisors, from various naval commands, and other federal and state agencies with whom the special agent has had professional contact and from the individual. Also, this file contains copies of each physical examination required annually of assigned civilian special agents.

Information for the Freedom of Information Act and Privacy Act Requests file is obtained from the individual requesting the information."

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N01070–12

SYSTEM NAME:

NISCOM Administrative Files System.

SYSTEM LOCATION:

Primary - Naval Investigative Service Command, Washington, DC 20388–5000.

Decentralized Segments - Naval Investigative Service Regional Offices (NISROs) retain duplicate copies of certain segments of the administrative files. Official mailing addresses are published as an appendix to the Navy's compilation of system of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Past and present civilian, military, and foreign national personnel assigned world-wide to the Naval Investigative Service Command.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel and Resource Information System - contains personnel management information/statistical information on NIS personnel.

Special Agent Career Development Files - contains correspondence unique to the NIS Special Agent, including annual physical examinations, assignment preferences, and special qualifications, which has a bearing on world-wide assignability, promotion, and general career assessment.

Weapons and Equipment Files - identifies credential numbers, badges, PSP pins, and weapons assigned to authorized NIS personnel.

Personnel Security Clearance File - identifies the classified material access level and date of last security clearance for assigned civilian and military personnel of NIS.

Personnel Utilization Data File - provides statistical information regarding the manner by which available NIS manhours are expended in the execution of its assigned investigative and counterintelligence mission. The file is formed by the submission (monthly) of individual manhour diaries. All assigned personnel input to this system; their manhours are categorized by function.

Freedom of Information Act and Privacy Act Requests File - contains correspondence and responses made to requests for information pursuant to the Freedom of Information Act and the Privacy Act of 1974.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and Executive Order 9397.

PURPOSE(S):

The Personnel and Resource Information System is used to prepare all personnel documents and personnel statistical studies. It provides such information as the average grade, the total number and composition of personnel at each NIS component, and

the past assignments of personnel. It is used on a daily basis by personnel in the formation and execution of staffing actions for the various NIS components, information verification of employee's tenure, and the compilation of necessary statistical studies.

Special Agent Career Development Files are used for in-house agency decisions regarding reassignment, promotion, career training, and long-range development. They form in-house agency repository for both adverse and favorable documents regarding Special Agents. The files have a long-range function, that of forming the basis for law enforcement retirement service certification. Though part of the file is duplicated in the official file maintained by the Civilian Personnel Office, the Special Agent Career Development File is considered privileged information and its contents are not released outside NIS. Within NIS, the files are maintained and controlled exclusively within the Career Services Division, NISCOM, and by assigned personnel of that Division. The files are released for review only to senior management personnel of NISCOM.

Weapons and Equipment Files are used to identify and inventory credentials, weapons, badges, and handcuffs issued to authorized NIS personnel.

Personnel Security Clearance Files are used to informally verify and authenticate security clearances issued to NIS personnel. The file has a daily working purpose of acting as a check sheet for the updating of security clearances. It is used by the Commander, NISCOM to certify the access level of certain assigned NIS personnel to other Navy commands as well as civilian contractors. Personnel Utilization Data File is used to make analyses which modify the staffing levels at various NIS components based on the actual work level. It further provides a tool to NIS management to gauge the efficiency of all components by comparing their workload with the amount of manhours available.

The records in this system may be used by other DOD components requiring confirmation of security clearance levels and for statistical purposes.

Freedom of Information Act and Privacy Act Request Files are used to record actions taken on requests/appeals/amendments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To law enforcement activities conducting criminal or suitability investigations.

To the Office of Personnel Management when making personnel determinations, e.g., awards or disciplinary actions.

To credit companies in response to credit queries.

To personal physicians regarding medical records.

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated and paper records.

RETRIEVABILITY:

For the Special Agent Career Development File - name only.

For the Weapons and Equipment File - by name or by item number (i.e., badge, credential, weapon, handcuff serial number).

For the Personnel and Resource Information System - by name and Social Security Number or by individual data characteristic, such as GS-grade level, duty-station, special qualifications, or language qualifications.

For the Personnel Utilization Data File - normally accessed and retrieved by location and functional category of employment (i.e., Special Agent, clerical, etc.). The capability exists, however, to retrieve by Social Security Number. The Personnel Security Classification File, which is a subordinate file to the Personnel and Resource Information System, is accessed by name and Social Security Number.

For the Freedom of Information Act and Privacy Act Requests File - by name and year request was made.

SAFEGUARDS:

Files are protected by limited controlled access, safes, locked cabinets, and locked doors. Visitor control and security computer software measures (where applicable) are utilized.

RETENTION AND DISPOSAL:

Personnel indexed in the Personnel and Resource Information System and the Personnel Security Clearance Files are deleted from the magnetic tape data storage upon termination of employment. Residual paper records are retained from two to five years and then destroyed.

Personnel indexed in the Weapons and Equipment Files are deleted as assigned equipment is accounted for or returned. Residual paper printouts are destroyed at least semi-annually. The Special Agent Career Development Files are semi-permanent and are retained, at least in essential skeletal format, indefinitely.

Personnel indexed in the Freedom of Information Act and Privacy Act Requests File are deleted after two years if their request was granted or no record found and six years if the request was denied in whole or in part.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Investigative Service Command, Washington, DC 20388–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Naval Investigative Service Command, Washington, DC 20388–5000. Individuals submitting requests should provide their full name, date of birth, Social Security Number, and dates of employment or assignment with NIS. In the case of personal visits, individuals requesting access to files in this system will be required to present reasonable proof of identity to minimally include a driver's license or similar document at least one of which must bear a current photograph and be able to provide (orally) some element of unique identifying data such as name of spouse or a past duty-station with NIS.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commander, Naval Investigative Service Command, Washington, DC 20388–5000. Individuals submitting requests should provide their full name, date of birth, Social Security Number, and dates of employment or assignment with NIS.

In the case of personal visits, individuals requesting access to files in this system will be required to present reasonable proof of identity to minimally include a drivers' license or similar document at least one of which must bear a current photograph and be able to provide (orally) some element of unique identifying data such as name of spouse or a past duty-station with NIS.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information for the Personnel and Resource Information System and the Personnel Utilization Data System is obtained from the individual employee, who is the prime source of information both for initial access to the files as well as for the periodic update.

Information for the Personnel Security Clearance File information is obtained from the Personnel and Resource Information System.

The information for the Weapons and Equipment Files is obtained from personnel charged with the issuance of various items inventoried therein (with verification by the personnel to whom the items are issued.)

Information for the Special Agent Career Development File is obtained from the individuals' supervisors, from various naval commands, and other federal and state agencies with whom the special agent has had professional contact and from the individual. Also, this file contains copies of each physical examination required annually of assigned civilian special agents.

Information for the Freedom of Information Act and Privacy Act Requests file is obtained from the individual requesting the information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N12930-1

SYSTEM NAME:

Industrial Relations Personnel Records, (54 FR 51794, December 18, 1989).

CHANGES:

SYSTEM NAME:

Delete entry and replace with "Human Resources Group Personnel Records."

SYSTEM LOCATION:

Delete entry and replace with "Commander, Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305-5097 and at all Navy Exchanges. Mailing addresses for Navy Exchanges are available from the Commander, Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305-5097."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Civilian employees, former civilian employees, and applicants for employment with the Navy Exchange Service Command and Navy Exchanges located worldwide. Employees who are paid from nonappropriated funds are regular full time, regular part-time, temporary full time, temporary part-time and intermittent."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Personnel jackets, including but not limited to Personnel Information Questionnaire, Personnel Action; Certification of Medical Examination Indoctrination Checklist; Election forms for all life, health, and retirement programs, applicant participation data for each program; notice of excessive absence and tardiness and warnings; disciplinary actions; certified record of court attendance; certified copy of completed military orders for any annual duty tours with recognized reserve organizations; employee job description; tuition assistance records; examination papers and tests, if any; evidence of date of birth, where required; official letters of commendation; cash register overage/shortage records; report of hearings and recommendations relative to employee's grievances; official work performance rating; designation beneficiary for unpaid compensation; reference check records; applicant files; employee profiles; personnel security information (including copies of National Agency Check (NAC) and Naval Investigative Service (NIS) reports); Certificate of Standards of Conduct and Fraud, Waste and Abuse training; travel requests, travel allowance and claims record; transportation agreements; employee affidavits; privilege card application, work assignments, work performance capability, counseling records, work-related records, training records including courses, type and completion dates; and related data.

Labor and Employee Relations Records include notices of excessive absence, tardiness and warnings; disciplinary actions; unsatisfactory work performance evaluations; grievances, appeals, complaint and appeal records; reports of potential grievances and appeals; congressional correspondence; investigative reports and summaries of personnel administrative actions.

Employee Benefits Records include data relating to Quality Salary Increase, Superior Accomplishment Recognition Awards, beneficial suggestions and similar awards; and personnel listings of the aforementioned services. Election forms for all life, health, and retirement programs and claims made for those programs."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "5 U.S.C. 301, Departmental Regulations; 29 U.S.C. 201; 29 U.S.C. 633a; 29 U.S.C. 791 and 794a; Pub. L. 93-259, Equal Employment Act of 1972; and Executive Order 9397."

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

At end of entry, add the following: *"Note: Records of identity, diagnosis, prognosis or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided herein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd-3 and 290ee-3. These statutes take precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The Department of the Navy's "Blanket Routine Uses" do not apply to these records."*

STORAGE:

Delete entry and replace with "The media in which these records are maintained vary, but include file folders; magnetic tapes; automated minicomputer data base, disks and diskettes (hard drive); rolodex files; cardex files; ledgers; and printed reports."

* * * * *

SAFEGUARDS:

Delete entry and replace with "Locked desks in supervisor's office and also, locked cabinets in locked offices supervised by appropriate personnel; periodic system backup and microcomputer records to data cartridge, microcomputer power supply locks and/or hard drive locks; security guards."

RETENTION AND DISPOSAL:

Delete entry and replace with "Current employee records remain on file at the local Navy Exchange

personnel office. Records on former employees are retained for one year and then forwarded to the Director, National Personnel Records Center, (Civilian Personnel Records), 111 Winnebago Street, St. Louis, MO 63118 for retention of permanent papers and destruction of temporary papers. Applicant files are retained for six months and then destroyed."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Policy Official is the Commander, Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305–5097.

Master Record Holder is the Manager, Staffing & Career Management, HRG–3, Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305–5097.

Local Record Holder is the Manager at the local Navy Exchange. Mailing addresses are available from the Commander, Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305–5097."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305–5097 or to the manager of the local Navy Exchange where employed.

The request should contain full name, Social Security Number, activity where last employed or where last application for employment was filed. A list of other offices the requester may visit will be provided after initial contact is made at the office listed above. At the time of a personal visit, requester must provide proof of identity containing the requester's signature."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commander, Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305–5097 or to the manager of the local Navy Exchange where employed.

The request should contain full name, Social Security Number, activity where last employed or where last application for employment was filed. A list of other offices the requester may visit will be provided after initial contact is made at the office listed above. At the time of a personal visit, requester must provide proof of identity containing the requester's signature."

* * * * *

N12930–1

SYSTEM NAME:

Human Resources Group Personnel Records.

SYSTEM LOCATION:

Commander, Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305–5097 and at all Navy Exchanges. Mailing addresses for Navy Exchanges are available from the Commander, Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305–5097.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian employees, former civilian employees, and applicants for employment with the Navy Exchange Service Command and Navy Exchanges located worldwide. Employees who are paid from nonappropriated funds are regular full time, regular part-time, temporary full time, temporary part-time and intermittent.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel jackets, including but not limited to Personnel Information Questionnaire, Personnel Action; Certification of Medical Examination Indoctrination Checklist; Election forms for all life, health, and retirement programs, applicant participation data for each program; notice of excessive absence and tardiness and warnings; disciplinary actions; certified record of court attendance; certified copy of completed military orders for any annual duty tours with recognized reserve organizations; employee job description; tuition assistance records; examination papers and tests, if any; evidence of date of birth, where required; official letters of commendation; cash register overage/shortage records; report of hearings and recommendations relative to employee's grievances; official work performance rating; designation beneficiary for unpaid compensation; reference check records; applicant files; employee profiles; personnel security information (including copies of National Agency Check (NAC) and Naval Investigative Service (NIS) reports); Certificate of Standards of Conduct and Fraud, Waste and Abuse training; travel requests, travel allowance and claims record; transportation agreements; employee affidavits; privilege card application, work assignments, work performance capability, counseling records, work-related records, training records including courses, type and completion dates; and related data.

Labor and Employee Relations Records include notices of excessive absence, tardiness and warnings; disciplinary actions; unsatisfactory work performance evaluations; grievances, appeals, complaint and appeal records; reports of potential grievances and appeals; congressional correspondence; investigative reports and summaries of personnel administrative actions.

Employee Benefits Records include data relating to Quality Salary Increase, Superior Accomplishment Recognition Awards, beneficial suggestions and similar awards; and personnel listings of the aforementioned services. Election forms for all life, health, and retirement programs and claims made for those programs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 29 U.S.C. 201; 29 U.S.C. 633a; 29 U.S.C. 791 and 794a; Pub. L. 93–259, Equal Employment Act of 1972; and Executive Order 9397.

PURPOSE(S):

To provide a basis by which an employee or an applicant may be determined to be suitable for employment, transfer, promotion or retention in employment; for verification of employment; to provide a record of travel performed and verification that the employees received proper remuneration for the travel performed; to ensure employees received timely consideration in the processing of work/appraisals and salary increases; for recognition of accomplishments and contributions by employees, and in the processing, administration, and adjudication of discipline, grievances, complaints, appeals, litigation, and program evaluation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To appeals officers and complaints examiners of the Equal Employment Opportunity Commission for the purpose of conducting hearings in connection with employees appeals from adverse actions and formal discrimination complaints.

To a federal agency in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract or the issuance of a license, grant or other benefit by the

requesting agency, to the extent that the information is relevant and necessary.

To the National Archives and Records Administration (GSA) in records management inspection conducted under authority of 5 U.S.C. 2904 and 2906.

In response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in the pending judicial or administrative proceeding.

To officials of labor organizations recognized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices and matters affecting working conditions.

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices also apply to this system.

Note: Records of identity, diagnosis, prognosis or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided herein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–3 and 290ee–3. These statutes take precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The Department of the Navy's "Blanket Routine Uses" do not apply to these records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

The media in which these records are maintained vary, but include: file folders; magnetic tapes; automated minicomputer data base, disks and diskettes (hard drive); rolodex files; cardex files; ledgers; and printed reports.

RETRIEVABILITY:

Name and/or Social Security Number; employee payroll number.

SAFEGUARDS:

Locked desks in supervisor's office and also, locked cabinets in locked offices supervised by appropriate personnel; periodic system backup and microcomputer records to data cartridge, microcomputer power supply locks and/or hard drive locks; security guards.

RETENTION AND DISPOSAL:

Current employee records remain on file at the local Navy Exchange personnel office. Records on former employees are retained for one year and then forwarded to the Director, National Personnel Records Center, (Civilian Personnel Records), 111 Winnebago Street, St. Louis, MO 63118 for retention of permanent papers and destruction of temporary papers. Applicant files are retained for six months and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official is the Commander, Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305–5097.

Master Record Holder is the Manager, Staffing and Career Management, HRG-3, Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305–5097.

Local Record Holder is the Manager at the local Navy Exchange. Mailing addresses are available from the Commander, Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305–5097.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305–5097 or to the manager of the local Navy Exchange where employed.

The request should contain full name, Social Security Number, activity where last employed or where last application for employment was filed. A list of other offices the requester may visit will be provided after initial contact is made at the office listed above. At the time of a personal visit, requester must provide proof of identity containing the requester's signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commander, Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305–5097 or to the manager of the local Navy Exchange where employed.

The request should contain full name, Social Security Number, activity where last employed or where last application for employment was filed. A list of other offices the requester may visit will be provided after initial contact is made at the office listed above. At the time of a personal visit, requester must provide proof of identity containing the requester's signature.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains; current and previous supervisors/employers; other records of the activity concerned; counseling records and comparable papers; educational institutions; applicants; applicant's previous employees; current and previous associates of the employee named by the employee as references; other records of activity investigators; witnesses; correspondents; investigative results and information provided by appropriate investigative agencies of the Federal Government.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under 5 U.S.C. 552a(k)(5) and (6), as applicable.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 701, subpart G. For additional information, contact the system manager.

[FR Doc. 92–22328 Filed 9–15–92; 8:45 am]

BILLING CODE 3810–01–F

DEPARTMENT OF ENERGY

Chicago Field Office; Chicago Support Office

AGENCY: Department of Energy.

ACTION: Notice of intent to make an award based on an unsolicited application.

SUMMARY: The Department of Energy (DOE), Chicago Field Office, through the Chicago Support Office (CSO), announces, pursuant to the DOE Financial Assistance Rules 10 CFR 600.14(f), that DOE intends to award a grant to Kent State University, for developing and testing an engineering prototype of their polymer dispersed Ferroelectric Smectic-C* display technology. The anticipated overall

objective is to test the electrical and optical properties of this particular type of liquid crystal system so as to determine the liquid crystal's potential in several application areas under varying conditions.

SUPPLEMENTARY INFORMATION: DOE announces further that pursuant to 10 CFR 600.6(a)(2), this discretionary financial assistance award to Kent State University, would be based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(ii).

Advantages over current technology are the potential for significant improvements for this type of flat panel display for application in laptop computers and higher resolution television sets at reduced energy consumption. The proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current, or planned solicitation. The extent of the energy savings will depend upon the penetration of this technology for the above applications.

(Award to Kent State University—continued)

The project period for the grant award is 24-months, expected to begin in September 1992. DOE plans to provide funding in the amount of $99,993.

FOR FURTHER INFORMATION CONTACT: Raymond J. Swiderski, U.S. Department of Energy, Chicago Support Office, 9800 South Cass Avenue, Argonne, IL 60439.

Issued in Chicago, Illinois on August 31, 1992.

Johnnie D. Greenwood,

Director, Contracts Division.

[FR Doc. 92–22373 Filed 9–15–92; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award Intent to Award a Cooperative Agreement to the University of Kentucky Research Foundation—Kentucky Geological Survey

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of intent to make a restricted eligibility financial assistance award DE–FC01–92EI23622 to the University of Kentucky Research Foundation—Kentucky Geological Survey.

SUMMARY: The Department of Energy (DOE) announces that, pursuant to 10 CFR 600.7, it is making a restricted eligibility financial assistance award for the above listed Cooperative Agreement. The award will total $100,000.00. This cooperative agreement will provide for the awardee to develop coal resource data for the demonstrated reserve base (DRB) and minable reserve estimates of bituminous coal in eastern Kentucky.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, Attn: Mr. Mark A. Guilfoil, PR–322.4, 1000 Independence Avenue, SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The objective of the proposed cooperative agreement is to develop coal DRB data allocated to specific ranges of sulfur and heat content. Data development will include analyses of coal geology, resource quantities, coal quality characteristics, and other factors that affect resource accessibility and minability. Data output will include original and remaining identified resources, DRB, accessible resources, and reserves allocated by type of mining and by heat and sulfur content.

The Kentucky Geological Survey (KGS) is the State authority on Kentucky coal reserves, continually collecting data on coal quality for the performance of geological mapping to determine the quantity and quality of coal reserves in the State. In addition, the KGS conducts research into coal geology, including the development of depositional models useful in assessing characteristics of coal based on geologic parameters and limited data. The KGS is an active and leading participant in the U.S. Geological Survey Coal Availability Cooperative Program in which reliable data on coal accessibility, minability, and recoverability are being developed. No other private or government entity is known to have the data and mapping capability required to estimate the quality of coal reserves for the state of Kentucky.

Thomas S. Keefe,

Director, Division "B" Office of Placement and Administration.

[FR Doc. 92–22376 Filed 9–15–92; 8:45 am]

BILLING CODE 6450–01–M

Chicago Field Office; Financial Assistance Award, Unsolicited Proposal; Melink Corp.

AGENCY: Department of Energy.

ACTION: Notice of intent to make an award based on an unsolicited application.

SUMMARY: The Department of Energy (DOE), Chicago Field Office, through the Chicago Support Office (CSO), announces, pursuant to the DOE Financial Assistance Rules 10 CFR 600.14(f), that DOE intends to award a grant to Melink Corporation for the purpose of developing a new and unique method for controlling exhaust fans in commercial kitchens.

SUPPLEMENTARY INFORMATION: The Department of Energy announces further that pursuant to 10 CFR 600.6(a)(2), this discretionary financial assistance award to Melink Corporation would be based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(ii). The patented technology uses temperature and smoke sensors to regulate the speed of the exhaust fan. The proposed project represents a unique idea that would be eligible for financial assistance under a recent, current, or planned solicitation.

(Award to Mr. Melink Corporation—continued)

The project period for the grant award is 18-months, expected to begin in September 1992. DOE plans to provide funding in the amount of $88,000.

FOR FURTHER INFORMATION CONTACT: Raymond J. Swiderski, U.S. Department of Energy, Chicago Support Office, 9800 South Cass Avenue, Building 201, Argonne, IL 60439.

Issued in Chicago, Illinois on August 31, 1992.

Johnnie D. Greenwood,

Director, Contracts Division.

[FR Doc. 92–22372 Filed 9–15–92; 8:45 am]

BILLING CODE 6450–01–M

Office of Arms Control and Nonproliferation Technology Support; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Switzerland concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/EU(SD)–77, for the transfer of 51 irradiated power reactor assemblies from Switzerland to the United Kingdom for reprocessing and storage. The assemblies contain 9,100 kilograms of uranium, enriched to 0.82 percent in the isotope uranium–235, and 80 kilograms of plutonium.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice and after fifteen days of continuous session of the Congress, beginning the day after the date on which the reports required by section 131(b)(1) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), are submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate. The two time periods referred to above may run concurrently.

Issued in Washington, DC, on September 10, 1992.

Salvador N. Ceja,

Acting Director, Office of Nuclear Nonproliferation Policy.

[FR Doc. 92–22377 Filed 9–15–92; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket No. 92–18–NG]

Northwest Pipeline Corp., Cascade Natural Gas Corp., Northwest Natural Gas Co., Washington Natural Gas Co., and the Washington Water Power Co.; Order Transferring Authority To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order transferring Northwest Pipeline Corporation's authorization to import natural gas from Canada granted by DOE/FE Opinion and Order No. 383 (1 FE § 70,301). The authorization was transferred to Cascade Natural Gas Company, Northwest Natural Gas Company, Washington Natural Gas Company, and the Washington Water Power Company.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 9, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–22375 Filed 9–15–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 92–112–NG]

Pepperell Power Associates Limited Partnership; Application for Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed by Pepperell Power Associates Limited Partnership (PPA) on August 24, 1992, to amend its application to import natural gas from Canada filed with the Economic Regulatory Administration (ERA) in ERA Docket No. 87–71–NG. In the amended application, PPA requests authorization to import up to 9,700 Mcf per day of natural gas from Canada for a period of ten years beginning November 1, 1992.

The revised gas supply arrangement in PPA's amended application is materially different from the filing which has been pending since December 14, 1987, in Docket No. 87–71–NG. Also, certain environmental implications relating to the import project have been superseded by intervening events. Therefore, DOE is closing the original docket and establishing a new proceeding under FE Docket No. 92–112–NG. In addition, the conditional import authorization issued to PPA on October 25, 1988, in DOE/ERA Opinion and Order No. 275 will be vacated because DOE's findings are based on the old information.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, October 16, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Peter Lagiovane, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8116.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: PPA is a Massachusetts limited partnership with its principal place of business in Syracuse, New York. Its general partners are HCE Pepperell, Inc. and KES Pepperell, Inc. The imported gas would be consumed in an existing 39-megawatt cogeneration powerplant owned and operated by PPA in Pepperell, Massachusetts. The powerplant is currently being fueled entirely by domestic natural gas supplies. The imported volumes would enter the United States at the interconnection of the pipeline systems of Tennessee Gas Pipeline Company (Tennessee) and TransCanada Pipelines Limited (TCPL) at the U.S.-Canada border near Niagara Falls, New York. Tennessee would transport the gas across New York and Massachusetts to an interconnection with Colonial Gas Pipeline Company (Colonial) in Berkshire County, Massachusetts. Colonial will then deliver the gas to the cogeneration plant. The proposed import would be accomplished using existing pipeline facilities and no new construction would take place. Electricity produced by the cogeneration plant is sold to Commonwealth Electric Company (Commonwealth) under the terms of a long-term power purchase agreement and steam is sold to Merrimac Paper Company, on whose land the cogeneration facility is located.

According to PPA, it is negotiating a gas purchase contract with Western Gas Marketing Limited (WGML) to import up to 9,700 Mcf of gas per day from Canada over a ten-year period. Pending conclusion of this long-term agreement, PPA and WGML have executed a letter agreement dated July 30, 1992, with respect to a five-term interim supply arrangement. The proposed "Interim Gas Sales Contract" would begin November 1, 1992, and continue through October 31, 1997, unless at an earlier date (1) the parties execute the new long-term contract; (2) PPA terminates the interim contract after the second contract year upon prior notice to WGML; or (3) PPA extends the contract for an additional five-year period.

The Interim Gas Sales Contract provides for firm deliveries of a maximum daily quantity (MDQ) of 9,700 Mcf and up to 3.5 Bcf per year, for the first two contract years and interruptible deliveries of the same amounts for the final three contract years. After the initial period, the contract stipulates that PPA may extend the term by five years under the same contractual provisions. The point of delivery for the natural gas sold by WGML to PPA would be the interconnection of the Tennessee and TCPL pipeline systems near Niagara Falls, New York.

The import price at Niagara Falls would be $1.70 (U.S.) per MMBtu for the first and second contract years. For gas imported each month of the remaining three years of the contract, the import price would be the sum of a commodity charge and a transportation charge. The commodity charge would be the simple average of: (a) The average Alberta spot price for such month published in "Canadian Natural Gas Focus"; (b) the average Alberta spot price for such month published in "Canadian Gas Price Reporter"; and (c) the average price for Alberta gas sold on a one year basis published in "Canadian Gas Price Reporter". The transportation charge is equal to the cost to transport the gas on TCPL from western Canada to Niagara Falls. There are no take-or-pay requirements or reservation charges in the contract.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In a long-term arrangement such as this, other matters that will be considered in making a public interest determination include need for the gas and security of the long-term supply. Parties, especially those that may oppose this application, should comment on the issues of competitiveness, need for the gas, and security of supply as they relate to requested import authority. PPA states that the import price under the Interim Sales Contract would be competitive with the price of other available fuel supplies, including domestic natural gas, and that the supply is secure. Parties opposing this arrangement bear the burden of overcoming these assertions.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notice of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notice of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of PPA's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on September 9, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–22374 Filed 9–15–92; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66166; FRL–4163–6]

b-Napthyloxy Acetic Acid: Receipt of Request to Cancel; Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for voluntary cancellation; cancellation order.

SUMMARY: This notice, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), announces EPA's receipt of a request from Security Products Company of Delaware, Inc. (Security) to cancel the registration of its product, No Seed-Blossom-Set, which contains the active ingredient (*b*-napthyloxy) acetic acid. EPA grants Security's request for voluntary cancellation effective September 16, 1992. Security may distribute and sell its existing stocks of No Seed-Blossom-Set through May 31, 1993. Retailers and distributors may sell and distribute, and all others may use, existing stocks of the product until supplies are exhausted. Any sale, distribution, or use of existing stocks of the canceled product must be in accordance with the product's existing approved labeling.

DATES: The cancellation shall become effective September 16, 1992.

FOR FURTHER INFORMATION CONTACT: Ruby Whiters, Special Review and Reregistration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (703) 308–8079.

SUPPLEMENTARY INFORMATION: This notice announces the receipt of a request for cancellation of (*b*-napthyloxy) acetic acid.

I. Request for Voluntary Cancellation

On July 2, 1992, EPA issued Notices of Intent to Suspend registration of pesticide product(s) containing (*b*-napthyloxy) acetic acid for failure to comply with the (*b*-napthyloxy) acetic acid phase 2 reregistration data requirements notice dated May 24, 1989, and phase 3 reregistration data requirements notice dated March 1990. These notices required each affected registrant to submit materials relating to the election of the options to address each of the data requirements. On May 23, 1990, Security as a (*b*-napthyloxy) acetic acid registrant committed to undertake required testing of its product No Seed-Blossom-Set. The May 1989 and March 1990 notices further required that data be submitted by certain deadlines. Security did not satisfy the data requirements by those deadlines. EPA therefore issued the Notices of Intent to Suspend.

On August 14, 1992, Security sent EPA a letter requesting that the registration of its product No Seed-Blossom-Set be voluntarily cancelled, and requesting that Security be permitted to continue to distribute and sell its existing stocks under conditions discussed in Unit II, below.

Under section 6(f)(1) of FIFRA, a registrant may request at any time that EPA cancel any of its pesticide registrations. EPA must publish in the **Federal Register** a notice of receipt of the request and allow public comment before granting the request unless either the registrant requests a waiver of the comment period or the Administrator determines that the continued use of the pesticide would pose an unreasonable adverse effect on the environment. By letter dated August 25, 1992, Security requested waiver of the public comment period. EPA hereby grants the request for voluntary cancellation of No Seed-Blossom-Set effective [insert date of publication in the **Federal Register**].

II. Existing Stocks Determination

In its letter of August 14, 1992, Security stated that it wished to continue to distribute and sell existing stocks of the product, consisting of approximately 4,055 cases of 12, 8-oz. bottles. The letter further stated that the active ingredient contained in each bottle of the product is by weight 0.0042 percent, and therefore, the total amount of active ingredient contained in the existing inventory of the product is approximately 16.4 oz. The letter explained that the product is used primarily by home gardeners to individually treat blossoms on tomato plants, and Security's selling season is concentrated in the first quarter of each year. Security therefore estimated based on a pattern of sales that disposition of existing stocks could be completed by May 1993.

For purposes of this Order, existing stocks are defined as those stocks of a previously-existing (*b*-napthyloxy) acetic acid product which were in the United States and were packaged, labeled, and released for shipment prior to August 14, 1992.

EPA grants Security's request to distribute and sell its existing stocks of No Seed-Blossom-Set through May 31, 1993. Retailers and distributors may sell and distribute, and all others may use the product, until supplies are exhausted. Any sale, distribution, or use of existing stocks of canceled product must be in accordance with the product's existing approved labeling.

III. Cancellation Order

EPA hereby grants Security's August 14, 1992, request that the registration of its product No Seed-Blossom-Set, which contains the active ingredient (*b*-Napthyloxy) acetic acid, be voluntarily cancelled. This Cancellation Order shall become effective on September 16, 1992.

Accordingly, as of September 16, 1992, no person may distribute or sell No Seed-Blossom-Set for use as a pesticide, except existing stocks of the product as permitted in the Existing Stocks provision of this Order. Any distribution, sale or use of existing stocks of the product that is not consistent with the terms of the Existing Stocks Provision of this Order will be considered a violation of FIFRA section 12(a)(2)(K) and, if distribution or sale, section 12(a)(1)(A).

Dated: September 3, 1992.

Daniel M. Barolo,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 92-22113 Filed 9-15-92; 8:45 am]

BILLING CODE 6560-50-F

[OPP-240100; FRL-4082-9]

State Registrations of Pesticides; Special Local Needs

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 31 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**. This document also contains notice of three disapproved State registrations from two States.

DATES: The last entry for each item is the date the State registration of that product became effective.

FOR FURTHER INFORMATION CONTACT: Edith Minor, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW. Washington, DC 20460. Office location and telephone number: Rm. 718, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5978.

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 May through June of 1992. Receipts-of-State registrations will be published periodically. Of the following registrations, nine 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 92 0005. Hub States Corp. Registration is for Esfenvalerate to be used on stored peanuts to control moths and beetles. June 3, 1992.

Arizona

EPA SLN No. AZ 92 0003. DowElanco. Registration is for Trifluralin to be used on chili peppers to control weeds. June 8, 1992.

Arkansas

EPA SLN No. AR 92 0006. E. I. Du Pont de Nemours and Co., Inc. Registration is for Nicosulfuron to be used on field and popcorn to control weeds. May 26, 1992.

California

EPA SLN No. CA 92 0009. J. G. Boswell Co. Registration is for EPTC to be used on safflower to control weeds. June 24, 1992.

Florida

EPA SLN No. FL 92 0003. Sandoz Crop Protection Corp. Registration is for Prodiamine to be used on leatherleaf fern to control weeds. May 7, 1992

EPA SLN No. FL 92 0004. Valent U.S.A. Corp. Registration is for Methamidophos to be used on tomatoes (fresh only) to control thrips. May 6, 1992.

EPA SLN No. FL 92 0005. Ciba-Geigy Corp. Registration is for Methidathion to be used on carambola and longan to control mealy bug and scale insects. May 6, 1992.

EPA SLN No. FL 92 0006. Ciba-Geigy Corp. Registration is for Cyromazine to be used on chrysanthemums to control leafminer. June 25, 1992.

Georgia

EPA SLN No. GA 92 0002. Hub States Corp. Registration is for A-70 to be used on stored peanuts to control stored grain pests. May 11, 1992.

Hawaii

EPA SLN No. HI 92 0006. Platte Chemical Co. Registration is for Diazinon to be used on bananas to control greenhouse thrips. June 23, 1992.

Idaho

EPA SLN No. ID 92 0008. Gowan Co. Registration is for Dimethoate to be used on cherries to control cherry fruit fly. May 6, 1992.

EPA SLN No. ID 92 0013. Uniroyal Chemical Co., Inc. Registration is for Propargite to be used on hops to control spider mites. June 18, 1992.

Illinois

EPA SLN No. IL 92 0004. FMC Corp. Registration is for Endosulfan to be used on succulent peas to control ground beetles, cutworms, and stink bugs. June 10, 1992.

Kansas

EPA SLN No. KS 92 0001. E. I. Du Pont de Nemours & Co., Inc. Registration is for Nicosulfuron to be used on field and popcorn grown for seed to control grasses and broadleaves. May 13, 1992.

EPA SLN No. KS 92 0002. Ciba-Geigy Corp. Registration is for Primisulfuron-methyl to be used on field corn to control weeds. May 14, 1992.

EPA SLN No. KS 92 0003. Miles, Inc. Registration is for Metribuzin to be used on field corn to control weeds. May 27, 1992.

Louisiana

EPA SLN No. LA 92 0007. E. I. Du Pont de Nemours & Co., Inc. Registration is for Nicosulfuron to be used on field corn grown for seed to control annual grasses. May 29, 1992.

EPA SLN No. LA 92 0009. ICI Americas, Inc. Registration is for Paraquat Dichloride to be used on hot peppers to control perennial weeds. May 29, 1992

Maine

EPA SLN No. ME 92 0001. Valent U.S.A. Corp. Registration is for Diquat Dibromide to be used on potatoes to control weeds. May 8, 1992.

EPA SLN No. ME 92 0002. Ciba-Geigy Corp. Registration is for Metalaxyl and Mancozeb to be used on potatoes to control late blight, tuber and pink rot. June 19, 1992.

EPA SLN No. ME 92 0003. USDA/APHIS Science Technology. Registration is for Compound DRC-1339 to be used on structural roosting sites to control starlings, cowbirds, and common crows. June 16, 1992.

Minnesota

EPA SLN No. MN 92 0001. Platte Chemical Co. Registration is for Malathion to be used on wild rice to control wild rice worms and midge. May 12, 1992.

Mississippi

EPA SLN No. MS 92 0008. ICI Americas, Inc. Registration is for Fluazifop-p-butyl to be used on kenaf to control grass and weeds. June 25, 1992.

Missouri

EPA SLN No. MO 92 0002. E. I. Du Pont de Nemours & Co., Inc. Registration is for Nicosulfuron to be used on field and popcorn grown for seeds to control annual weeds. May 18, 1992.

EPA SLN No. MO 92 0003. E. I. Du Pont de Nemours & Co., Inc. Registration is for Metsulfuron-methyl to be used in pastures and on rangeland to control weeds. May 18, 1992.

EPA SLN No. MO 92 0004. E. I. Du Pont de Nemours & Co., Inc. Registration is for Bensulfuron-methyl to be used on rice to control yellow nutsedge and rice flatsedge. May 29, 1992.

Montana

EPA SLN No. MT 92 0001. Gowan Co. Registration is for Dimethoate to be used on cherries to control cherry fruit fly. May 6, 1992.

EPA SLN No. MT 92 0002. Gowan Co. Registration is for Methyl Parathion to be used on canola and rapeseed to control insects. May 11, 1992.

EPA SLN No. MT 92 0003. Platte Chemical Co. Registration is for Methyl Parathion to be used on rapeseed and canola to control insects. May 11, 1992.

EPA SLN No. MT 92 0004. Wilbur Ellis Co. Registration is for Methyl Parathion to be used on rapeseed and canola to control insects. May 11, 1992.

EPA SLN No. MT 92 0005. ICI Americas, Inc. Registration is for Fluazifop-p-butyl to be used on alfalfa to control quackgrass. May 15, 1992.

Nebraska

EPA SLN No. NE 92 0004. Miles, Inc. Registration is for Metribuzin to be used on field corn to control weeds. May 20, 1992

EPA SLN No. NE 92 0005. Miles, Inc. Registration is for Metribuzin to be used on field corn to control weeds. May 20, 1992

EPA SLN No. NE 92 0006. FMC Corp. Registration is for Carbofuran to be used on wheat, barley, and oats to control grasshoppers. May 20, 1992.

Nevada

EPA SLN No. NV 92 0005. Nevada State Dept. of Agriculture. Registration is for Strychnine to be used in gopher burrows to control pocket gophers. May 14, 1992.

EPA SLN No. NV 92 0006. ICI Americas, Inc. Registration is for Lamda-cyhalothrin to be used on alfalfa grown for seed to control lygus bugs and pea aphids. June 26, 1992.

EPA SLN No. NV 92 0007. FMC Corp. Registration is for Bifenthrin to be used on carrots grown for seeds to control lygus bugs, aphids, and spider mites. June 25, 1992.

New Hampshire

EPA SLN No. NH 92 0002. Rhone-Poulenc AG Co. Registration is for Thiodicarb to be used on sweet corn to control European corn borers, corn earworms, and armyworms. June 25, 1992.

New Mexico

EPA SLN No. NM 92 0001. E. I. Du Pont de Nemours & Co., Inc. Registration is for Nicosulfuron to be used on popcorn and field corn grown for seed to control weeds. June 11, 1992.

New York

EPA SLN No. NY 92 0001. Valent U.S.A. Corp. Registration is for Diquat Dibromide to be used in ponds, lakes, and ditches to control weeds. May 26, 1992.

EPA SLN No. NY 92 0002. Valent U.S.A. Corp. Registration is for Naled to

be used over wetlands to control mosquitos. June 30, 1992.

Oklahoma

EPA SLN No. OK 92 0010. E. I. Du Pont de Nemours & Co., Inc. Registration is for Metsulfuron-methyl to be used on rangelands and pastures to control weeds. June 11, 1992.

Pennsylvania

EPA SLN No. PA 92 0002. FMC Corp. Registration is for Endosulfan to be used on rapeseed to control insects. May 20, 1992.

South Carolina

EPA SLN No. SC 92 0004. Gowan Co. Registration is for Phosmet to be used on blueberries to control cranberry fruitworms and blueberry maggots. May 2, 1992.

South Dakota

EPA SLN No. SD 92 0003. Miles, Inc. Registration is for Metribuzin to be used on field corn to control weeds. May 7, 1992.

EPA SLN No. SD 92 0004. Sandos Crop Protection Corp. Registration is for Dicamba to be used on wheat to control annual weeds. May 26, 1992.

EPA SLN No. SD 92 0005. American Cyanamid Co. Registration is for Imazethapyr to be used on legume vegetables to control weeds. June 8, 1992.

EPA SLN No. SD 92 0006. E. I. Du Pont de Nemours & Co., Inc. Registration is for Nicosulfuron to be used on pop and field corn grown for seed to control grasses. June 22, 1992.

EPA SLN No. SD 92 0007. FMC Corp. Registration is for Bifenthrin to be used on seed crown vetch to control lygus bugs, aphids, weevils, and spider mites. June 30, 1992.

Texas

EPA SLN No. TX 92 0010. E. I. Du Pont de Nemours & Co., Inc. Registration is for Methomyl to be used on cotton to control cotton aphid. May 5, 1992.

EPA SLN No. TX 92 0011. E. I. Du Pont de Nemours & Co., Inc. Registration is for Methomyl to be used on cotton to control cotton aphid. May 5, 1992.

EPA SLN No. TX 92 0012. Ameron Protective Coastings Division. Registration is for Amercoat 698HS to be used on oceanographic instruments to control aquatic organisms. May 5, 1992.

EPA SLN No. TX 92 0013. Ameron Protective Coastings Division. Registration is for Amercoat 635 to be used on oceanographic instruments to control aquatic organisms. May 5, 1992.

EPA SLN No. TX 92 0014. Morgan International Products, Inc. Registration is for Permacide to be used on beef cattle and calves to control horn flies and insects. May 5, 1992.

EPA SLN No. TX 92 0015. Ciba-Geigy Corp. Registration is for Metalaxyl and Mancozeb to be used on roses to control downy mildew. May 15, 1992.

EPA SLN No. TX 92 0016. E. I. Du Pont de Nemours & Co., Inc. Registration is for Metsulfuron to be used in pastures and rangeland to control weeds. May 21, 1992.

EPA SLN No. TX 92 0017. E. I. Du Pont de Nemours & Co., Inc. Registration is for Oxamyl to be used on non-bell peppers to control insects. May 21, 1992.

EPA SLN No. TX 92 0018. Sandoz Crop Protection Corp. Registration is for Dicamba to be used on wheat to control broadleaf weeds. May 28, 1992.

EPA SLN No. TX 92 0019. Nor-Am Chemical Co. Registration is for Formetanate Hydrochloride to be used on greenhouse-grown ornamental plants to control western flower thrips. June 11, 1992.

EPA SLN No. TX 92 0020. Valent U.S.A. Corp. Registration is for Thiobencarb to be used on rice to control annual weeds, aquatic weeds, goose weeds, and crabgrass. June 25, 1992.

Utah

EPA SLN No. UT 92 0003. Gowan Co. Registration is for Methyl Parathion to be used on canola and rapeseed to control cabbage aphid and fleabeetles. May 5, 1992.

EPA SLN No. UT 92 0004. American Cyanamid Co. Registration is for Pendimethalin to be used on alfalfa grown for seed to control grasses and broadleaf weeds. May 5, 1992.

EPA SLN No. UT 92 0005. E. I. Du Pont de Nemours & Co., Inc. Registration is for Metsulfuron-methyl to be used on pastures and rangelands to control weeds. May 20, 1992.

Virginia

EPA SLN No. VA 92 0006. Miles, Inc. Registration is for Disulfoton granular to be used on peanuts to control insects. May 11, 1992.

EPA SLN No. VA 92 0007. FMC Corp. Registration is for Endosulfan to be used on rapeseed to control insects. May 20, 1992.

Washington

EPA SLN No. WA 92 0011. ICI Americas, Inc. Registration is for Captan to be used on raspberries and blackberries to control spur blight and botrytis. May 8, 1992.

EPA SLN No. WA 92 0012. ICI Americas, Inc. Registration is for Captan to be used raspberries and blackberries to control spur blight and botrytis. May 8, 1992.

EPA SLN No. WA 92 0013. Gowan Co. Registration is for Methyl Parathion to be used on canola and rapeseed to control insects. May 6, 1992.

EPA SLN No. WA 92 0014. Helena Chemical Co. Registration is for Methyl Parathion to be used on rapeseed and canola to control flea beetles and aphids. May 6, 1992.

EPA SLN No. WA 92 0015. American Cyanamid Co. Registration is for Pendimethalin to be used on carrots to control grasses and broadleaf weeds. May 5, 1992.

EPA SLN No. WA 92 0016. Wilbur Ellis Co. Registration is for Methyl Parathion to be used on rapeseed and canola to control insects. May 6, 1992.

EPA SLN No. WA 92 0017. Platte Chemical Co. Registration is for Methyl Parathion to be used on canola and rapeseed to control insects. May 5, 1992.

EPA SLN No. WA 92 0018. All-Pure Chemical Co. Registration is for Sodium Hypochlorite 12.5 to be used on tomato, pepper seed, and carrots to control bacterial blight. May 13, 1992.

EPA SLN No. WA 92 0019. Uniroyal Chemical Co., Inc. Registration is for Propargite to be used on apples to control mites. May 28, 1992.

EPA SLN No. WA 92 0020. Uniroyal Chemical Co., Inc. Registration is for Propargite to be used on apples to control mites. May 28, 1992.

EPA SLN No. WA 92 0021. Miles, Inc. Registration is for Cyfluthrin to be used on ornamentals to control black vine weevil. May 28, 1992.

EPA SLN No. WA 92 0022. Orco, Inc. Registration is for Chlorophacinone to be used on orchards and pastures to control ground squirrels. June 16, 1992.

EPA SLN No. WA 92 0023. E. I. Du Pont de Nemours & Co., Inc. Registration is for Diuron to be used on hybrid poplar plantings to control weeds. June 2, 1992.

EPA SLN No. WA 92 0024. E. I. Du Pont de Nemours & Co., Inc. Registration is for Terbacil to be used on hybrid poplar plantings to control weeds. June 2, 1992.

EPA SLN No. WA 92 0025. ICI Americas, Inc. Registration is for Cyhalothrin to be used on alfalfa grown for seeds to control insects. May 22, 1992.

EPA SLN No. WA 92 0026. Columbia Basin Vegetable Seed Association. Registration is for Disulfoton to be used on radishes grown for seed to control aphids. June 3, 1992.

EPA SLN No. WA 92 0027. Miles, Inc. Registration is for Disulfoton to be used on seed radishes to control aphids. June 3, 1992.

EPA SLN No. WA 92 0028. Miles, Inc. Registration is for Carbofuran to be used on potatoes to control insects. June 16, 1992.

EPA SLN No. WA 92 0029. Gowan Co. Registration is for Phosmet to be used on blueberries to control blueberry maggots. June 11, 1992.

EPA SLN No. WA 92 0030. Roussel Uclaf. Registration is for Tralomethrin to be used on alfalfa grown for seed to control pea aphids. June 12, 1992.

EPA SLN No. WA 92 0031. Haco, Inc. Registration is for Diphacinone to be used on ditch banks and orchards to control ground squirrels. June 30, 1992.

Wisconsin

EPA SLN No. WI 92 0006. FMC Corp. Registration is for Clomazone to be used on tobacco to control grasses and broadleaves. May 6, 1992.

EPA SLN No. WI 92 0007. FMC Corp. Registration is for Endosulfan to be used on succulent peas to control insects. May l, 1992.

EPA SLN No. WI 92 0008. Rhone-Poulenc AG Co. Registration is for Bromoxynil to be used on spray millet to control broadleaf weeds. June 25, 1992.

Wyoming

EPA SLN No. WY 92 0004. DowElanco. Registration is for Ethalfluralin to be used on alfalfa to control nightshade. May 20, 1992.

DISAPPROVALS

The following State registrations of pesticides under section 24(c) of FIFRA were disapproved by the Administrator:

Hawaii

EPA SLN No. HI 92 0004. E. I. Du Pont DeNemours, Inc. Registration is for Benomyl in ginger root as seed piece treatment to control fusarium yellow disease. Disapproved June 30, 1992.

Louisiana

EPA SLN No. LA 92 0004. Ciba-Geigy Corp. Registration is for Metalaxyl on water-seeded rice to control feeder root necrosis. Disapproved June 30, 1992.

EPA SLN No. LA 92 0006. Griffin Corp. Registration is for Mancozeb on cotton to control damping off and seedling blight. Disapproved June 23, 1992.

Authority: Sec. 24, as amended, 92 Stat. 835 (7 U.S.C. 136).

Dated: August 12, 1992.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 92–22257 Filed 9–15–92; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1907]

Petitions for Reconsideration or Clarification of Actions in Rule Making Proceedings

September 8, 1992.

Petitions for reconsideration or clarification have been filed in the Commission rule making proceedings listed in this Public Notice and published pursuant to 47 CFR § 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor Downtown Copy Center (202) 452–1422. Opposition to these petitions must be filed October 1, 1992. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

SUBJECT: Codification of the Commission's Political Programming Policies

(MM Docket No. 91–168)

Number of Petitions Filed: 1

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 92–22385 Filed 9–15–92; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Tampa Port Authority et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and 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 10325. Interested parties may submit protests or 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 and protests are found in § 560.6 and/or 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.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224–002810–009.

Title: Tampa Port Authority/Harborside Refrigerated Services Terminal Agreement.

Parties: Tampa Port Authority ("Authority"), Harborside Refrigerated Services, Inc. ("Harborside").

Filing Party: H. E. Welch, Traffic Manager, Tampa Port Authority, Post Office Box 2192, 811 Wynkoop Road, Tampa, Florida 33601.

Synopsis: This modification of the lease between the parties establishes a payment schedule wherein Harborside will reimburse the Authority for monies due under provisions of the Agreement.

Agreement No.: 224–003079–014.

Title: Tampa Port Authority/Eller & Company Terminal Agreement.

Parties: Tampa Port Authority ("Authority"), Eller & Company, Inc. ("Eller").

Filing Party: H. E. Welch, Traffic Manager, Tampa Port Authority, Post Office Box 2192, 811 Wynkoop Road, Tampa, Florida 33601.

Synopsis: This modification of the lease between the parties establishes a payment schedule wherein Eller will reimburse the Authority for monies due under provisions of the Agreement.

By Order of the Federal Maritime Commission.

Dated: September 10, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92–22296 Filed 9–15–92; 8:45 am]

BILLING CODE 6730–01–M

Thompson Shipping Co.; Agreement Filed

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, 800 North Capitol Street, NW., 9th Floor. 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.: 203–011385.
Title: Cayman Islands Agreement.
Parties: Thompson Shipping Co., Ltd., Kirk Freight Line Ltd.
Synopsis: The proposed Agreement will permit the parties to discuss, exchange information, and agree on rates, rules and conditions of service in the trade between ports in Florida and the Cayman Islands, British West Indies. Adherence to any agreement reached by the parties is strictly voluntary.

By Order of the Federal Maritime Commission.

Dated: September 10, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92–22295 Filed 9–15–92; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Equivalent Examinations for Alien Physicians Seeking Temporary Nonimmigrant H–1B Visa Status

The Miscellaneous and Technical Immigration and Naturalization Amendments (MTINA) of 1991 (Pub. L. 102–232) amended section 101 of the Immigration and Nationality Act, as amended by the Immigration Act (IMMACT) of 1990 (8 U.S.C. 1101) to, among other things, establish requirements for certain aliens who are graduates of medical schools seeking temporary admittance to the United States principally to perform services as members of the medical profession. Public Law 102–232 provides that these aliens could obtain H–1B classification in either of two ways.

First (mirroring the pre-IMMACT statutory language), an alien may be accorded H–1B classification if the alien is coming to the United States pursuant to an invitation from a public or nonprofit private educational or research institution or agency to teach or conduct research.

Second, an alien may be accorded H–1B classification if he or she, in addition to meeting other requirements, has passed the Federation Licensing Examination (FLEX), or an equivalent examination as determined by the Secretary of Health and Human Services.

Notice is hereby given that the Parts I, II and III National Board of Medical Examiners (NBME) certifying examinations, and the Steps 1, 2, and 3 examinations of the new United States Medical Licensing Examinations (USMLE) program, have been recognized by the Secretary of Health and Human Services to be equivalent to the FLEX for purposes of section 101 of the Immigration and Nationality Act (8 U.S.C. 1101), as amended by the MTINA of 1991.

First and foremost, any examination(s) determined equivalent to the FLEX and for use for the H–1B visa, must have like power to assess possession of the expertise requisite to practice quality medicine anywhere in the United States.

Currently, most physicians are licensed to practice in the United States on the basis of passing the FLEX or endorsement of the NBME Certificate which requires passage of all three NBME examinations.

The Federation of State Medical Boards (FSMB) and the NBME have announced that over the next several years all current licensure programs will be replaced by a single examination program. The new examination program will be called the United States Medical Licensing Examination (USMLE) and will replace the FSMB's FLEX and certification by the NBME.

Step 1 of the USMLE was administered for the first time in June 1992, and the USMLE Step 2 examination will be administered initially on September 24–25, 1992. Step 3 of the USMLE will be administered for the first time in June 1994.

The NBME, the USMLE, and the FLEX examinations have been determined to be equivalent for alien physicians seeking temporary nonimmigrant H–1B visa status because these tests have like power to assess possession of the expertise required to practice medicine.

Obtaining H–1B visa status in and of itself does not qualify a person to practice medicine in a State. H–1B visa holders must meet all relevant licensing and other requirements for clinical practice in the State or jurisdiction where the petitioning employer is located.

Persons interested in obtaining additional information concerning the USMLE examinations should contact USMLE Secretariat, 3930 Chestnut Street, Philadelphia, PA 19104. Telephone: (215) 590–9600.

Persons interested in obtaining additional information concerning the FLEX examinations may contact the Federation of State Medical Boards, 6000 Western Place, Suite 707, Fort Worth, Texas 76107. Telephone: (817) 735–8445.

Persons interested in obtaining information concerning the NBME examinations may contact NBME, Department of Testing Services, 3930 Chestnut Street, Philadelphia, PA 19104. Telephone: (215) 590–9700.

Persons interested in obtaining information concerning this Notice should contact Marc L. Rivo, M.D., M.P.H., Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 4C–25, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone: (301) 443–6190.

Dated: August 24, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 92–22314 Filed 9–15–92; 8:45 am]

BILLING CODE 4160–15–M

Agency for Toxic Substances and Disease Registry

[Program Announcement Number 280]

Development of a Medical School Curriculum for Environmental Health

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 1992 funds for a cooperative agreement with the National Academy of Sciences (NAS). The proposed program is for the development of a medical school curriculum for environmental health, to include materials on environmental lead exposure.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of Healthy People 2000, see the section **WHERE TO OBTAIN ADDITIONAL INFORMATION**).

Authority: This program is authorized under section 104(i)(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) [42 U.S.C. 9604(i)(14)].

Eligible Applicant

Assistance will be provided only to NAS. No other applications will be solicited. As described below, NAS by virtue of its previous work is uniquely suited to develop a medical curriculum for environmental health.

In its report, Role of the Primary Care Physician in Occupational and Environmental Medicine, NAS defines "environmental medicine" to include the caring for individuals exposed to toxic substances in their homes and neighborhoods through such media as contaminated soil, water, and air. The report states that physicians are inadequately trained in environmental medicine. This is due, in part, to the lack of clinical role models, a limited research presence, few published articles in the general medical literature, little information in standard medical textbooks, and overcrowded curriculum. The report recommends that environmental medicine should be better represented in the medical school curriculum, be a vital part of the traditional student clinical assignments, and be included as part of third- and fourth-year teaching programs.

Because of NAS's unique position in assisting Federal Government agencies with important issues and problems that relate to health and medicine, and because of NAS's previous work directly related to the proposed cooperative agreement, the Academy has an unparalleled capacity to carry out the purpose of this cooperative agreement in an appropriate, timely, and efficient manner.

NAS has demonstrated the ability to: (1) Identify, for study and analysis, important issues and problems that relate to health and medicine; (2) initiate and conduct studies on national policy and planning for health care and health-related education and research; (3) respond to requests from the Federal government and other agencies for studies and advice on matters relating to health and medicine; (4) establish liaisons with the major scientific and professional societies in the field; and (5) disseminate information to the public and relevant professions.

Availability of Funds

Approximately $250,000 is available in FY 1992 to fund this award. It is expected that the award will begin on or about September 30, 1992, for a 12-month budget period, with a 12-month project period. The funding estimate may vary and is subject to change.

Purpose

The purpose of this cooperative agreement is to assist NAS in investigating and recommending how to develop, implement, and finance curricula activities in environmental medicine, including materials on environmental lead exposure. This work will help primary care physicians to identify possible occupationally or environmentally induced conditions and to make the appropriate referrals for follow-up.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below and ATSDR shall be responsible for conducting activities under B., below.

A. NAS-Based Activities

1. Define the discipline of environmental medicine.
2. Identify essential competencies in environmental medicine.
3. Develop learning objectives for medical students.
4. Recommend methods for faculty development in environmental medicine.
5. Identify resources for faculty training and development.
6. Recommend strategies for implementing environmental medicine into a curriculum.
7. Develop a method to evaluate the effectiveness of an environmental medicine curriculum.

B. ATSDR-Based Activities

1. Collaborate with NAS in the design, implementation, and evaluation of an environmental medicine curriculum.
2. Provide NAS with required information and instructional resources on environmental medicine for curriculum development.
3. Collaborate with NAS on identifying essential competencies in environmental medicine.
4. Assist NAS in the identification of resources for faculty training and development.
5. Participate with NAS in workshops, conferences, and meetings to exchange current information, opinions, and findings concerning environmental medicine.
6. Collaborate with NAS in the evaluation plan to determine the effectiveness of an environmental medicine curriculum.

Evaluation Criteria

The application will be reviewed and evaluated based on the following criteria:

1. Proposed Project and Appropriateness of Project Design—60%

a. Applicant's understanding of the project's purpose.

b. Applicant's understanding of the need or problem to be addressed.

c. Quality of project objectives in terms of specificity, measurability, and feasibility.

d. Appropriateness and thoroughness of the methods used to evaluate the project.

2. Proposed Project Management—40%

a. Ability of the applicant to provide appropriate program staff and support staff to the project.

b. Ability of the applicant to provide staff time, facilities, space, equipment, financial, and other resources required to perform the applicant's responsibilities in the project.

c. Extent to which the applicant has provided an administrative plan, outlined strategic and operational plans for the 1-year project period, and designated a qualified administrator to manage the project.

3. Proposed Budget—Not Scored

Appropriateness of the estimated cost of project. The proposed budget is clearly justified and consistent with intended use of funds. A budget narrative is included.

Executive Order 12372 Review

The application to be submitted under this announcement is not subject to the Intergovernmental Review of Federal Programs as governed by Executive Order 12372.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.161

Application Submission Deadline

The NAS must submit an original and two copies of application PHS Form 5161–1 to Henry S. Cassell, III, Grant Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E–14, Atlanta, Georgia 30305. (By formal agreement, the CDC Procurement and Grants Office will act on behalf of and for ATSDR on this matter.)

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this program, please refer to Announcement 280 and contact Van Malone, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300 Mailstop E–14, Atlanta, Georgia 30305, Telephone (404) 842–6630, for business management technical assistance. Programmatic technical assistance may be obtained from Donna Orti, M.S., Chief, Health Professions

Education Unit, Division of Health Education, ATSDR, 1600 Clifton Road, NE., Mailstop E-33 Atlanta, Georgia 30333, Telephone (404) 639-6205.

A copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report, Stock No. 017-001-00473-1) referenced in the Introduction may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, telephone (202) 783-3238.

Dated: September 8, 1992.

William L. Roper,

Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 92-22369 Filed 9-15-92; 8:45 am]

BILLING CODE 4160-70-M

[ATSDR-56]

Quarterly Public Health Assessments Completed and Public Health Assessments To Be Conducted in Response to Requests From the Public

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice contains the following:

1. A lost of sites for which ATSDR has completed a public health assessment, or issued an addendum to a previously completed public health assessment, during the period April-June 1992. This list includes sites that are on, or proposed for inclusion on, the National Priorities List (NPL) and a non-NPL site for which ATSDR has prepared a public health assessment in response to a request from the public (petitioned site).

2. A list of sites for which ATSDR, during the same period, has accepted a request from the public to conduct a public health assessment (petitioned public health assessment). Acceptance for a request for the conduct of a public health assessment is based on a determination by the Agency that there is a reasonable basis for conducting a public health assessment is based on a determination by the Agency that there is a reasonable basis for conducting a public health assessment at the site.

FOR FURTHER INFORMATION CONTACT: Robert C. Williams, P.E., Director, Division of Health Assessments and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E-32, Atlanta, Georgia 30333, telephone (404) 639-0610.

SUPPLEMENTARY INFORMATION: The most recent list of completed public health assessments, public health assessments with addenda, and petitioned public health assessments which were accepted by ATSDR during January-March 1992, was published in the **Federal Register** on June 30, 1992, (57 FR 29092). The quarterly announcement is the responsibility of ATSDR under the regulation, Public Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities (42 CFR part 90). This rule sets forth ATSDR's procedures for the conduct of public health assessments under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) (42 U.S.C. 9604(i), and appeared in the **Federal Register** on February 13, 1990, (55 FR 5136).

Availability

The completed public health assessments are available for public inspection at the Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, Building 33, Executive Park Drive, Atlanta, Georgia (not a mailing address), between 8 a.m. and 4:30 p.m., Monday through Friday except legal holidays. The completed public health assessments are also available by mail through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, or by telephone at (703) 487-4650. There is a charge determined by NTIS for these public health assessments. The NTIC order numbers are listed in parentheses after the site name.

1. Public Health Assessments or Addenda Completed or Issued

Between April 1, 1992 and June 30, 1992, public health assessments or addenda to public health assessments were issued for the sites listed below:

NPL Sites

Alaska: Arctic Surplus—Fairbanks—(PB92-201078).

Arkansas: Magnolia City Landfill—Magnolia—(PB92-178037). Monroe Auto Equipment Company (Paragould Pit)—Paragould—(PB92-201052).

California: CTS Printex—Mountain View—(PB92-185909). Industrial Waste Processing—Pinedale—(PB92-179522). Synertek (Building #1)—Santa Clara—(PB92-184209). United Heckathorn—Richmond—(PB92-178136).

Delaware: Sussex County Landfill #5—Laurel—(PB92-178185).

Minnesota: Dakhue Sanitary Landfill—Hampton—(PB92-178029). East Bethel Demolition Landfill—Cedar—(PB92-177823). Oak Grove Township Sanitary Landfill—Oak Grove Township—(PB92-178102). Pine Bend Sanitary Landfill—Inver Grove Heights—(PB92-178011).

Nebraska: Lindsay Manufacturing Company—Lindsay—(PB92-177807). Nebraska Army Ordnance Plant (Former)—Mead—(PB92-177815).

New Jersey: Chemical Insecticide Corporation—Edison Township—(PB92-193382).

New York: Sealand Restoration—Lisbon—(PB92-185628). Warwick Landfill—Warwick—(PB92-204106).

Pennsylvania: Old City of York Landfill—Seven Valleys—(PB92-197185). Osborne Landfill—Grove City—(PB92-196120).

Texas: Crystal Chemical Company—Houston—(PB92-179548). Motco Incorporated—Texas City—(PB92-186014). Texarkana Wood Preserving Company—Texarkana—(PB92-185990).

Wisconsin: Sauk County Landfill—Excelsior—(PB92-197177).

Petitioned Site: (Non-NPL Site).

Kentucky: Calvert City Industrial Complex—Calvert City—(PB92-191477).

2. Petition for Public Health Assessment Accepted

Between April 1, 1992, and June 30, 1992, ATSDR determined that there was a reasonable basis to conduct a public health assessment for the site listed below in response to requests from the public. As of June 30, 1992 ATSDR initiated a public health assessment at this site.

Pennsylvania: C and D Recycling—Foster Township.

Dated: September 8, 1992.

William L. Roper,

Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 92-22370 Filed 9-15-92; 8:45 am]

BILLING CODE 4160-70-M

Food and Drug Administration

[Docket No. 87D-0356]

Compressed Medical Gases—Warning Letters for Specific Violations Covering Liquid and Gaseous Oxygen; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of revised Compliance

Policy Guide (CPG) 7132a.16 entitled "Compressed Medical Gases—Warning Letters for Specific Violations Covering Liquid and Gaseous Oxygen." The CPG provides guidance to FDA district offices for issuing warning letters to firms that are engaged in filling cylinders with gas(es) for medical use that are not operating in conformance with the adulteration, misbranding, and/or new drug provisions of the Federal Food, Drug, and Cosmetic Act (the act).

ADDRESSES: A copy of revised CPG 7132a.16 entitled "Compressed Medical Gases—Warning Letters for Specific Violations Covering Liquid and Gaseous Oxygen" may be ordered from National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Orders must reference NTIS order number PB92–221845 and include payment of $12.50 for each copy of the document. Payment may be made by check, money order, charge card (American Express, VISA, or MasterCard), or billing arrangements made with NTIS. Charge card orders must include the charge card account number and expiration date. For telephone orders or further information on placing an order, call NTIS at 703–487–4650. CPG 7132a.16 is available for public examination in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Duane S. Sylvia, Center for Drug Evaluation and Research (HFD–322), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8095.

SUPPLEMENTARY INFORMATION: FDA revised the CPG to update guidance to district offices for issuing warning letters to firms that are engaged in filling cylinders with gas(es) for medical use that are not operating in conformance with the adulteration, misbranding, and/or new drug provisions of the act.

The statements made herein are not intended to create or confer any rights, privileges, or benefits on or for any private person, but are intended merely for internal guidance.

Dated: September 9, 1992.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 92–22339 Filed 9–15–92; 8:45 a.m.]

BILLING CODE 4160–01F

Health Care Financing Administration; Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services, Health Care Financing Administration (HCFA) (49 FR 35247, dated September 6, 1984) is amended to include the Secretary's delegation of authority to the Administrator, HCFA, under section 2326(a) of the Deficit Reduction Act of 1984 (Pub. L. 98–369), as amended by the Omnibus Budget Reconciliation Acts of 1986 (Pub. L. 99–509) and 1989 (Pub. L. 101–239). The delegation includes the authority to: (1) Enter into competitive agreements with intermediaries and contracts with carriers for the purpose of replacing intermediaries and carriers that have agreements and contracts under sections 1816 or 1842 of the Social Security Act (the Act), as amended, whose performance rankings have been in the lowest 20th percentile over a 2-year period of time, and (2) to enter into intermediary agreements and carrier contracts without regard to cost reimbursement limitations contained in sections 1816 and 1842 of the Act.

The specific changes to Part F. are described below:

• Section F.30., Delegations of Authority, is amended to reflect the two new delegations of authority from the Secretary to the Administrator, Health Care Financing Administration, under section 2326(a) of the Deficit Reduction Act of 1984 (DEFRA), as amended. Section F. 30. now includes a new paragraph FF. which reads as follows:

FF. Delegations of Authority Under Section 2326(a) of the Deficit Reduction Act of 1984 (Pub. L. 98–369), As Amended

1. The authority under section 2326(a) of the Deficit Reduction Act (DEFRA) of 1984 (Pub. L. 98–369), as amended by section 9321(b) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509), by sections 6215(a) (1) and (2) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239), and as may hereafter be amended, to enter into agreements under section 1816 of the Social Security Act (the Act), as amended, and contracts under section 1842 of the Act, as amended, for the purpose of replacing an intermediary or carrier which over a 2-year period of time has been in the lowest 20th percentile of intermediaries and carriers having agreements or contracts under sections 1816 and 1842 of the Act, as measured by the cost and performance criteria established by the Health Care Financing Administration. These agreements and contracts must be entered into on the basis of competitive bidding. In addition, they may be entered into without regard to the nominating process under section 1816(a) of the Act or the cost reimbursement provisions under section 1816(c) or 1842(c) of the Act during the term of any such agreements or contracts.

This delegation includes the authority to determine which intermediaries' and carriers' performance rankings are in the lowest 20th percentile as well as the authority to determine which intermediaries and carriers from the lowest 20th percentile should be replaced. If a decision is made to terminate or nonrenew an intermediary agreement and/or carrier contract as a result of exercising the authority under section 2326(a) of DEFRA, as amended, the termination or nonrenewal action must be approved by the Administrator or Deputy Administrator, HCFA.

The authority herein delegated under section 2326(a) of DEFRA, as amended, to enter into competitive agreements and contracts to replace poor performing intermediaries and carriers may be redelegated except for the termination and nonrenewal authority.

2. The authority under section 2326(a) of the Deficit Reduction Act (DEFRA) of 1984 (Pub. L. 98–369), as amended by section 9321(b) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509), by section 6215(a)(3) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239), and as may hereafter be amended, to enter into agreements and contracts with intermediaries and carriers on a basis of other than cost if both the Health Care Financing Administration and the intermediaries and carriers agree to waive the cost reimbursement provisions contained in section 1816 or 1842 of the Social Security Act, as amended.

The authority herein delegated may be redelegated.

The delegation of the authorities under section 2326(a) of Deficit Reduction Act of 1984, as amended, is effective immediately. In addition, I hereby affirm and ratify any actions taken by the Administrator or other HCFA officials which, in effect, involved the exercise of the subject authorities prior to the effective date of this delegation.

• Section F.50., Limitations of Authority, is amended to reflect the limitation of the Administrator's authority to terminate or nonrenew an

intermediary agreement and/or carrier contract which could result from exercising the authority under section 2326(a) of DEFRA, as amended. The new Paragraph reads as follows:

6. Under the Deficit Reduction Act of 1984, As Amended

a. If a decision is made to terminate or nonrenew an intermediary agreement and/or carrier contract as a result of exercising the authority under section 2326(a) of the Deficit Reduction Act of 1984, as amended, the termination or nonrenewal action must be approved by the Administrator or Deputy Administrator, Health Care Financing Administration. Refer to section F.30., paragraph FF.1.

• Section F.60., Redelegation of Authority, is amended to reflect the restriction of the Administrator's authority to redelegate the termination or nonrenewal authority under section 2326(a) of the Deficit Reduction Act of 1984, as amended. The new paragraph reads as follows:

c. The authority to approve actions to terminate or nonrenew an intermediary agreement and/or carrier contract as a result of exercising the authority under section 2326(a) of the Deficit Reduction Act of 1984, as amended, may not be redelegated. Refer to section F.30., paragraph FF.1.

Dated: August 28, 1992.

Louis W. Sullivan,

Secretary, Department of Health and Human Services.

[FR Doc. 92–22342 Filed 9–15–92; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–150–4830–11–24–1A]

National Public Lands Advisory Council; Call for Nominations

AGENCY: Bureau of Land Management, (BLM), Interior.

ACTION: Call for nominations for the National Public Lands Advisory Council.

SUMMARY: The purpose of this notice is to call for nominations for seven memberships on the BLM's National Public Lands Advisory Council.

The Council consists of 21 members. Under the established staggered-term arrangement, the terms of seven members on the Council will expire on December 31, 1992. Current Council members may be reappointed or new members may be appointed. Terms of appointment will be for 3 years, beginning January 1, 1993, and expiring December 31, 1995.

Nominees for membership should be well qualified through education, training and experience to give informed and objective advice concerning land use and resource planning for the public lands.

DATE: Nominations should be received by the BLM by October 15, 1992.

ADDRESS: Persons wishing to nominate individuals to serve on the Council should send biographical data that include name, address, profession, and other relevant information about the candidate's qualifications to Director (150), Bureau of Land Management, MS–5626, Department of the Interior, 1849 C Street, NW., Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The function of the Council is to advise the Secretary of the Interior, through the Director, BLM, on policies and programs of a national scope related to the resources and uses of public lands under the jurisdiction of the BLM.

The Council is expected to meet three times a year. Additional meetings may be called by the Director in connection with special needs for advice. Members will serve without salary, but will be reimbursed for travel and per diem expense rates prevailing for Government employees.

FOR FURTHER INFORMATION: Nan Morrison, Bureau of Land Management (150), MS–5626, Department of the Interior, 1849 C Street NW., Washington, DC 20240, Telephone: (202) 208–5101.

Date Signed: September 10, 1992.

Cy Jamison,

Director.

[FR Doc. 92–22304 Filed 9–15–92; 8:45 am]

BILLING CODE 4310–84–M

[WO–150–00–4830–11–24–1A]

National Public Lands Advisory Council; Meeting

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of meeting of the National Public Lands Advisory Council.

SUMMARY: Notice is hereby given that the National Public Lands Advisory Council will meet Friday, October 16, 1992, at the Inn Best Western, 700 Scott Avenue, Farmington, New Mexico 87401. Meeting hours will be 8 a.m. to 4:30 p.m. on Friday, October 16.

The proposed agenda for the meeting is:

Opening remarks by BLM Director Cy Jamison, National Public Lands Advisory Council Chairman Mark Murphy, and BLM New Mexico State Director Larry Woodard.

The Council has ongoing task force groups. The issues that these groups have been addressing include mining, recreation, the Endangered Species Act, and peer review. The appropriate Council member will provide an update on the status of these working groups.

The BLM will provide briefings to the Council members on various issues, including oil and gas, land exchanges and BLM's Automated Land and Mineral Record System.

All meetings of the Council are open to the public. Opportunity will be given for members of the public to make oral statements to the Council beginning at 1 p.m. on Friday, October 16. Speakers should address specific national public land issues and are encouraged to submit a copy of their written statements prior to oral delivery. Please send written comments by October 10 to the BLM's Farmington, New Mexico, Resource Area Office at the address listed below. Depending on the number of people who wish to address the Council, it may be necessary to limit the length of oral presentations.

DATES: Friday, October 16, 1992—National Public Lands Advisory Council Meeting.

ADDRESSES: Copies of Public Statements should be received by October 10.

PLEASE MAIL TO: Mr. Mike Pool, Area Manager, Bureau of Land Management, 1235 La Plata Highway, Farmington, New Mexico 87401.

FOR FURTHER INFORMATION CONTACT: Nan Morrison, Washington, DC, Office, BLM, telephone (202) 208–5101.

SUPPLEMENTARY INFORMATION: The Council advises the Secretary of the Interior through the Director, BLM, regarding policies and programs of a national scope related to public lands and resources under the jurisdiction of the BLM.

Date Signed: September 10, 1992.

Cy Jamison,

Director.

[FR Doc. 92–22303 Filed 9–15–92; 8:45 am]

BILLING CODE 4310–84–M

National Park Service

Concession Contract Negotiations; Eastern National Park and Monument Association

AGENCY: National Park Service Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession permit with Eastern National Park & Monument

Association authorizing it to continue to provide for a sale of convenience items for the public at various parks within the Southeast Region for a period of five (5) years from January 1, 1991 through December 31, 1995.

EFFECTIVE DATE: November 16, 1992.

ADDRESSES: Interested parties should contact the Regional Director, Southeast Region, 75 Spring Street, SW., Atlanta Georgia 30303, for information as to the requirements of the proposed permit.

SUPPLEMENTARY INFORMATION: This permit has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under existing permits which expired by limitation of time on December 31, 1990, and therefore pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the permits and in the negotiation of a new permit as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: August 31, 1992.

James W. Coleman, Jr.,

Regional Director, Southeast Region.

[FR Doc. 92-22383 Filed 9-15-92; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-624 and 625 (Preliminary)]

Certain Helical Spring Lockwashers from the People's Republic of China and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of preliminary antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731-TA-624 and 625 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China and Taiwan of certain helical spring lockwashers,[1] provided for in subheading 7318.21.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by October 23, 1992.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: September 8, 1992.

FOR FURTHER INFORMATION CONTACT: Jonathan Seiger (202-205-3183), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on September 8, 1992, by the Shakeproof Industrial Products Division, Illinois Tools Works, Milwaukee, WI.

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 270.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register.** The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

[1] For purposes of these investigations, "certain helical spring lockwashers" consist of circular, twisted-helix washers of iron or steel (including stainless steel), whether or not heat-treated or plated, designed to function as a spring to compensate for out-of-tolerance looseness between component parts of an assembly, to provide a hardened bearing surface, or for similar functions.

Limited Disclosure of Business Proprietary Information (BPI) under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these preliminary investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register.** A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on September 30, 1992, at the U.S. International Trade Commission Building, 550 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Jonathan Seiger (202-205-3183) not later than September 28, 1992, to arrange for their appearance. Parties in support of opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the commission on or before October 5, 1992, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of

1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

Issued: September 10, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-22347 Filed 9-15-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 332-333]

Mackerel; Competitiveness of the U.S. Industry in Domestic and Foreign Markets

AGENCY: United States International Trade Commission.

ACTION: Notice of investigation and request for comments.

EFFECTIVE DATE: September 4, 1992.

SUMMARY: Following the receipt on August 6, 1992, of a request from the Committee on Finance, U.S. Senate, the Commission instituted investigation No. 332-333 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) for the purpose of assessing the competitiveness of U.S. mackerel products in foreign markets. The Committee requested that in its investigation, the Commission should, to the extent possible, develop information on the following subjects:

(1) *U.S. and foreign industry profiles.* Provide economic profiles of the U.S. and foreign mackerel harvesting and processing sectors, including the extent of direct government involvement in the industry.

(2) *U.S. and foreign markets.* Describe the U.S. market and important foreign markets for mackerel products, particularly markets in the Middle East, Europe, West Africa, and the Caribbean. In addition, descriptions should be provided of tariff and non-tariff barriers encountered in these markets.

(3) *Competitiveness assessment.* An analysis should be provided of the principal factors having a significant bearing on the competitiveness of U.S. mackerel products in both U.S. and foreign markets, including trade barriers, government policies, and other economic factors.

As requested by the Finance Committee, the Commission will seek to report the results of its investigation by June 8, 1993.

FOR FURTHER INFORMATION CONTACT: Roger Corey ((202) 205-3327), Agriculture Division, Office of Industries, U.S. International Trade Commission. For information on the legal aspects of this investigation, contact William Gearhart ((202) 205-3091) of the Office of the General Counsel. Hearing-impaired persons can obtain information on this investigation by contacting the Commission's TDD terminal on (202) 205-1810.

PUBLIC HEARING: A public hearing in connection with the investigation will be held in the Commission Hearing Room, 500 E Street SW., Washington, DC 20436, beginning at 9:30 a.m. on January 26, 1993. All persons have the right to appear by counsel or in person, to present information, and to be heard. Persons wishing to appear at the public hearing should file a letter asking to testify (state the names and titles of witnesses) with the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC, 20436, no later than the close of business (5:15 p.m.) on January 12, 1993. In addition, persons testifying must file prehearing briefs (original and 14 copies) with the Secretary by the close of business on January 19, 1993. Any posthearing briefs should be filed not later than the close of business on February 12, 1993.

WRITTEN SUBMISSIONS: Interested persons may submit written statements concerning the investigation. To be assured of consideration, written statements must be received by the close of business on February 12, 1993. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform to 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, U.S. International Trade Commission, 500 E St. SW., Washington, DC 20436.

Issued: September 9, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-22346 Filed 9-15-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-354]

Stainless Steel Pipes and Tubes from Sweden

AGENCY: U.S. International Trade Commission.

ACTION: Notice of remand determination.

SUMMARY: The Commission hereby gives notice of its final affirmative determination, made pursuant to court remand, in the above-identified antidumping duty investigation.

FOR FURTHER INFORMATION CONTACT: George Thompson, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436; (202) 205-2349. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205-1810.

SUPPLEMENTARY INFORMATION: On November 25, 1987, the Commission published its determination that an industry of the United States was not injured by reason of imports of Swedish welded stainless steel pipes and tubes. 55 FR 45256 (Nov. 25, 1987); *Stainless Steel Pipes and Tubes from Sweden,* Investigation No. 731-TA-354, USITC Pub. No. 2033 (November 1987). Domestic producers of welded stainless steel pipe and tube sought review of that final determination.

On June 20, 1990, the Court of International Trade (CIT) remanded the determination of then-Chairman Liebeler to the Commission with instructions to evaluate the investigation in relation to certain required statutory factors. In that decision, the CIT held that Chairman Liebeler's determination was not supported by substantial evidence because her analysis was based on a five-factor test she had originated in an earlier investigation, rather than on the statutory factors outlined in 19 U.S.C. 1677(7)(C)(iii), and focused improperly on the intent of the importer rather than on injury to the domestic industry, as required by 19 U.S.C. 1677(7)(B)(iii). *Trent Tube Div., Crucible Materials Corp.* v. *United States,* 741 F. Supp. 921 (Ct. Int'l Trade 1990).

On July 6, 1990, in response to a motion by defendant-intervenors for a rehearing, the CIT held that Chairman Liebeler's departure from the Commission since the Commission's original negative determination was rendered was not a sufficient ground for a rehearing or a reopening of the investigation. The remand order required an institutional response by the Commission rather than responses by each of the individual Commissioners participating in the majority's determination. *Trent Tube Div., Crucible Materials Corp.* v. *United*

States, 741 F. Supp. 227, 230 (Ct. Int'l Trade 1990).

On remand, the Commission reversed its earlier negative determination. By this time, Chairman Liebeler and Commissioner Eckes had left the Commission, and then-Commissioner Newquist joined. Acting Chairman Brunsdale and Commissioner Rohr adopted their original negative determinations, and Commissioner Lodwick adopted his original affirmative determination. Commissioner Newquist voted in the affirmative. Thus, by a 2–2 affirmative vote, the Commission issued its affirmative remand determination, and filed that decision with the CIT. *Stainless Steel Pipes and Tubes from Sweden*, Inv. No. 731 TA–354 (Final) (Remand), USITC Pub. No. 2304 (August 1990). At the time, the Commission withheld publication of a **Federal Register** notice of its remand determination until the CIT held that the Commission had complied with its remand order.

On November 27, 1990, the CIT held that the Commission had complied with its remand order, and affirmed the remand determination. *Trend Tube Div. Crucible Materials Corp.* v. *United States*, 752 F. Supp. 468 (Ct. Int'l Trade 1990). Notice of the CIT's decision was published by the Department of Commerce on December 17, 1990. According to that notice, an antidumping duty order on welded stainless steel pipe and tube from Sweden would issue if the CIT's opinion in that case was not appealed, or if appealed, was affirmed on appeal. Also, in accordance with *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990), Commerce ordered the suspension of liquidation of the subject merchandise. 55 FR 51745 (December 17, 1990).

Thereafter, an appeal was taken to the Court of Appeals for the Federal Circuit (CAFC) by the Swedish defendants Avesta Sandvik Tube AB and Avesta Stainless, Inc. The CAFC affirmed the CIT's decisions to remand the Commission's original negative determination and to uphold the Commission's affirmative remand determination. *Trent Tube Div., Crucible Materials Corp.* v. *U.S. Intern'l Trade Comm'n*, No. 91–1173 (Fed. Cir. July 27, 1992).

On August 27, 1992, the CAFC denied a petition for rehearing in the case. The mandate was issued on September 3, 1992. The judicial proceedings having finally ended, the Commission now publishes notice of its remand determination.

Issued: September 8, 1992.

By order of the Commission.

Paul Bardos,

Acting Secretary.

[FR Doc. 92–22345 Filed 9–15–92; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32097]

Burlington Northern Railroad Co.; Purchase Exemption; Chicago Central & Pacific Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, under 49 U.S.C. 10505, exempts from the prior approval requirements of 49 U.S.C. 11343, Burlington Northern Railroad Company's purchase from Chicago Central & Pacific Railroad Company (CCP) of 12.43 miles of track and related rail property between milepost 168.96 near Portage, IL, and milepost 181.20 (at the south line of Fifth Street) in East Dubuque, IL, and CCP's interlocker and both main tracks between mileposts 168.77 and 168.96, near Portage.

DATES: This exemption will be effective on September 15, 1992. Petitions for reconsideration must be filed by September 28, 1992.

ADDRESSES: Send pleadings referring to Finance Docket No. 32097 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

Petitioner's representatives:

(2) Michael E. Roper, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102–5384, and

Richard B. Herzog, 1300 19th Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927–5610, [TDD for hearing impaired: (202) 927–5721].

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, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: September 8, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–22365 Filed 9–15–92; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–167 (Sub-No. 1094)]

Chelsea Property Owners; Abandonment; Portion of the Consolidated Rail Corporation's West 30th Street Secondary Track in New York, NY; Findings

The Commission has found that the public convenience and necessity permit Consolidated Rail Corporation to abandon a 1.45-mile segment of its West 30th Street Secondary track between 34th Street on the north and the northern border of Gansevoort Street on the south, in the Borough of Manhattan, New York, NY.

A certificate will be issued authorizing abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served on the applicant and the railroad no later than 10 days from publication of this Notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope: "Rail Section, AB–OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: August 28, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–22366 Filed 9–15–92; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub-No. 437X)]

CSX Transportation, Inc.; Abandonment Exemption; in Fremont, Newaygo County, MI

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonments

to abandon its line of railroad from Milepost CED–19.98, Valuation Station 1055+00, to Milepost CED–20.28, Valuation Station 1070+80, a distance of approximately 0.30 miles, in Fremont, Newaygo County, MI.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of a complainant within the 2-year period, and (4) the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

This exemption will be effective on October 16, 1992, unless stayed or a formal expression of intent to file an offer of financial assistance (OFA) is filed. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 [3] must be filed by September 28, 1992. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 6, 1992, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street J150, Jacksonville, FL 32202.

[1] A stay will be issued routinely where an informed decision on environmental issues, whether raised by a party or by the Commission's Section of Energy and Environment (SEE), cannot be made before the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental grounds is encouraged to file promptly so that the Commission may act on the request before the effective date.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEE will issue an environmental assessment (EA) by September 21, 1992. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: September 11, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–22368 Filed 9–15–92; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 92–70; Exemption Application No. D–8984, et al.]

Grant of Individual Exemptions; Truck Dispatch Service, Inc. Profit Sharing Plan and Trust, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Truck Dispatch Service, Inc. Profit Sharing Plan and Trust (the Plan) Located in Fresno, California

[Prohibited Transaction Exemption 92–70; Exemption Application No. D–8984]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash purchase (the Purchase) of a certain promissory note and trust deed (the Note) by the Plan from Truck Dispatch Service, Inc., a party in interest with respect to the Plan, provided the Plan pays the lesser of either (1) the sum of $155,000, or (2) the fair market value of the Note as determined by a qualified, independent appraiser on the date of the Purchase.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of

proposed exemption published on August 4, 1992, at 57 FR 34309.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Polymer Group Retirement Savings Plan and Trust (the Plan) Located in Dayton, Ohio

[Prohibited Transaction Exemption 92–71; Exemption Application No. D–9075]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) the extension of interest-free credit (the Advances) to the Plan by Cadillac Plastic Group, Inc. and its affiliates, parties in interest with respect to the Plan, and (2) the repayment of the Advances to the Plan, provided that (a) no interest and/or expenses are paid by the Plan, (b) the Advances are used only in lieu of withdrawals due from the Guaranteed Investment Contract, Number CG01302A3A (the GIC) issued by Executive Life Insurance Company (Executive Life), (c) the repayment by the Plan of the Advances is restricted to cash proceeds paid by the Plan by or on behalf of Executive Life with respect to the obligations of Executive Life under the GIC, and (d) repayment of the Advances will be waived to the extent to the Plan receives less from disposition of the GIC than the total amount of the Advances.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 23, 1992, at 57 FR 32817.

EFFECTIVE DATE: This exemption is effective as of June 1, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 523–8881. (This is a toll-free number.)

Gerber Childrenswear, Inc. Salaried Investment Plan (the Plan) Located in Greenville, South Carolina

[Prohibited Transaction Exemption 92–72; Exemption Application No. D–9058]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of sections 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the extension of credit (the Loan) to the Plan by Gerber Childrenswear, Inc., the sponsor of the Plan, with respect to group annuity contract number GA–CG0121503A issued by Executive Life Insurance Company of California (Executive Life) and group annuity contract number GA–5244 (together, the GACs) issued by Mutual Benefit Life Insurance Company of New Jersey (Mutual Benefit); and (2) the potential repayment of the Loan (the Repayments) by the Plan; provided that the following conditions are satisfied:

(a) All terms of such transactions are no less favorable to the Plan than those which the Plan could obtain in arm's-length transactions with an unrelated party;

(b) No interest and/or expenses are paid by the Plan;

(c) The Loan is made only in lieu of payments due from Executive Life and Mutual Benefit with respect to the GACs;

(d) The Repayments shall not exceed the amounts of the Loan;

(e) The Repayments shall not exceed the amounts actually received by the Plan from Executive Life, Mutual Benefit, and other responsible third party payors with respect to the GACs; and

(f) The Repayment of the Loan shall be waived to the extent that the amount of the Loan exceeds the amounts recovered by the Plan with respect to the GACs from Executive Life, Mutual Benefit, or any other source.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 7, 1992 at 57 FR 29897.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Aetna Life Insurance Company (Aetna) Located in Hartford, Connecticut

[Prohibited Transaction Exemption 92–73; Exemption Application No. D–8919]

Exemption

The restrictions of sections 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the code, shall not apply to the proposed purchase or sale by an employee benefit plan to which Aetna or an affiliate is a party in interest (the Plan) of shares of an open-end investment company registered under the Investment Company Act of 1940 (the Fund), where the Fund is also a party in interest with respect to the Plan as a result of Aetna or its affiliates owning 50% or more of the Fund's outstanding shares at the time of the transaction; provided that the following conditions are met:

(a) Neither Aetna nor any affiliate has discretionary authority or control for the investment of the Plan's assets involved in the transaction or renders investment of the Plan's assets involved in the transaction or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) for those assets.

(b) The price paid by the Plan for shares of the Fund is the net asset value per share at the time of the transaction and is the same price which would be paid for the shares by any other investor at that time.

(c) The Plan does not pay a sales commission in connection with the purchase or sale of shares of the Fund.

(d) The Plan does not pay a redemption fee in connection with the sale by the Plan to the Fund of such shares unless (1) the redemption fee is paid only to the Fund and such fee is disclosed in the Fund prospectus in effect both at the time of the purchase of such shares and at the time of the sale.

(e) A fiduciary for the Plan who is independent of and unrelated to Aetna and its affiliates (an Independent Fiduciary), receives full written disclosure of information concerning the Fund (including a current prospectus for the Fund and a statement of additional information which describes, among other things, the relationship of Aetna and its affiliates to the Fund and the fee structure for such Fund). For purposes of this exemption, such fiduciary will not be deemed to be an Independent Fiduciary with respect to Aetna and its affiliates if:

(1) The fiduciary directly or indirectly controls, is controlled by, or is under common control with Aetna or any affiliate;

(2) The fiduciary, or any officer, director, partner, employee or relative of such fiduciary, is an officer, director, partner, or employee of Aetna or any affiliate (or is a relative of such persons); or

(3) The fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this exemption.

If an officer, director, partner, or employee of Aetna or any affiliate (or a relative of such persons) is a director of such fiduciary, and if he or she abstains from participation in any such purchase or sale between the Plan and the Fund, then section (e)(2) shall not apply.

(f) On the basis of the information referred to in section (e), the

Independent Fiduciary decides whether to purchase or sell shares of the Fund consistent with the responsibilities, obligations, and duties imposed on fiduciaries by part 4 of title I of the Act.

(g) The combined total of all fees received by Aetna and its affiliates for the provision of services to the Plan, and in connection with the provision of services to the Funds in which the Plan may invest, are not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(h) Immediately following the acquisition by a Fund of any securities that are issued by Aetna and its affiliates, the percentage of that Fund's net assets invested in such securities will not exceed one percent.

(i) Aetna maintains for a period of six years the records necessary to enable the persons described below in section (j) to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Aetna or its affiliates, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than Aetna shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by section (j) below.

(j)(1) Except as provided in paragraph (2) of this section and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in section (i) are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(ii) Any fiduciary of the Plan who has authority to acquire or dispose of shares of the Funds owned by the Plan, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of the Plan or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in section (j)(1)(ii) and (iii) shall be authorized to examine trade secrets of Aetna, any of its affiliates, or commercial or financial information which is privileged or confidential.

Definitions

For purposes of this exemption,

(a) An *affiliate* of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative of, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(b) The term *control* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term *net asset value* means the amount computed by dividing the total value of the Fund's securities (as described in the prospectus and statement of additional information for such Fund) plus any cash or other assets (including dividends accrued but not collected) less all liabilities (including accrued expenses), by the number of shares outstanding.

(d) The term *Fund* means an open-end investment company registered under the Investment Company Act of 1940 for which Aetna or an affiliate serves as the principal underwriter and/or investment adviser.

(e) the term *relative* means a *relative* as that term is defined in section 3(15) of the Act (or a *member of the family* as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or sister.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 7, 1992, at 57 FR 29891.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Panhandle Eastern Corporation Retired Employee and Dependent Life Insurance Plan (the Retiree Life Plan), Panhandle Eastern Corporation Active Employee and Dependent Life Insurance Plan (the Active Life Plan), Panhandle Eastern Corporation Permanent and Total Disability Plan (the Disability Plan), Panhandle Eastern Corporation Medical Plan (the Medical Plan) and Panhandle Eastern Corporation Dental Plan (the Dental Plan; collectively, the Plans) Located in Kansas City, MO

[Prohibited Transaction Exemption 92–74; Exemption Application Nos. L–8771, L–8772, L–8773 and L–8774]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act shall not apply to the proposed cash sale of certain improved real property (the South Building) by the Panhandle Eastern Corporation Employee Benefit Trust (the VEBA), which maintains the assets of the Plans, to Panhandle Eastern Pipe Line Company (PEPL), a party in interest with respect to the Plans, provided the following conditions are satisfied: (1) The amount paid for the South Building is not less than the greater of $7,565,000 or the fair market value of such property at the time the transaction is consummated, (2) the VEBA does not pay any real estate fees or commissions in connection with the transaction and (3) the independent fiduciary, who has made an initial determination that the proposed sale is an appropriate transaction for the VEBA, monitors its terms on behalf of the VEBA.[1]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 22, 1992 at 57 FR 27795.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an

[1] Because the VEBA is not qualified under section 401 of the Code, there is no jurisdiction under title II of the Act pursuant to section 4975 of the Code. However, there is jurisdiction under title I of the Act pursuant to section 3(1) of the Act.

administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 11th day of September, 1992.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 92-22360 Filed 9-15-92; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 92-48]

NASA Advisory Council (NAS), Space Station Advisory Committee (SSAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Station Advisory Committee.

DATES: September 23, 1992, 8:30 a.m. to 5:30 p.m. and September 24, 1992, 8:30 a.m. to Noon.

ADDRESSES: Capital Gallery Building, 600 Maryland Avenue, SW., Suite 300 (East), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Dr. W.P. Raney, Code D, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-4165.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—U.S.—Russian Cooperation
—Space Station Freedom Program Update
—Procurement
—Operations Report
—Space Station Advisory Committee Panel Reports

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the participants. Visitors will be requested to sign a visitor's register.

Dated: September 9, 1992.

John W. Gaff,

Advisory Committee Management Office.

[FR Doc. 92-22335 Filed 9-15-92; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Visual Arts/Media/Design/Literary Arts Section) to the National Council on the Arts will be held on October 6, 1992 from 9:15 a.m.-6 p.m., October 7 from 9 a.m.-6 p.m., and October 8 from 9 a.m.-5:30 p.m. in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on October 6 from 9:15 a.m.-10:30 a.m. and October 8 from 3 p.m.-5:30 p.m. The topics will be opening remarks, general overview, and policy discussion.

The remaining portions of this meeting on October 6 from 10:30 a.m.-6 p.m., October 7 from 9 a.m.-6 p.m., and October 8 from 9 a.m.-3 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applications. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682/5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5439.

Dated: September 10, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92-22336 Filed 9-15-92; 8:45 am]

BILLING CODE 7537-01-M

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Federal Advisory Committee on International Exhibitions will be held on October 5, 1992 from 10 a.m.-3 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 10 a.m.-10:30 a.m. for introductory remarks.

The remaining portion of this meeting from 10:30 a.m.-3 p.m. is for the purpose of reviewing proposals for support under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, this session will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5439.

Dated: September 10, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92–22337 Filed 9–15–92; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Fellowships for Creative Writers: Poetry Section) to the National Council on the Arts will be held on October 7–8, 1992 from 9 a.m.–6:30 p.m. and October 9 from 9 a.m.–5 p.m. in room M–14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on October 9 from 2 p.m.–5 p.m. for policy discussion.

The remaining portions of this meeting on October 7–8 from 9 a.m.–6:30 p.m. and October 9 from 9 a.m.–2 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendations on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: September 8, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92–22323 Filed 9–15–92; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Fellowships for Creative Writers: Prose Section) to the National Council on the Arts will be held on October 14–15, 1992 from 9 a.m.–6:30 p.m. and October 16 from 9 a.m.–5 p.m. in Room M–14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on October 16 from 2 p.m.–5 p.m. for policy discussion.

The remaining portions of this meeting on October 14–15 from 9 a.m.–6:30 p.m. and October 16 from 9 a.m.–2 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, or advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: September 8, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92–22324 Filed 9–15–92; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SPACE COUNCIL

Meeting of the National Space Policy Assessment Task Group

AGENCY: National Space Council.

ACTION: Notice of meeting.

SUMMARY: The Vice President's Space Policy Advisory Board National Space Policy Assessment Task Group will meet October 1, 1992.

DATES: October 1, 1992.

ADDRESSES: 1215 Jefferson Davis Highway, Suite 800, Arlington, Virginia, 22202.

FOR FURTHER INFORMATION CONTACT: Stephen Hopkins, (703) 685–3307 or James Beale, National Space Council, Executive Office of the President, Washington, D.C., (202) 395–6175.

SUPPLEMENTARY INFORMATION: The National Space Policy Assessment Task Group of the Vice President's Space Policy Advisory Board will meet between 8:30 a.m. and 5:30 p.m. on October 1, 1992 at the ANSER Corporation, Suite 800, 1215 Jefferson Davis Highway, Arlington, Virginia. The agenda for the meeting includes briefings summarizing current national space policies, briefings on the history of current space-related policies, and discussions of institutional roles and responsibilities. This meeting will be closed to the public under exception 1 of the Government in the Sunshine Act (5 U.S.C. 552b) from 3:30 p.m. to 5:30 p.m. October 1, 1992. All other portions will be open session. Persons interested in attending should contact Stephen Hopkins, (703) 685–3307 no later than September 29, 1992.

James R. Beale,

Designated Federal Officer.

[FR Doc. 92–22352 Filed 9–15–92; 8:45 am]

BILLING CODE 3128–01–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 or NRC staff) 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 August 24, 1992, through September 3, 1992. The last biweekly notice was published on September 2, 1992 (57 FR 40206).

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 Rules and Directives Review 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. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 16, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 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 amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period.

However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

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 Services 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 N1023 and the following message addressed to **(Project Director):** petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, 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 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 20555, and at the local public document room for the particular facility involved.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: August 6, 1992Description of amendments request: The proposed amendment would amend Section 6 of the Technical Specifications to implement the functional role and responsibilities of the recently created Nuclear Assessment Department (NAD). The NAD performs internal evaluations and assessment activities. The fundamental role is to assist in the early identification of deficiencies that may prevent the Company's nuclear projects from achieving the desired level of performance on a sustained basis and to ensure effective correction of deficiencies. The NAD has also assumed the responsibility for administering the independent review program and the independent assessment of unit activity.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because it is programmatic and does not physically alter any safety-related systems, nor does it affect the way in which any safety-related systems perform their functions. The independent review function is being revised to provide program consistency among the nuclear units while maintaining compliance with ANSI N18.7. The independent assessment requirements for the NAD are being removed from the Technical Specifications (TSs) and reference made to the Quality Assurance (QA) Program for these details. Since the design of the facility and system operating parameters are not changing, the proposed amendment does not involve an increase in the probability or consequences of any accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated in Item 1, the proposed amendment is programmatic and does not physically alter any safety-related systems; nor does it affect the way in which any safety-related systems perform their functions. Since the design of the facility and system operating parameters are not changing, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety because it is a programmatic change. As stated in Item 1, the proposed amendment does not physically alter any safety-related systems; nor does it affect the way in which any safety related systems perform their functions. Since the design of the facility and system operating parameters are not changing, the proposed amendment does not involve any reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: August 10, 1992

Description of amendment request: The proposed amendment would amend Section 6 of the Technical Specification to implement the functional role and responsibilities of the recently created Nuclear Assessment Department (NAD). The NAD performs internal evaluations and assessment activities. The fundamental role is to assist in the early identification of deficiencies that may prevent the Company's nuclear projects from achieving the desired level of performance on a sustained basis and to ensure effective correction of deficiencies. The NAD has also assumed the responsibility for administering the independent review program and the independent assessment of unit activity.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase inthe probability or consequences of an accident previously evaluated because it is programmatic and does not physically alter any safety-related systems, nor does it affect the way in which any safety-related systems perform their functions. The independent review function is being revised to provide program consistency among the nuclear units while maintaining compliance with ANSI N18.7. The independent assessment

requirements for the NAD are being removed from the Technical Specifications (TSs) and reference made to the Quality Assurance (QA) Program for these details. Since the design of the facility and system operating parameters are not changing, the proposed amendment does not involve an increase in the probability or consequences of any accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated in Item 1, the proposed amendment is programmatic and does not physically alter any safety-related systems; nor does it affect the way in which any safety-related systems perform their functions. Since the design of the facility and system operating parameters are not changing, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety because it is a programmatic change. As stated in Item 1, the proposed amendment does not physically alter any safety-related systems; nor does it affect the way in which any safety related systems perform their functions. Since the design of the facility and system operating parameters are not changing, the proposed amendment does not involve any reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: August 6, 1992

Description of amendment request: The proposed amendment would amend Section 6 of the Technical Specifications to implement the functional role and responsibilities of the recently created Nuclear Assessment Department (NAD). The NAD performs internal evaluations and assessment activities. The fundamental role is to assist in the early identification of deficiencies that may prevent the Company's nuclear projects from achieving the desired level of performance on a sustained basis and to ensure effective correction of deficiencies. The NAD has also assumed the responsibility for administering the independent review program and the independent assessment of unit activity.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because it is programmatic and does not physically alter any safety-related systems, nor does it affect the way in which any safety-related systems perform their functions. The independent review function is being revised to provide program consistency among the nuclear units while maintaining compliance with ANSI N18.7. The independent assessment requirements for the NAD are being removed from the Technical Specifications (TSs) and reference made to the Quality Assurance (QA) Program for these details. Since the design of the facility and system operating parameters are not changing, the proposed amendment does not involve an increase in the probability or consequences of any accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated in Item 1, the proposed amendment is programmatic and does not physically alter any safety-related systems; nor does it affect the way in which any safety-related systems perform their functions. Since the design of the facility and system operating parameters are not changing, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety because it is a programmatic change. As stated in Item 1, the proposed amendment does not physically alter any safety-related systems; nor does it affect the way in which any safety related systems perform their functions. Since the design of the facility and system operating parameters are not changing, the proposed amendment does not involve any reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: June 29, 1992, as supplemented August 28, 1992

Description of amendment request: The proposed amendment would change Technical Specification Section 3/4.9 by revising the requirements for assuring the operability of a diesel generator upon loss of other auxiliary electrical equipment, revising the battery availability requirements to address use of the alternate 125 volt batteries, and revise battery Service and Performance test surveillance requirements to reflect current industry standards. In addition, the Quad Cities Technical Specifications would be changed so that a modification could be made that allows the backfeed of power from the offsite distribution system through the main power transformer and unit auxiliary transformer of a shutdown unit to any operating unit through the 4160-volt bus tie. (The same modification is being installed at Dresden, but the current Dresden Technical Specifications do not have to be changed to accommodate the modification.) This request partially supersedes an August 9, 1991, request for Dresden published in the **Federal Register** on April 29, 1992 (57 FR 18171).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below: The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because:

Diesel Generator Requirements

Proposed Specification 4.9.D.1 for Dresden, and 4.9.A.1.a for Quad Cities, separates the start and loading portions of the monthly test. Separating the start and loading portions of the test is administrative and does not impact the current diesel generator requirements. Therefore, the proposed changes will not affect the operational readiness or availability of the diesel generators, and will not significantly increase the probability or

consequences of previously defined accidents requiring the diesel generators for successful mitigation.

Revisions are proposed for the required diesel generator operation as a result of the inoperability or unavailability of other equipment. These include: a) revising the requirement for operating the diesel generators upon loss of two incoming offsite power lines, b) revising the requirement for the demonstration of operability, or c) when making a diesel generator inoperable for the performance of pre-planned preventive maintenance to include surveillance testing. Removing the requirement to operate the diesel generators connected to the bus following the loss of both offsite power lines or the other diesel generator decreases the probability of the diesel generators to attempt to pick up non-safety related loads during an accident and increases the probability of their availability should they be required in these situations.

Similarly, the removal of the requirement to start the diesel generator for periodic maintenance or surveillance testing of the other diesel generator when there is no demonstrated or suspected generic condition which would cause the otherwise operable diesel generator to be inoperable reduces the stress and wear on the diesel generators and increases their reliability. The diesel generator is not considered an initiator in any previously evaluated accident and the changes increase the reliability of the diesel generators. Therefore, the revision to the diesel generator operability requirements will have no significant increase in the probability or consequences of any previously evaluated accidents.

Battery Requirements

The addition of new surveillance requirements to reflect the service and performance testing of the batteries will increase the reliability of the batteries. Since the alternate power system is not considered to initiate any previously evaluated accidents, the probability of such accidents is not increased. Additionally, since the additional testing does not adversely impact the response of the alternate power system, the change will not increase the consequences of any previously evaluated accidents. The addition of surveillance requirements for the use of the alternate 125 volt batteries represents an addition of equipment, but does not increase the probability of any previously evaluated accident since the batteries are not considered as accident initiators.

Quad Cities-Redundant ECCS Testing

The present testing requirements for ECCS at Quad Cities when one system (or subsystem) is inoperable represent requirements beyond those necessary to adequately demonstrate system operability. The proposed deletion of multiple system testing will conform Quad Cities to current BWR plant operating practices. ECCS perform accident mitigation functions. Because changing testing requirements will not change the probability of accident precursors, this proposed amendment does not affect the probability of an accident previously evaluated. The proposed amendment does not involve a significant increase in the consequences of an accident previously evaluated because testing other than multiple system testing ensures that the present level of operability for the ECCS system is maintained.

The proposed changes to Technical Specification Section 3/4.9 represents an administrative change which enhances clarity and reduces the potential of misinterpretation. The emergency diesel generators and station batteries will be operated in a more reliable manner than previously evaluated as result of the proposed changes. Existing failure modes for the station's auxiliary electrical equipment are not affected by the proposed changes. Therefore, no significant increase in the probability or consequences of any previously evaluated accidents results from the proposed amendments.

Battery Clarification

The addition of provisions which state more clearly when the use of the 125 volt DC alternate batteries is appropriate will prevent use of the battery in situations beyond its current design capability. The proposed LCOs assure that use of the alternate battery is limited to a period when testing and maintenance is performed on the permanent batteries. The alternate batteries are not considered to be initiators of any previously evaluated accidents, therefore, the introduction of restrictions on the use of the alternate 125 volt system will not increase the probability of any previously evaluated accident.

Backfeed Modification Changes (Quad Cities Only)

The proposed change will provide additional flexibility to the current requirement for a second source of offsite power. This flexibility will allow the use of the Main Power Transformer/Unit Auxiliary Transformer (MPT/UAT) of a shutdown unit, in addition to the current requirement of the Reserve Auxiliary Transformer (RAT), to supply power through the 4160-volt bus tie to an operating unit. This proposed change does not affect any accident initiators or precursors. Therefore it cannot increase the probability of an accident previously evaluated. By allowing for the use of the MPT/UAT (in addition to the RAT) as a second source of offsite power for an operating unit, the proposed change will provide an additional means to obtain auxiliary power from the offsite transmission system. Therefore, the proposed change does not increase the consequences of an accident previously evaluated.

The proposed changes do not [increase] the possibility of a new or different kind of accident from any accident previously evaluated because:

The restructuring of Technical Specification Section 3/4.9 will not cause the station's auxiliary electrical equipment to be operated in a less reliable manner. The plant will not be placed in an operational condition which has not been previously evaluated as a result of the proposed restructuring and surveillance changes. The revisions to the monthly diesel generator surveillance requirements and to the diesel generator operating requirements for inoperability or unavailability of required equipment does not introduce any new operating modes or new equipment. The upgrade of surveillance requirements for the station batteries does not create the possibility of an accident of a type different from any previously evaluated. Therefore, the possibility of a new or different kind of accident has not been created.

The change deletes excessive testing requirements for ECCS systems at Quad Cities. These changes do not introduce any new modes of operation which could initiate a new or different kind of accident. The proposed amendment will not introduce any new types of equipment failure that could cause a new or different kind of accident.

Battery Clarification

The clarification of operability requirements for the use of the alternate 125 volt battery reflects the addition of requirements which govern the use of new equipment. However, the alternate battery will be used to serve the same function as the permanent battery. Use of the alternate battery is limited to plant configurations supportable by its current design capabilities. The possibility of a new or different accident is not increased by the addition of restrictions on the use of the alternate batteries.

Backfeed Modification Changes (Quad Cities Only)

The design function of the auxiliary power system is to ensure an adequate supply of electric power for loads which are required to operate to mitigate the consequences of postulated abnormal occurrences and design bases events. The proposed Technical Specification amendment does not change or decrease the ability of the auxiliary power system to meet the design function. The proposed change will increase the availability of a second source of offsite power to an operating unit. The proposed change does not introduce any new or different modes of plant operation. Therefore the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes do not involve a significant reduction in a margin of safety because:

The revisions to the monthly diesel generator surveillance requirements and to the diesel generator operating requirements for inoperability or unavailability of requirement equipment do not reduce the operability requirements or capabilities of the auxiliary electrical equipment. Additionally, no setpoints have been revised and the surveillance requirements have been revised to increase the availability and reliability of the equipment. Therefore, the changes do not involve a significant reduction in the margin of safety.

The revisions to Technical Specification Section 3/4.9 will not cause the station's auxiliary electrical equipment to be operated in a less reliable manner, reduce any equipment operability requirements or increase any associated allowable out of service times (except as described above). New surveillance requirements have been introduced; however, these surveillance are performed by observation and no equipment

manipulations (or new equipment) are required, or the tests are performed while the unit is in a refueling outage. Therefore, there is no significant reduction in a margin of safety.

The proposed amendment will not reduce the availability of ECCS systems at Quad Cities when required to mitigate accident conditions. Excessive testing of systems and components can reduce rather than increase reliability. An acceptable level of testing to demonstrate operability currently being used at later BWR plants does not include multiple testing of other ECCS systems when one or more systems is inoperable. The testing that will remain in the technical specifications provides adequate assurance of system performance.

Battery Clarification

The addition of clearer limitations on the use of the 125 VDC alternate battery assures that use of the battery is prohibited during plant configurations which 125 VDC availability is required but cannot be assured by the alternate source over the full range of postulated events. The availability of an alternate DC source combined with surveillance requirements for the alternate battery equivalent to those for the permanent battery serves to increase the margin of safety. Therefore, there is no significant reduction in a margin of safety.

Backfeed Modification Changes (Quad Cities Only)

The proposed change to Technical Specification 3.9.A.3 does not change the accident transient analysis of the plant nor does it make plant operations less conservative. The proposed amendment will allow for the use of the MPT/UAT of a shutdown unit in place of the RAT to supply a second source of offsite power to the operating unit through the 4160-volt bus tie. Protective relay modifications will ensure that this configuration for the second source of offsite power will not negatively impact the MPT and UAT. Plant operations and safety are improved by minimizing unnecessary shutdowns during extended RAT outages. This in turn will minimize the associated challenges to plant safety systems. No established safety limit, operating limit or design assumption is altered by the proposed amendment. Therefore, the proposed change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: For Dresden, the Morris Public Library, 604 Liberty Street, Morris, Illinois 60450; and for Quad Cities, the Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: Richard J. Barrett

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of amendment request: November 22, 1991

Description of amendment request: The proposed amendment would add the Technical Specifications (TS) for some of the accident monitoring instrumentation covered by NUREG-0737, Regulatory Guide 1.97, and Generic Letter 83-37. The following instrumentation will be added in the TS for Zion: Core Exit Thermocouples, Containment Water Level Wide Range, Containment Recirculation Sump Level, Reactor Coolant Inventory Tracking System, Condensate Storage Tank Level, Neutron Flux Indication, and Containment Isolation Value Position Indicators. In addition, the amendments will make some administrative changes and revise a few other TS to make them consistent with the guidance provided by the staff. The November 22, 1991, submittal superceeds the previous submittals dated May 23, 1990, and August 26, 1990, published in the **Federal Register** on June 27, 1990 (55 FR 26280).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The proposed changes have been broken down into five distinct categories, based on the changes made. The No Significant Hazards Consideration has been broken down into separate assessments, to reflect these categories, and to appropriately address all the changes made. The licensee's analysis is presented below:

ADMINISTRATIVE CHANGES (A)

The following changes have been categorized as administrative in nature. These changes do not involve a change in intent, requirement, or regulation. As such, this No Significant Hazards Considerations will address these items:

- Page number changes and additions,
- Title changes, relocations, and additions,
- Location and wording of notes associated with the PORVs and PORV Block Valves,
- Clarified proper mode to eliminate ambiguity
- Changes in terminology,
- Addition of notes clarifying current exemptions to performing periodic surveillances,
- Changes providing reference to base documents and revision numbers,
- Deletion of surveillance frequency notation addressed appropriately elsewhere in the Technical Specifications,
- Reformatting of pages, and
- Inclusion of reporting requirements into the administrative section of the Technical Specifications, required to be performed under an action statement.

The proposed changes do not result in a significant increase in the probability or consequences of accidents previously evaluated. The proposed changes to the Technical Specification listed above have been determined to be administrative in nature. The proposed amendment to the Technical Specifications does not change or alter any current operator actions, or requirements for the mitigation of any previously evaluated accident. These changes have no impact on assumed margins or actions during an evaluated accident. Plant response to previously evaluated accidents will not be altered as a result of these changes. As such, the probability and consequences associated with evaluated accidents have remained unchanged.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. These proposed changes will not impose or result in plant operation that differ from any existing requirements. No new equipment is being introduced as a result of these changes. As such, the possibility of a new or different kind of accident from any accident previously evaluated will not occur as a result of these changes. The proposed changes do not involve a significant reduction in a margin of safety. These changes do not alter the manner in which equipment required for safe operation of the plant is operated. There are no setpoint, or operational limitations being altered or changed as a result of these revisions. As such, these changes have no significant effect on the margin of safety.

ADDITION OR CHANGES OF INSTRUMENTATION (B)

The following changes involve the addition of instrumentation as a result of the guidance given in the Commission's Interim Policy Statement and Generic Letter 83-37 regarding "NUREG 0737 Technical Specifications". As such, this No Significant Hazards Considerations will address the following items:

- Containment Pressure (Wide Range) changing from narrow range to wide range. In addition, the total number of instrument channels has been changed from 4 to 2 to address the appropriate number of qualified instruments,
- Changing of the Pressurizer Safety Valve Position Indicator to include both a Technical Specification for the primary and the backup indicators,
- Revision of the RCS Subcooling Monitor, to delete previously approved manual calculations in lieu of utilization of installed instrumentation, and
- The addition of the following instrumentation into the Technical Specifications:

Core Exit Thermocouples,
Containment Water Level Wide Range,
Containment Recirculation Sump Level,
Reactor Coolant Inventory Tracking System,
Condensate Storage Tank Level,

Neutron Flux Indication, and
Containment Isolation Valve Position Indicators

The proposed change does not result in a significant increase in the probability or consequences of accidents previously evaluated. The purpose of the Accident Monitoring Instrumentation is to provide sufficient information to perform required manual actions, and to monitor and assess plant status and behavior during and following an accident. The instrumentation referenced in the Technical Specifications to perform these functions must be capable of providing this information under assumed accident conditions. Therefore, there must both be an adequate number of parameters monitored, and these parameters must be monitored by appropriately qualified instrumentation. The probability for an evaluated accident is independent of the number and type of instruments designated for monitoring purposes. The probability for an accident is linked to the precursor events leading to an accident. None of the accident monitoring instrument changes addressed here are linked in any fashion to these precursor events.

As such, the probability for previously evaluated events has remained unchanged. The consequences of evaluated events are lessened by assuring that the minimum number of parameters required to perform required manual actions, and monitor and assess plant status following an accident are available.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes will not approve or result in plant operation that could create a new or different kind of accident. The addition of these instruments to the technical specifications will provide assurance in regards to their availability, through the establishment of Limiting Conditions for Operation, Remedial Actions, and appropriate Surveillance Requirements. The accident monitoring instrumentation is directly tied to accident mitigation, through the accomplishment of manual actions and assessment. Through proper decision making the possibility of different type of accident or accident conditions propagating in a different manner will be prevented.

The proposed change does not involve a significant reduction in a margin of safety. The inclusion of these instruments into the Technical Specification will provide assurance that an adequate number of the appropriate instruments are available to monitor required plant parameters in the event of an accident. By referencing instrumentation that is appropriately qualified for the expected condition, assurance is gained that these parameters will be available if required. By reducing the total number of channels for the Containment Wide Range Pressure Instruments from 4 to 2 the appropriately qualified instruments are referenced. However the margin of safety has remained unchanged by virtue of the required number of channels remaining the same. For the instrumentation being added, these changes will enhance the safety of the plant through the establishment of minimum acceptable levels of performance and availability for these instruments in the Technical Specifications. Through the establishemnt of these minimum levels, information required for appropriate decision making during and following an accident can be assured. Surveillance requirements are being specified for the purpose of determining operability. The remedial actions associated with the added Specifications will require the plant to be placed into a shutdown condition, after providing an appropriate time frame to restore the inoperable instrument(s) to operable status. As such, these proposed changes to the Technical Specifications will result in an increase in the current margin of safety.

ACTION AND PROGRAMMATIC CHANGES (C)

The following assessment involves the revision of the action statements associated with the accident radiation monitoring instruments. This assessment also addresses the addition of programmatic control to assure these monitoring capabilities. As such, this No Significant Hazards Considerations will address the following items:

- Addition of action statement 31 regarding the actions associated with the Containment High Range Radiation Monitors, and
- The addition of the requirement to have Post Accident sampling programs capable of obtaining and analyzing reactor coolant and containment atmosphere, and to collect and analyze or measure radioactive iodines and particulates in plant gaseous effluents samples under accident conditions.

The proposed changes do not result in a significant increase in the probability or consequences of accidents previously evaluated. The radiation monitor action statement changes and programs being added to the administrative section of the Technical Specifications of themselves have no impact on the probability of any events that are inputs to evaluated accidents. As such, the probability for evaluated events has remained the same. The changes made are providing assurance to the availability of these monitors or alternative methods of providing comparable information during and following an accident. Through assuring the availability of these parameters and programs, the consequences of evaluated accidents remain the same.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes address the revisions to programs and action statements. There is no new equipment being proposed for installation that could present the possibility for a new or different type of accident, as a result of these changes. Plant operations will not be altered in any fashion that could create the possibility for a new or different type of accident. Through assuring the availability of these parameters during an accident, proper decision making can be assured. As such, these changes will not create the possibility for a new or different type of accident. In addition, the potential for accident conditions propagating in a differing manner will be prevented.

The proposed change does not involve a significant reduction in a margin of safety. The proposed additional actions will result in the preparation and submittal of a report to the NRC after establishment of alternate methods of monitoring the effluent release paths for the Containment Area High Range Monitors if the affected monitor is not restored to OPERABLE status within 7 days. The administrative changes being added to the Technical Specifications involve the addition of the requirements to have Post Accident sampling programs capable of obtaining and analyzing reactor coolant and containment atmosphere, and to collect and analyze or measure radioactive iodines and particulates in plant gaseous effluents samples under accident conditions. These programs include; the training of personnel, procedures for sampling and analysis, and provisions for maintenance of sampling and analysis equipment. These changes help provide assurance that these capabilities and programs will be established and maintained. The results of these changes are viewed as an improvement in the plants overall ability to assess accident conditions, and the potential for or qualification of releases. As such, these changes do not result in a significant reduction in the margin of safety.

CHANGES TO REQUIRED NUMBER OF INSTRUMENTS (D)

The following assessment involves changes to the required number of instruments, and parameters that must be monitored. As such, this No Significant Hazards Considerations will address the following items:

- Changes to the Required and Minimum Number of instruments for the Steam Generator Wide Range Level Indicators,
- Changes to the Required and Minimum Number of instruments for the Auxiliary Feedwater Flow Rate Monitoring Instruments,
- The deletion of the PZR PORV acoustic monitors from the Technical Specification, and
- Revision of the PZR PORV Block Valve Position Indicator, increasing the Minimum Number of channels from 0 to 1.

The proposed changes do not result in a significant increase in the probability or consequences of accidents previously evaluated. The above noted instruments provide monitoring capabilities of parameters important for the proper assessment of plant status. These proposed changes are not linked to increasing the probability of any accident. These changes do not alter any of the assumed initial conditions for evaluated accidents at the Zion Station. As such, the probability and consequences for an evaluated accident has remained unchanged. In the case of the Steam Generator Wide Range Level and the Auxiliary Feedwater Flow Monitoring Instruments, the required number of instruments have become more restrictive. In addition, the PZR PORV Block Valve Position Indicator, the Minimum Number of Channels has also become more restrictive. The proposed change will increase the Minimum Number of Channels required for the Steam Generator Wide Range Level and Auxiliary Feedwater Flow Monitoring instruments based on the more restrictive limits imposed on the Required Number of Channels operable. In addition,

the Steam Generator Narrow Range Level instruments provide redundant indication of heat sink status for both the Steam Generator Wide Range Level instruments, and the Auxiliary Feedwater Flow Rate instruments. As such, there is redundancy available for monitoring these parameters. The Steam Generator Narrow Range Level instruments have a required number of 2, and a minimum number of 1, and are powered from redundant safety related power supplies. In this fashion, it can be shown that there is sufficient redundancy available to justify a 7 day action statement alone for the Steam Generator Wide Range Level and Auxiliary Feedwater Flow Rate instruments. In reference to the PORV Position Indicator, the safety related limit switch position indicators will still be retained in the Technical Specifications.

These indicators on their own are sufficient to provide valve status indication in the Control Room. In this fashion, the consequences of previously evaluated accidents will remain unchanged. Based on the diversity available for monitoring the parameter associated with the Steam Generator Wide Range Level and the Auxiliary Feedwater Flow Rate indicator, in addition to the safety related limit switches associated with the PZR PORV Position indication, sufficient monitoring capability will be maintained. As such, the consequences of evaluated events will remain the same through the assurance that the minimum number of parameters required to perform required manual actions, and monitor and assess plant status following an accident are available.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes will not impose or result in plant operation that will challenge the integrity of any fission product barriers. Post accident monitoring instrumentation is directly tied to accident mitigation in regards to assessment and decision making process. The number and type of instruments specified in the Technical Specifications, of there own will not result in the possibility of a different type of accident. All of these items as proposed, will still have adequate indication available through either safety related or diverse indication. Through the assurance that the required parameters necessary for appropriate decision making during and following an accident are available, it can be determined that the possibility of a different type of accident or an accident conditions propagating in a differing manner will be prevented.

The proposed change does not involve a significant reduction in a margin of safety. These changes will enhance the safety of the plant through the establishment of more restrictive minimum acceptable levels of performance and availability for the Steam Generator Wide Range Level and Auxiliary Feedwater Flow Rate Instruments in the Technical Specifications. The current Technical Specifications do not invoke any required remedial actions until at least 3 instruments fail. In the event of 3 failures, a 7 day action statement would be entered. In the event of all 4 instruments failing, a 48 hour action statement time clock is entered. The proposed changes would invoke a 7 day time clock based on a single failure and a 48 hour time clock would apply for two or more channel failures. The Steam Generator Narrow Range Level instruments provide redundant indication of heat sink status for both the Steam Generator Wide Range Level instruments, and the Auxiliary Feedwater Flow Rate instrument. As such, there is redundancy available for monitoring these parameters. The Steam Generator Narrow Range Level instruments have a required number of 2, and a minimum number of 1. In this fashion, it can be shown that there is sufficient redundancy available to justify a 7 day action statement alone for the Steam Generator Wide Range Level and Auxiliary Feedwater Flow Rate instruments.

Based on the diversity available for monitoring this parameter, it can be concluded that sufficient monitoring capability will be maintained. As such, based on the redundancy in indication, and the lower threshold for action statement entry, it has been concluded that the overall margin of safety has been enhanced. In regards to the PZR PORV Valve Position Indicators, valve position indication will be available from the safety related limit switches associated with these valves. Based on the current Technical Specifications, operations could continue for a period of 7 days based on the inoperability of either a stem mounted limit switch, or an acoustical monitor. If both of these indicators were inoperable, operations could continue for a period of time not to exceed 48 hours. If, the required number of channels or minimum operable channels are not restored within these time frames, the unit will be placed in Mode 4 within the next 12 hours. The proposed changes will allow operations to continue for a period of time not to exceed 48 hours based on the inoperability of the stem mounted limit switch alone. If, the required number of channels (same as the minimum operable number) are not restored within this time frame, the unit will be placed in Mode 4 within the next 12 hours. In the event that the acoustical monitor is inoperable, the actions required will [remain] the same. As such, it can be concluded that the restoration time frame for an inoperable limit switch is the same in the proposed change, is the same as the current Technical Specifications assuming loss of the acoustic monitor. Regarding the PZR PORV Block Valve Position Indicators, valve position indication will be available from the safety related limit switches associated with these valves. Based on the current Technical Specifications, operations could continue for a period of 7 days based on the inoperability of a stem mounted limit switch. If the required number of channels is not restored within this time frame, the unit will be placed in Mode 4 within the next 12 hours. The proposed changes will allow operations to continue for a period of time not to exceed 48 hours based on the inoperability of the stem mounted limit switch. If, the required number of channels (same as the minimum operable number) are not restored within this time frame, the unit will be placed in Mode 4 within the next 12 hours. In this fashion, the margin of safety will remain the same.

MODE OF APPLICABILITY CHANGE (E)

The following No Significant Hazards Considerations addresses the addition of Mode 7 as a required mode for the accident monitoring instrumentation.

The Mode of Applicability for Specification 3.8.9, Accident Monitoring Instrumentation has been revised to include Mode 7. Generic Letter 83-37 was written to address the Modes of Applicability as defined in the Standardized Technical Specifications. Mode 7 in the Zion Station Technical Specifications is defined as; less than or equal to 5% power with reactivity and temperature stated per the specific test. This mode is synonymous with Mode 2, incorporating specified tests from the Special Test Exemptions in the Standard Technical Specifications. This change will require the Accident Monitoring Instruments to be operable in Modes 1, 2, 3, and 7.

The proposed change does not result in a significant increase in the probability or consequences of accidents previously evaluated. Mode 7 at the Zion Station is Low Power Physics Testing. Low Power Physic Testing involves operation at power levels not to exceed 5% of rated thermal power. In order to establish these conditions, the plant must transition Mode 3. In transitioning Mode 3 the plant is in a condition where the accident monitoring instruments are required to be operable. The probability for a previously evaluated accident has remained unchanged. The addition of this mode has no effect on an events or conditions that are precursors to any evaluated accidents. By assuring the operability of these instruments, in all appropriate modes, the consequences of previously evaluated accidents will remain the same.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes does not approve or result in the installation of new equipment. The proposed changes will not impose or result in plant operation that will deviate from current practices. In order to establish Mode 7, the plant must first enter Mode 3. The Accident Monitoring Instruments are currently required operable in Mode 3. As such, this change does not result in operations different from current. As such, the proposed change will not create the possibility for a new or different kind of accident from those previously evaluated.

The proposed change does not involve a significant reduction in a margin of safety. This proposed change will result in the accident monitoring instruments specified in table 3.8.9, being required to be operable in Mode 7. The inclusion of this mode provides assurance that these instruments would be maintained operable during low power physics testing. As such, the margin of safety will not be significantly reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the

amendment request involves no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: Richard J. Barrett

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: June 12, 1992

Description of amendment request: The amendment proposes that Specification 3.19 be changed to delete the requirements relating to the Iodine Removal System Hydrazine Storage Tank, T-102. In addition, it proposes that the remaining requirements of Specification 3.19 be rearranged in an updated format.

A. Item 3.19.1.a, specifying T-102 volume, concentration, and pressure requirements, should be deleted.

B. Item 3.19.1.c, specifying system operability requirements, should be revised to delete reference to T-102.

C. Table 4.2.2, items 12.b.1, and 12.b.2, specifying surveillance requirements for tank volume and concentration should be revised to delete reference to T-102.

D. Table 4.2.2, item 12.c, specifying surveillance requirements for automatic valves, should be deleted. The only automatic valves in the Iodine Removal System are those associated with T-102.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The hydrazine tank was installed solely for mitigation of the effects of a Loss of Coolant Accident (LOCA); it functions only following initiation of containment spray. Therefore, the probability of an accident will be unaffected by removal of the hydrazine tank requirements.

The function of the hydrazine tank, when it was installed, was to increase the removal of iodine from the post LOCA containment atmosphere. The presence of hydrazine in the containment spray solution has no effect on the iodine removal rate coefficients, as calculated in accordance with the current version of the Standard Review Plan.

Hydrazine, at Palisades, is not used for control of post accident pH in the containment pump. Sodium hydroxide is added to the post accident solution in the containment sump. Removal of the hydrazine tank will not affect the functioning of the sodium hydroxide tank. Therefore, the consequences of an accident are not increased due to the removal of the Hydrazine Tank.

Therefore, operation of the facility in accordance with the proposed change to the Technical Specifications would not 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 previously evaluated.

The hydrazine addition tank was required only as an aid to removal of iodine from the post LOCA containment atmosphere. It has no function in preventing occurrence of any accident. Deletion of the requirements for the hydrazine tank, and subsequent removal of the tank and associated piping, will not introduce any new operation conditions. It will not affect the capacity, functioning, or settings of any other equipment.

Therefore, operation of the facility in accordance with the proposed change to the Technical Specifications would not create the possibility of a new or different kind of accident from any previously evaluated.

3.

Involve a significant reduction in a margin of safety.

The sole function of the hydrazine tank was to enhance the removal of iodine from the post LOCA containment atmosphere. Current methods used for calculation of iodine removal rates predict no such enhancement from the use of hydrazine addition. The rate of iodine removal, calculated using the methodology of the current revision of the SRP, would be higher than the removal rate, calculated by older methodology, which was found to be acceptable in the Safety Evaluation Report for Amendment 31 to the Palisades operating license.

Therefore, the proposed change to the Technical Specifications would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Van Wylen 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: L. B. Marsh

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: August 12, 1992

Description of amendment request: The amendment proposes that the operability requirements for the main condenser low vacuum scram function in Table 3.1.1 of the Technical Specifications be revised to more accurately reflect the as-built design of the main condenser vacuum trip system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

GPU Nuclear Corporation has determined that:

A. 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. No credit is taken for the low condenser vacuum scram in any of the transients analyzed in the [Final Safety Analysis Report] FSAR. This change does not effect previously evaluated accidents.

B. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed operability requirement will provide greater assurance that main condenser and turbine integrity is protected in a loss of vacuum event.

C. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. The proposed operability requirement for the low condenser vacuum scram trip will enhance the protection of non-safety related equipment.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, 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

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station,Unit No. 1, Washington County, Nebraska

Date of amendment request: September 20, 1991, as superseded by letter dated June 5, 1992

Description of amendment request: This amendment request was previously noticed in the **Federal Register** on January 22, 1992 (57 FR 2598). The proposed amendment to the Technical

Specifications (TS) would change the limitations associated with the Regulatory Control Element Assembly (CEA) insertion limits during hot standby and power operations for TS 2.10.2(7) and 2.10.2(7)c. The proposed amendment also modifies TS 2.10.2(9)b(i) to achieve consistency with the Combustion Engineering (CE) Standard Technical Specifications (STS) as contained in NUREG-0212, Revision 2. Omaha Public Power District (the licensee) had previously submitted an amendment request by letter dated September 20, 1991, to change the TS as above. The June 5, 1992, submittal supersedes the September 20, 1991, letter, and includes and incorporates the NRC staff comments. The licensee's analysis of no significant hazards consideration has not changed; however, it will be repeated for completeness.

Basis for proposed no significant hazards consideration determination: The first part of the proposed amendment to the TS deals with limitations associated with Regulatory CEA insertion limits. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed amendment does not involve a significant hazards consideration because the operation of Fort Calhoun Station in accordance with this amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed amendment changes the CEA long term insertion limits in the third (or longest time interval) category from "14 EFPD [effective full-power days] per calendar year" to "14 EFPD per fuel cycle." Since a fuel cycle is greater than a calendar year, the proposed changes are more conservative. Evaluation of the impact of CEA insertions on the fuel residing in the core for a given fuel cycle is also more appropriate than evaluating the insertions on a calendar year basis, which may impact two fuel cycles.

(2) Create the possibility of a new or different kind of a accident. It has been determined that a new or different type of accident is not created because no new or different modes of operation result from this change.

(3) Involve a significant reduction in the margin of safety. The CEA insertion duration limits proposed by this change are more conservative than the current Technical Specifications. Therefore, the margin of safety remains unchanged.

The second part of the proposed amendment to the TS deals with achieving consistency with the CE STS. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed amendment does not involve a significant hazards consideration because the operation of Fort Calhoun Station in accordance with this amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes result in a consistency between the Fort Calhoun Station Technical Specifications and the NUREG-0212 Revision 2 CE Standard Technical Specifications for the STS 3/4.10.1 exception on required shutdown margin during measurement of CEA worths. Maintaining an available shutdown margin equivalent to at leastthe highest estimated CEA worth during CEA worth measurement ensures the reactor can be adequately shut down if the need arises. Thus, the proposed change establishes a consistency with the STS while not significantly deviating from the existing Specifications 2.10.2(9)b(i)1 and 2.10.2(9)b(i)2 and does not increase the probability or consequences of a previously evaluated accident.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. It has been determined that a new or different type of accident is not created because no new or different modes of operation are proposed for the plant. Maintenance of an adequate available shutdown margin, defined as the reactivity equivalent to the highest estimated CEA worth, prevents possibility of a new or different kind of accident.

(3) Involve a significant reduction in a margin of safety. The available shutdown margin is allowed to be reduced for CEA measurements which confirm core design and further insure shutdown margin Mode 1 operations. The brief time period the shutdown margin is reduced is deemed acceptable as confirmed by the current allowed reduction for shutdown CEA worth measurements and also in the CE Standard Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1875 Connecticut Avenue, N.W., Washington, D.C. 20009-5728

NRC Project Director: John T. Larkins

Pennsylvania Power and Light Company, Docket No. 50-388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of amendment request: June 30, 1992 and supplemented by letter dated July 21, 1992

Description of amendment request: The proposed amendment would make changes to the Susquehanna Steam Electric Station (SSES), Unit 2 Technical Specifications in support of the ensuing Cycle 6 reload. Changes to the following Technical Specifications and bases are requested:

a. B 2.1 Safety Limits

b. 3/4.2.1 Average Planar Linear Heat Generation Rate

c. 3/4.2.2 APRM Setpoints

d. 3/4.2.3 Minimum Critical Power Ratio

e. 3/4.2.4 Linear Heat Generation Rate

f. 3/4.4.1 Recirculation System

g. B 3/4.1 Reactivity Control Systems

1h. B 3/4.2 Power Distribution Limits

i. B 3/4.4.1 Recirculation System

j. 5.3.1 Fuel Assemblies

The references discussed in the analysis below are available with the incoming application.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

No Significant Hazards Considerations

The following three questions are addressed for each of the proposed Technical Specification changes.

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

3. Does the proposed change involve a significant reduction in a margin of safety?

Specification 3/4.2.1, Average Planar Linear Heat Generation Rate

The change to this specification extends the Average Planar Linear Heat Generation Rate limits to a bundle exposure of 48,000 [Mega-watt days per metric ton] MWd/MT. The prior Average Planar Linear Heat Generation Rate limits prior to 40,000 MWd/MT are unaffected by this change.

1. No. Additional [Loss of Coolant Accident] LOCA heatup calculations were performed by [Siemans Nuclear Power] SNP, using NRC-approved methods, at exposures of 40,000 and 48,000 MWd/MT for one of the fresh fuel types to be loaded in Unit 2 Cycle 6 (U2C6). The results of these calculations showed that the [Peak Cladding Temperature] PCTs were less than 2200 °F and the [Metal-Water reaction] MWRs were less than 17% at both 40,000 and 48,000 MWd/MT. The results also showed that the calculated values at an exposure of 48,000 MWd/MT were no higher than the calculated results at an exposure of 40,000 MWd/MT. Based on the results of the SNP calculations, the extension of the Average Planar Linear Heat Generation Rate limits to an exposure of 48,000 MWd/MT does not involve a significant increase in the probability or

consequences of an accident previously evaluated.

2. No. The methodology and results described above can only be evaluated for their effect on the consequences of analyzed events; they cannot create new ones.

3. No. Based on 1. above, the methodology and results do not indicate a significant reduction in a margin of safety.

Specification 3/4.2.2, APRM Setpoints

The primary change to this specification is to add the Linear Heat Generation Rate for [Average Power Range Monitor] APRM setpoints (Figure 3.2.2-2) which are to be used for XN-1 fuel bundles. In addition, editorial changes were made to change "[Advanced Nuclear Fuels] ANF" to "SNP" and to correct words which were inadvertently reversed.

1. No. Based on the results provided in Attachment 'A' to the Reload Summary Report, the use of the new Linear Heat Generation Rate [LHGR] limits for APRM setpoints for the XN-1 fuel bundles at exposures up to 57,300 MWd/MT does not involve a significant increase in the probability or consequences of an accident previously evaluated. The extension of the LHGR for APRM setpoint limits (Figure 3.2.2-2) to 57,300 MWd/MT is necessary to support the exposure extension demonstration of the XN-1 fuel assemblies.

The editorial changes do not revise the technical methods or limits. Therefore, these changes cannot impact the probability or consequences of an accident previously evaluated.

2. No. The methodology and results described above can only be evaluated for their effect on the consequences of analyzed events; they cannot create new ones.

3. No. Based on 1, above, the methodology and results do not indicate a significant reduction in a margin of safety.

Specification 3/4.2.3, Minimum Critical Power Ratio

The changes to this specification support new [Minimum Critical Power Ratio] MCPR operating limits based on the [Pennsylvania Power and Light Company] PP&L reactor analysis methods described in Reload Summary Report Reference 3 and 7. The limits calculated for U2C6 will be a function of scram speed. The bounding analyses of the core design with the four XN-1 fuel bundles and the core design without the four XN-1 fuel bundles was chosen to develop the MCPR Operating Limits. Therefore, the requirements have been revised to reflect these bases.

1. No. The MCPR Operating Limits for U2C6 were generated using PP&L's reactor analysis methods described in PP&L reports PL-NF-87-001-A (see Reload Summary Report Reference 1), PL-NF-89-005 (see Reload Summary Report Reference 2 and 4). PL-NF-90-001 (see Reload Summary Report References 3 and 7). As a result of these analyses [the changes in] [Critical Power Ratio] CPRs were generated, and after combining with the MCPR Safety Limit as calculated by SNP, MCPR operating limits were developed as MCPR versus Percent of Rated Core Flow and MCPR versus Percent of Rated Core Thermal Power. These limits cover the allowable operating range of power and flow. As specified in PL-NF-90-001, seven major events were analyzed. These events can be divided into two categories: Core Wide Transients and Local Transients; the core wide transient events analyzed were:

1) Generator Load Rejection Without Bypass (GLRWOB),

2) Feedwater Controller Failure (FWCF),

3) Recirculation Flow Controller Failure-Increasing Flow (RFCF), and

4) Loss of Feedwater Heating (LOFWH).

As discussed in PL-NF-90-001, the other core wide transients are non-limiting (i.e., they would produce lower calculated [changes in] CPRs then one of the above four events). The local transient events analyzed were:

1) Rod Withdrawal Error (RWE), and

2) Fuel Loading Error (FLE).

The fuel loading error evaluation includes analysis of both rotated and mislocated fuel assemblies.

Sufficient analyses were performed to define the MCPR operating limits as a function of core power, core flow, and scram speed. These limits were also determined for three plant equipment availability conditions:

1) Main Turbine Bypass and EOC-RPT operable,

2) Main Turbine Bypass inoperable, and

3) EOC-RPT inoperable.

Core-Wide Transients

The PP&L RETRAN model and methods described in PL-NF-89-005 (see Reload Summary Report Reference[s] 2 and 4), PL-NF-90-001 (see Reload Summary Report Reference[s] 3 and 7), were used to analyze the GLRWOB, FWCF, and RFCF events. The [changes in] CPRs were evaluated using the XN-3 Critical Power Correlation (see Relaod Summary Report Reference 26) consistent with the methods described in PL-NF-90-001. The GLRWOB and FWCF events were analyzed based on an average scram speed of 4.4 feet/second and the minimum allowed Technical Specification scram speed. Thus, given that these two events are limiting, the Technical Specification power dependent MCPR operating limits determined for U2C6 will be a function of scram speed for the three plant equipment availability conditions as discussed above. The RFCF event was conservatively analyzed at the Technical Specification scram speed. The RFCF event is the limiting event in determining the Technical Specification flow dependent MCPR operating limits for U2C6. The [changes in] CPR results for the GLRWOB, FWCF, and RFCF are provided in Reload Summary Report Tables 2, 3, and 4, respectively.

The LOFWH event was conservatively analyzed by PP&L using the stead[y] state core physics methods described in PL-NF-90-001 and Reload Summary Report Reference 7. The [change in] CPR calculated for the LOFWH event is 0.11 and is bounded by the results of the other three core-wide transients.

Local Transients

The RWE and FLE (rotated and mislocated bundle) were analyzed using the methodology described in PL-NF-87-001-A (see Reload Summary Report Reference 1), PL-NF-90-001 (see Reload Summary Report, Reference[s] 3 and 7). The [change in] CPR resulting from the RWE analysis (based on a Rod Block Monitor setpoint of 108%) and the [changes in] CPRs resulting from the FLE analyzes are provided in Reload Summary Report Table 5. The results of these events are bounded by those of the GLRWOB, and thus these events are non-limiting for U2C6.

Based on the above, the methodology used to develop the new MCPR operating limits for the Technical Specifications does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. No. The methodology and results described above can only be evaluated for their effect on the consequences of analyzed events; they cannot create new ones. The consequences of analyzed events were evaluated in 1. above.

3. No. Based on 1. above, the methodology used to generate the MCPR operating limits for U2C6 is both sufficient and conservative.

Specification 3/4.2.4, Linear Heat Generation Rate

The primary change to this specification is to add the Linear Heat Generation Rate (Figure 3.2.4-2) which is to be used for the XN-1 fuel bundles. In addition, editorial changes were made to change "ANF" references to "SNP."

1. No. Based on the results provided in Attachment 'A' to the Reload Summary Report, the use of the new Linear Heat Generation Rate limits for XN-1 fuel bundles at exposures up to 57,300 MWd/MT does not involve a significant increase in the probability of consequences of an accident previously evaluated. The extension of the LHGR limits to 57,300 MWd/MT is necessary to support the exposure extension demonstration of the XN-1 fuel bundles.

The editorial changes do not revise the technical methods or limits. Therefore, these changes cannot impact the probability or consequences of an accident previously evaluated.

2. No. The methodology and results described above can only be evaluated for their effect on the consequences of analyzed events; they cannot create new ones.

3. No. Based on 1. above, the methodology and results do not indicate a significant reduction in a margin of safety.

Specification 3/4.4.1, Recirculation System (Two Loop Operation)

The changes to this specification (i.e., Figure 3.4.1.1.1-1) reflect the results of cycle-specific stability analysis.

1. No. The stability operating regions which will be used for Unit 2 Cycle 6 are the same as described in Attachment 1 to the interim requirements of NRC Bulletin No. 88-07, Supplement 1 "Power Oscillations in Boiling Water Reactors," (see Reload Summary Report, Reference 18). As in the previous cycle, Regions B and C of the NRC Bulletin have been combined into a single region (i.e., Region II), and Region A of the NRC Bulletin corresponds to Region I.

In addition to the region definitions, PP&L has performed stability tests in SSES Unit 2 over the course of Cycles 2, 3, and 4 to

demonstrate stable reactor operation with SNP 9X9 fuel. The test conditions covered a range from a mixed core of SNP 9X9 and GE 8X8R fuel (Cycles 2 and 3) to a full core of SNP 9X9 fuel (Cycle 4). Reload Summary Report Reference[s] 19 provided an NRC evaluation of the test data and concluded that the use of 9X9 fuel does not produce significant changes in stability behavior as compared to [Boiling Water Reactor] BWRs loaded with standard 8X8 fuel.

Based on the above, operation within the limits specified by the proposed changes will ensure that the probability and consequences of unstable operation will not significantly increase.

2. No. The methodology described above can only be evaluated for its effect on the consequences of unstable operation; it cannot create new events. The consequences were evaluated in 1. above.

3. No. PP&L believes that the use of Technical Specifications that comply with NRC Bulletin 88-07, Supplement 1, and the tests and analyses described above, provide assurance that SSES Unit 2

Cycle 6 will comply with General Design criteria 12, Suppression of Reactor Pool Oscillations. Therefore, no margin of safety will be significantly reduced as a result of the proposed changes.

Specification 3/4.4.1, Recirculation System (Single Loop Operation)

The changes to this specification are evaluated above. The changes to the single loop limits for Specification 3.2.3 are the result of the MCPR operating limit analyses evaluated above.

1. No. The changes are evaluated elsewhere in the No Significant Hazards Consideration evaluation.

2. No. See 1. above.

3. No. See 1. above.

Specification 5.3.1, Fuel Assemblies

The change to this specification is to reflect that the U2C6 core will contain only 9X9 fuel assemblies, which contain 79 fuel rods and 2 Zircaloy-2 water rods.

1.No. The changes are editorial to reflect the configuration of the Unit 2 Cycle 6 core, i.e., all 9X9 fuel assemblies which contain 79 fuel rods and 2 Zircaloy-2 water rods. The changes cannot impact the probability or consequences of any previously evaluated event.

2. No. See 1. above.

3. No. See 1. above.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, D.C. 20037

NRC Project Director: Charles L. Miller

Pennsylvania Power and Light Company, Docket No. 50-388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of amendment request: August 19, 1992

Description of amendment request: This amendment would make changes to the Technical Specifications to revise the logic which controls the automatic transfer of the High Pressure Coolant Injection (HPCI) pump suction source on high suppression pool level.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

All pertinent [Final Safety Analysis Report] FSAR and [Design Analysis Report] DAR evaluations were reexamined based on the proposed modification. The probability of a failure of the new relay has been minimized by the use of the same type already in use in Engineered Safety Feature control systems. Further, its operability will be confirmed through periodic testing. A probabilistic evaluation based on a review of reliability studies performed for the Susquehanna [Individual Plant Evaluation] IPE considered failures of the F042 and F006 valves to open. This evaluation determined that the increase in failure rate due to the addition of the relay falls within the error band of the predicted failure rate of the valves without the additional relay installed. The new relay has no interconnections with any other components which could impact safety. Therefore, the proposed change will not significantly increase the probability of previously evaluated events.

With regard to the consequences of previously evaluated events, as stated earlier, HPCI failure is bounded by the operation of [Automatic Depressurization System] ADS by design. If rather than HPCI failure, a pipe break is assumed while HPCI is aligned for pressure control with suppression pool level potentially greater than 24 feet, the resulting loads on safety-related components and structures are bounded by existing analysis as discussed previously. Based on the above, the consequences are bounded by existing analysis, and therefore, do not constitute any increase in the consequences of previously evaluated events.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Postulated failures of the new design, as described above, could result in the loss of the HPCI [Emergency Core Cooling System] ECCS function. However, the ADS system exists as part of the design basis for this purpose. Other failures postulated while HPCI is operating in pressure control mode are bounded by previously evaluated events as described in 1. above. Therefore, the proposed change will not create the possibility of a new or different kind of event.

3. Involve a significant reduction in a margin of safety.

The motivation for proposing this modification is to improve the operators' ability to control level and pressure in the reactor after an [Main Steam Isolation Valve] MSIV closure event. [Pennsylvania Power & Light Company] PP&L believes this will improve the safe operation of Susquehanna SES. It will not significantly reduce any margin of safety because:

° It will continue to ensure that HPCI realigns to the suppression pool for HPCI injection if suppression pool level approaches the Technical Specification limit and injection into the vessel is required.

° Failure of the new relay will prevent the above realignment when required, but other single failures exist which can create this effect, and we have determined that the increase in failure rate due to the new relay is within the error band of the currently predicted failure rate (without the relay installed).

° When HPCI is in pressure control mode the change does not prevent operation of suppression pool level above the Technical Specification limit as long as HPCI is not required to inject. However, based on consideration of worst case single failures while in pressure control mode, it is concluded that the impact of such events on containment analysis results is bounded by previous analysis.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, D.C. 20037

NRC Project Director: Charles L. Miller

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: September 1, 1992

Description of amendment request: The amendments would change the technical specifications (TSs) to facilitate operation of the Limerick Generating Station (LGS), Units 1 and 2, in a 24-month fuel cycle. The 24- month refueling cycle will require numerous

revisions to the TSs to change the current 18-month TS surveillance testing interval to a 24-month testing interval. This amendment application is the second of three applications being submitted to the NRC to support the proposed changeover to a 24-month fuel cycle. The first application was submitted May 8, 1991 and May 15, 1992, noticed in the **Federal Register** on June 10, 1992 (57 FR 24675), and approved by Amendment Nos. 56 and 21 dated August 20, 1992. In the applications, the licensee stated that "These TS changes were evaluated in accordance with the guidance provided in NRC Generic Letter (GL) No. 91-04, 'Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle'" dated April 2, 1991.

The subject application involves proposed changes to the TS surveillance intervals for non-instrumentation (i.e., non-instrument calibration) TS line items (e.g., pump, valve and flow testing, logic system functional testing, response time testing, etc.). Proposed changes to TS surveillance intervals for instrument calibrations and the remaining TS line items to support a 24-month refueling cycle will be requested in a separate, forthcoming (i.e., third) application.

The proposed TS changes generically involve changing the surveillance test interval, typically stated as "at least once per 18 months," to "at least once per 24 months." The proposed TS changes also involve specific additional changes to certain Surveillance Requirements (SRs) that are required because of the change to 24-month refueling cycles, e.g., a change to the percent sampling required, or a change to the total number of years over which sampling occurs. In addition, the proposed TS changes involve a change to certain TS, SRs or associated bases that indicate conformance to a specific Regulatory Guide (RG) related to the system being tested, i.e., the proposed change would indicate that the change to a 24-month testing interval would be an exception to the 18-month testing interval guidance provided in the RG.

The proposed TS changes only involve a change to the surveillance intervals; there are no changes to the SRs themselves with the exceptions indicated above which do not change the overall requirement. Additionally, the proposed TS changes do not change the way in which the surveillances are performed. Also, the proposed changes do not involve any physicalchanges to plant systems or components. For a detailed description and discussion of each proposed change, the reader is referred to the licensee's application.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes involved a change in the surveillance testing intervals to facilitate the current change in the LGS Unit 1 and Unit 2 refueling cycles from 18 months to 24 months. The proposed TS changes do not physically impact the plant nor do they impact any design or functional requirements of the associated systems. That is, the proposed TS changes do not degrade the performance or increase the challenges of any safety systems assumed to function in the accident analysis. The proposed TS changes do not impact the TS surveillance requirements themselves, other than the frequency, nor the way in which the surveillance[s] are performed. Additionally, the proposed TS changes do not introduce any new accident initiators since no accidents previously evaluated have as their initiators anything related to the change in the frequency of surveillance testing. Also, the proposed TS changes do not affect the availability of equipment or systems required to mitigate the consequences of an accident because of other, more frequent testing and/or the availability of redundant systems or equipment. Furthermore, an historical review of surveillance test results indicated that any failures identified were unique, non-repetitive, and not related to any time-based failure modes, and that there was no evidence of any failures that would invalidate the above conclusions. Therefore, the proposed TS changes do not increase the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes involve a change in the surveillance testing intervals to facilitate the current change in the LGS Unit 1 and Unit 2 refueling cycles from 18 months to 24 months. The proposed TS changes do not introduce nor increase the number of failure mechanisms of a new different type than those previously evaluated since there are no physical changes being made to the facility. Additionally, the surveillance test requirements themselves, other than the frequency, and the way surveillance tests are performed will remain unchanged. Furthermore, an historical review of surveillance test results indicated there was no evidence of any failures that would invalidate the above conclusions. Therefore, the proposed TS changes do not create the possibility of a new or difference kind of accident from any previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

Although the proposed TS changes will result in an increase in the interval between surveillance tests, the impact on system availability, if any, is small based on other, more frequent testing or redundant systems or equipment. Furthermore, a review of surveillance test history demonstrated that there is no evidence of any failures that would impact the availability of the systems. Accordingly the assumptions in the plant licensing basis are not impacted, and therefore the proposed TS changes do not reduce the margin of safety of the affected equipment/components.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Charles L. Miller

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: August 10, 1992

Description of amendment request: The proposed amendment to the James A. FitzPatrick Radiological Effluent Technical Specifications would change the offgas system steam dilution flow isolation setpoints. The proposed changes would increase the offgas dilution steam low flow and high flow isolation setpoints to 6300 pounds per hour and 7900 pounds per hour, respectively. The proposed steam dilution low setpoint is designed to ensure adequate steam flow through the recombiner during normal plant operation to prevent overheating or ignition of the catalyst. The proposed steam dilution high setpoint is designed to provide recombiner isolation in the event of a break as described in the Final Safety Analysis Report (FSAR). The associated Bases will also be revised to describe more accurately the offgas steam dilution function.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined 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 offgas system is not used to mitigate any of the transients or the accidents described in the FSAR. The proposed change increases the offgas dilution steam low flow and high flow setpoints to greater than or equal to 6300 and less than or equal to 7900 pounds per hour respectively. The proposed setpoints do not change the normal operation of the system. The proposed steam dilution low setpoint will continue to ensure adequate steam flow through the recombiner during normal plant operation to prevent overheating or ignition of the catalyst. The proposed low setpoint follows the guidance provided in [General Electric Service Information Letter] GE SIL 150, Rev. 2. which recommends that the low flow setpoint be set at a value no lower than 92% of the design steam flow required to keep the process below the flammability limit. In addition, this value is conservative for both the current licensed power level and for the planned power uprate. The proposed steam dilution high setpoint will continue to provide recombiner isolation in the event of a break as described in the FSAR. If a postulated break occurs, the difference of the release between the old and new setpoint will be negligible. The proposed change does not 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.

The proposed changes involve changing the instrument setpoints but do not change the operation of the offgas system or the ability of the recombiner to perform its intended function. The proposed changes will ensure sufficient steam to prevent overheating the recombiner catalyst as well as isolation and pipe break detection. The changes do not introduce new equipment or any new failure modes to the plant. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. involve a significant reduction in a margin of safety.

Increasing the existing low and high dilution flow setpoints will provide an adequate window for normal plant operation. The proposed changes will ensure that existing margin of safety will be maintained. The offgas system will continue to meet all of its safety design bases as described in the FSAR. Changing the setpoints values will ensure safe plant operation since the probability of hydrogen combustion within the offgas system remains unchanged and within acceptable levels. In addition, the isolation function will continue to be provided by the revised setpoints. The proposed setpoints will ensure an adequate operational band when instrument uncertainty is considered. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: June 16, 1992

Description of amendment request: The proposed amendment would issue a one-time schedular exemption to Technical Specification (TS) Surveillance Requirement 4.6.1.2.a and its associated Bases, that requires three Type A Containment Integrated Leakage Rate Tests (CILRT) be performed at 40 + 10 month intervals during each 10-year service period. This one-time schedular exemption would allow the third test of the first 10-year service period to be performed during Refuel 7 at approximately a 53-month interval instead of the current maximum interval of 50 months and would extend the first 10-year service period by approximately 14 months.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed exemption to Technical Specification Surveillance Requirement 4.6.1.2.a does not involve a significant hazards consideration because operation of Callaway Plant with this exemption would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. This exemption applies to the integrated leak rate test and does not affect the local leak rate testing of containment penetrations and isolation valves where the majority of the leakage occurs. The allowable containment leakage used in accident analysis of offsite doses, $_a$ is 0.2 wt.%/day and for conservatism the leakage is limited to 75% $_a$ to account for possible degradation of the containment leakage barriers between tests. Based on the "as-left" leakage data from the past two CILRTs, the additional time period added to the testing interval would not adversely impact the containment leakage barriers to where degradation would cause leakage to exceed that assumed in accident analysis.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated. There are no design changes being made that would create a new type of accident or malfunction and the method and manner of plant operation remain unchanged. The change to the Surveillance Requirement is a one-time exemption to extend the surveillance interval for performance of the third CILRT.

3. Involve a significant reduction in a margin of safety. There are no changes being made to the safety limits or safety system settings that would adversely impact plant safety. The change is a one-time exemption to extend the time interval for performing a CILRT approximately 3 months beyond the current maximum interval. This change does not reduce any technical specification margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, DC 20037

NRC Project Director: John N. Hannon

Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station (YNPS), Franklin County, Massachusetts

Date of amendment request: August 27, 1992

Description of amendment request: The proposed amendment would move the Radiological Effluent Technical Specifications from the facility Technical Specifications to the Offsite Dose Calculation Manual (ODCM) and the Process Control Program (PCP). In addition, programmatic controls will be added to the Administrative Controls section of the Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes have been evaluated and determined to present no significant hazards. The modifications to the Technical Specification, ODCM, and PCP documents:

(1) Do not involve a significant increase in the probability or consequence of an accident previously evaluated. The radioactive

effluent and radiological environmental monitoring systems and equipment are not being changed. The proposed changes involve only the way such systems and equipment will be controlled.

(2) Do not create the possibility of a new or different type of accident from any accident previously evaluated. The radioactive effluent and radiological environmental monitoring systems and equipment are not being changed.

The proposed changes involve only the way such systems and equipment will be controlled.

(3) Do not involve a significant reduction in the margin of safety. There are no changes being made to systems or equipment. The changes being made are administrative in nature.

Based on the considerations contained herein, there is reasonable assurance that maintenance of YNPS consistent with the proposed changes will not endanger the health and safety of the public. This proposed change has been reviewed by the Plant Operations and Review Committee and the Nuclear Safety Audit and Review Committee.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301

Attorney for licensee: Thomas Dignan, Esquire, Ropes and Gray, One International Place, Boston, Massachusetts 02110-2624

NRC Project Director: Seymour H. Weiss

Previously Published Notices Of Consideration Of Issuance Of Amendments To Operating Licenses And Proposed No Significant Hazards Consideratinn Determination And Opportunity For Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: August 24, 1992

Description of amendment request: The proposed amendment would change the repair criteria for the Unit 1 Steam Generators for Catawba Unit 1 Cycle 7 operation. The amendment would modify Technical Specifications 3/4.4.5, Steam Generators, and 3/4.4.6, Reactor Coolant System Leakage, along with their associated Bases, to allow use of an interim tube plugging criteria, which will utilize a bobbin probe voltage-based plugging criteria.Date of publication of individual notice in Federal Register:August 28, 1992 (57 FR 39250)

Expiration date of individual notice: September 28, 1992

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: January 9, 1991, and its supplements dated August 19, 1991, June 22, 1992, and August 3, 1992.I11.T3Brief description of amendment request: The amendment would make changes to the technical specifications to prevent inadvertent isolation of the Reactor Water Cleanup System due to high seasonal temperatures while still providing timely leak detection capability.Date of publication of individual notice in **Federal Register:** September 1, 1992 (57 FR 39713)

Expiration date of individual notice: October 1, 1992

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

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, D.C., 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.

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: February 27, 1992

Brief description of amendment: The amendment modifies the auxiliary feedwater system Surveillance Requirement 4.7.1.2.1 and Bases section B3/4.7.1.2 to add full flow surveillance test capability for both the motor-driven AFW pumps, provide consistent motor-driven and turbine-driven AFW pump surveillance test acceptance criteria, acknowledge a revised AFW design flow, and provide consistent application of and reference to the non-applicability of Technical Specification 4.0.4 for the turbine-driven AFW pump.

Date of issuance: September 2, 1992

Effective date: September 2, 1992
Amendment No. 29
Facility Operating License No. NPF-63. Amendment revises the Technical Specifications.
Date of initial notice in **Federal Register:** April 1, 1992 (57 FR 11105) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 2, 1992. No significant hazards consideration comments received: No
Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: March 10, as revised May 11, 1992, and July 10, 1992
Brief description of amendment: The amendment changes the TS to: (1) increase the boron concentration in the refueling water storage tank and the safety injection system accumulators from 2000-2200 ppmB to 2400-2600 ppmB, (2) increase the specified volume of NaOH in the spray additive tank from 2736-2912 gallons to 3268-3964 gallons and add the level range of 92-96 percent, (3) change the level of boric acid in the boric acid tank from 60 percent (21,400 gallons) to 74 percent (24,150 gallons) in Modes 5-6, and (4) reference the Core Operating Limits Report for determining the necessary reactor coolant system and refueling canal boron concentration.
Date of issuance: September 2, 1992.
Effective date: September 2, 1992.
Amendment No. 30
Facility Operating License No. NPF-63. Amendment revises the Technical Specifications.
Date of initial notice in **Federal Register:** April 15, 1992 (57 FR 13128) and August 5, 1992 (57 FR 34580) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 2, 1992.No significant hazards consideration comments received: No
Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois; Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: March 31, 1992
Brief description of amendments: Revision of Technical Specifications to add an NRC-approved Topical Report to the list of analytical methods for determining the Cycle Specific Limits in the Core Operating Limits Report.
Date of issuance: August 21, 1992
Effective date: August 21, 1992
Amendment Nos.: 136, 132, 84, and 68
Facility Operating License Nos. DPR-29, DPR-30, NPF-11 and NPF-18. The amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** April 29, 1992 (57 FR 18171)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 21, 1992. No significant hazards consideration comments received: No
Local Public Document Room location: For Quad Cities, the Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021; and for LaSalle the Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: May 22, 1991
Brief description of amendments: The amendments change the Technical Specifications (TS) by removing the TS on radioactive effluents and radiological environmental monitoring and adding controls to include them in the Offsite Dose Calculation Manual (ODCM). Specifications on radioactive wastes will be relocated to the Process Control Program (PCP). These revisions are in response to Generic Letter 89-01, dated January 31, 1989. Various administrative changes were also made to indicate specification sections that have been deleted and are not being used.
Date of issuance: September 1, 1992
Effective date: Immediately, to be implemented within 30 days.
Amendment Nos.: 85 and 69
Facility Operating License Nos. NPF-11 and NPF-18. The amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** July 10, 1991 (56 FR 31431)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 1, 1992. No significant hazards consideration comments received: No
Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: January 21, 1992
Brief description of amendments: Changes the Technical Specifications to allow 14 days before shutdown upon failure of the high pressure flow test of the High Pressure Core Injection or the Reactor Core Isolation Cooling systems.
Date of issuance: August 27, 1992
Effective date: August 27, 1992
Amendment Nos.: 137 and 133
Facility Operating License Nos. DPR-29 and DPR-30. The amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** February 19, 1992 (57 FR 6036)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 27, 1992. No significant hazards consideration comments received: No
Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut, and Northeast Nuclear Energy Company, Docket Nos. 50-245, 50-336, and 50-423, Millstone Nuclear Power Station, Unit Nos. 1, 2 and 3, New London County, Connecticut

Date of application for amendments: February 25, 1992, as supplemented March 18, 1992.
Brief description of amendments: The amendments revise the Administrative Controls, Section 6, of the Technical Specifications to reflect recent organizational and administrative title changes at the facilities, clarify the responsibilities of the onsite review groups and increase the quorum of the Millstone Site Operations Review Committee.

Date of issuance: August 28, 1992
Effective date: August 28, 1992
Amendment Nos.: 155 - Haddam Neck, 58, 163, 69 - Millstone Units 1,2,3
Facility Operating License Nos. DPR-61, DPR-21, DPR-65, NPF-49. Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** April 1, 1992 (57 FR 11106) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 28. 1992.No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457, for the Haddam Neck Plant; Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360, for Millstone 1, 2 and 3.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: July 31, 1989

Brief description of amendment: This amendment revises

Facility Operating License No. DPR-20 by adding a new license condition in Section 2.C.(3), removes fire protection TS 3.22, 4.17, 6.2.2.c and 6.4.2 and revises TS 4.2.2 and 6.5.2.4.1. Generic Letter 86-10, dated April 24, 1986 and Generic Letter 88-12, dated August 2, 1988, provided guidance to licensees for removal of the fire protection TS. This amendment is in response to these Generic Letters.

Date of issuance: August 21; 1992

Effective date: August 21, 1992

Amendment No.: 152

Facility Operating License No. DPR-20. The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** September 6, 1989 (54 FR 37044)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 21, 1992.No significant hazards consideration comments received: No.

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: January 30, 1992

Brief description of amendment: The amendment revises Technical Specification (TS) Tables 3.4.3.2-1 and 3.4.3.2-2 to remove two valves from the listing of Rector Coolant System Pressure Isolation Valves. These valves will remain in TS Table 3.6.3-1, "Primary Containment Isolation Valves."

Date of issuance: July 31, 1992

Effective date: This license amendment is effective as of the date of its issuance with full implementation within 45 days.

Amendment No.: 85

Facility Operating License No. NPF-43. The amendment revises the Technical Specifications

Date of initial notice in **Federal Register:** May 27, 1992 (57 FR 22261)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 31, 1992.No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Duke Power Company, Docket Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina

Date of application for amendments: May 20, 1992

Brief description of amendments: The amendments to the Technical Specifications would allow a one-time extension of the outage time for each 125 VDC battery and associated distribution center servicing the 230 kV switchyard. The extension would allow battery replacement without shutdown of the three Oconee nuclear plants.

Date of issuance: August 26, 1992

Effective date: August 26, 1992

Amendment Nos.: 196, 196, and 193

Facility Operating License Nos. DPR-38, DPR-47 and DPR-55. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 24, 1992 (57 FR 28199)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 26, 1992, and in an Environmental Assessment dated August 19, 1992.No significant hazards consideration comments received: No.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Entergy Operations, Inc., Docket No. 50-382, Waterford Steam ElectricStation, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: May 11, 1992

Brief description of amendment: The amendment revised the Technical Specifications for Engineered Safety Features Actuation Instrumentation and A.C. Sources-Operating to adjust the degraded voltage protection relay setpoints.

Date of issuance: August 24, 1992

Effective date: August 24, 1992

Amendment No.: 74

Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 24, 1992 (57 FR 28200)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 24, 1992.No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Entergy Operations, Inc., Docket No. 50-382, Waterford Steam ElectricStation, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: May 5, 1992, as supplemented July 23, 1992

Brief description of amendment: The amendment revised the Technical Specifications (TS) by removing the component lists "Secondary Containment Bypass Leakage Paths," "Containment Isolation Valves," "Containment Penetration Conductor Overcurrent Protective Devices," and "Motor-Operated Valves Thermal Overload Protection and/or Bypass Devices" from the TS. This removal implements the staff's recommendations contained in NRC Generic Letter 91-08.

Date of issuance: August 25, 1992

Effective date: August 25, 1992

Amendment No.: 75

Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 8, 1992 (57 FR 30248) The additional information contained in the supplemental letter dated July 23, 1992, was clarifying in nature and thus, within the scope of the initial notice and did not affect the staff's proposed no significant hazards consideration.The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 25, 1992.No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122. 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: May 26, 1992, as supplemented by letter dated June 3, 1992.

Brief description of amendments: The amendments change the Technical Specifications in Sections 3/4.9 and 5.6 related to the prevention of criticality in the spent fuel pool. The revised specifications introduce a required boron concentration in the spent fuel pool during refueling operations and define categories of fuel assemblies based upon enrichment, burnup, and presence of burnable poisons. The allowable arrangement of assemblies within the spent fuel pool is determined as a function of the defined categories.

Date of issuance: August 25, 1992

Effective date: August 25, 1992, to be implemented within 10 days of issuance.

Amendment Nos.: Amendment Nos. 43 and 32.

Facility Operating License Nos. NPF-76 and NPF-80: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 22, 1992 (57 FR 32572)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 25, 1992.No significant hazards consideration comments received: No.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488

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: June 19, 1992

Brief description of amendments: The amendment revises Technical Specifications 3/4.7.9 related to the schedule for snubber visual inspections. The changes are in accordance with the guidance provided in Generic Letter 90-09, "Alternate Requirements for Snubber Visual Inspection Intervals and Corrective Actions."

Date of issuance: August 27, 1992

Effective date: August 27, 1992, to be implemented within 10 days of issuance.

Amendment Nos.: Amendment Nos. 44 and 33.

Facility Operating License Nos. NPF-76 and NPF-80: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 22, 1992 (57 FR 32573)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 27, 1992.No significant hazards consideration comments received: No.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461 Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: July 11, 1990, as supplemented May 7, 1991

Description of amendment request: The amendment revised Technical Specifications (TS) in response to NRC Generic Letter GL) 88-01 by changing Section 4.0.5, Surveillance Requirements for Inservice Inspection andTesting; Section 3/4.4.3.1, Reactor Coolant System Leakage Detection Systems Section, and Bases; and, 3/4.4.3.2, Operational Leakage and Bases. The revisions added a commitment to perform the Inservice Inspection Program for piping as identified in GL 88-01, changed the actions for out of service leakage detection systems, and added Limiting Conditions for Operation and Action Statements for sudden increases in Reactor Coolant System leakage.

Date of issuance: August 21, 1992

Effective date: August 21, 1992

Amendment No.: 65

Facility Operating License No. NPF-62. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 5, 1990 (55 FR 36345) and February 5, 1992 (57 FR 4488). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 21, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy, Center, Linn County, Iowa

Date of application for amendment: February 18, 1992

Brief description of amendment: The amendment changed the Technical Specifications by revising the setpoints for isolation of the High Pressure Coolant Injection and Reactor Core Isolation Cooling systems on a high steam flow condition.

Date of issuance: August 25, 1992

Effective date: August 25, 1992

Amendment No.: 187

Facility Operating License No. DPR-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 18, 1992 (57 FR 9446)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 25, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S. E., Cedar Rapids, Iowa 52401.

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: March 24, 1992

Brief description of amendment: This amendment 1) increases the fuel enrichment limit from a maximum nominal value of 3.70 weight percent U-235, to a maximum value of 3.95 weight percent U-235 radially averaged within any axial enrichment zone, and 2) changes the nominal active fuel length from 136.7 inches, to a range of 136 to 137 inches.

Date of issuance: September 3, 1992

Effective date: September 3, 1992

Amendment No.: 133

Facility Operating License No. DPR-36: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 29, 1992 (57 FR 18175)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 3, 1992.No significant hazards consideration comments received: No

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578.

North Atlantic Energy Service Corporation, Docket No. 50-443, SeabrookStation, Rockingham County, New Hampshire

Date of application for amendment: June 11, 1992

Brief description of amendment: This amendment would change the Seabrook Station Technical Specifications (TS) to implement the guidance of NRC Generic Letter (GL) 91-08, "Removal of Component Lists from Technical Specifications". The guidance of GL 91-08 is implemented by removing the listing of Secondary Containment Bypass Leakage Paths (Table 3.6-1) from TS. The listing of leak paths will instead be included in the licensee's Technical Requirements Manual and the Final Safety Analysis Report. Additionally, TS 3.6.3 is revised to permit locked or sealed closed containment isolation valves to be opened on an intermittent basis under administrative control.

Date of issuance: August 27, 1992

Effective date: August 27, 1992

Amendment No.: 14

Facility Operating License No. NPF-86: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 8, 1992 (57 FR 30259)The Commission's related evaluation of the

amendment is contained in a Safety Evaluation dated August 27, 1992.No significant hazards consideration comments received: No

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

North Atlantic Energy Service Corporation, Docket No. 50-443, Seabrook Station, Rockingham County, New Hampshire

Date of application for amendment: May 5, 1992

Brief description of amendment: This amendment changes the Seabrook Station Technical Specifications to allow a relaxation in the pressurizer safety valve (PSV) and main steam safety valve (MSSV) setpoint tolerances to +3%. The +3% tolerance is used for the "as found" acceptance criteria for additional valve testing.

Date of issuance: September 3, 1992

Effective date: September 3, 1992

Amendment No.: 15

Facility Operating License No. NPF-86: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 10, 1992 (57 FR 24677)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 3, 1992.No significant hazards consideration comments received: No

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: March 18, 1991, as supplemented December 23, 1991

Brief description of amendment: The amendment incorporates into the Technical Specifications additional fire detection and suppression systems resulting from various 10 CFR 50, Appendix R, modifications, design changes, and other changes, including changes to correct errors in the Technical Specifications and to provide consistency with those changes made in response to Generic Letter 87-09 and Amendment No. 151, as described in the licensee's submittal.

Date of issuance: August 26, 1992

Effective date: August 26, 1992

Amendment No.: 162

Facility Operating License No. DPR-65. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 1, 1991 (56 FR 20041)The December 23, 1991, submittal provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 26, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County,Minnesota

Date of application for amendments: June 15, 1992

Brief description of amendments: The amendments consist of changes to the Technical Specifications in response to your application dated June 15, 1992. The application requests changes that would implement Generic Letter 87-09 provisions relating to missed surveillances and applicability of action requirements.

Date of issuance: August 20, 1992

Effective date: August 20, 1992

Amendment Nos.: 101 and 94

Facility Operating License Nos. DPR-42 and DPR-60. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 8, 1992 (57 FR 30254) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 20, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: May 8, 1991, as supplemented by letter dated May 15, 1992

Brief description of amendments: The amendments changed the Technical Specifications to 1) revise the channel calibration frequency for the peak acceleration seismic monitoring recorder mounted on the reactor vessel head flange from 18 to 24 months and 2) revise the frequency of surveillance testing of the main steam safety relief valves from 18 to 24 months.

Date of issuance: August 20, 1992

Effective date: August 20, 1992Amendment Nos. 56 and 21

Facility Operating License Nos. NPF-39 and NPF-85. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 10, 1992 (57 FR 24675)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 20, 1992.No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Portland General Electric Company, et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: June 26, 1992

Brief description of amendment: The amendment revises Technical Specification Section 6.0, "Administrative Controls," to clarify the responsibilities of the Vice President and Chief Nuclear Officer and responsibilities of the Vice President, Nuclear. Additionally, the amendment corrects editorial errors. These errors consisted of misspelled words, improper capitalization of terms, omitted words, an omitted definition, improper punctuation, and errors introduced by overlapping amendments. The application for amendment was designated as LCA 222.

Date of issuance: August 26, 1992

Effective date: August 26, 1992

Amendment No.: 187

Facility Operating License No. NPF-1: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 22, 1992 (57 FR 32575)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 26, 1992.No significant hazards consideration comments received: No.

Local Public Document Room location: Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: May 19, 1992

Brief description of amendment: Allows an exception to the Technical Specification 4.0.4 Surveillance requirements for the Intermediate Range Monitors (IRMs) and Source Range Monitors (SRMs) when Operational

Condition 2 or 3 is entered from Operational Condition 1.

Date of issuance: August 24, 1992

Effective date: August 24, 1992

Amendment No.: 54

Facility Operating License No. NPF-57: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 10, 1992 (57 FR 24678)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 24, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of application for amendment: April 6, 1992

Brief description of amendment: The amendment extends the maximum interval between steam generator tube inspections from 24 to 28 months for the inspection interval ending in 1992.

Date of issuance: August 26, 1992

Effective date: August 26, 1992

Amendment No.: 149

Facility Operating License No. DPR-13: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 27, 1992 (57 FR 22265)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 26, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: February 2, 1990

Brief description of amendment: The amendment revised TS 3/4.3.3.6, Post-Accident Monitoring Instrumentation, by adding neutron flux (wide range) and neutron flux (source range) instrumentation to Tables 3.3-10 and 4.3-10 to reflect the appropriate surveillance requirements for the new monitors. Additionally the amendment revised TS 3/4.9.2, Refueling Operations - Instrumentation, by adding a requirement to calibrate the neutron flux monitors prior to entry into Mode 6.

Date of issuance: August 24, 1992

Effective date: August 24, 1992

Amendment No. 172

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 4, 1991 (56 FR 43813)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 24, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear PowerStation, Franklin County, Massachusetts

Date of application for amendment: February 3, 1992

Brief description of amendment: Removed the 3.25 limit on extending surveillance intervals in the Technical Specifications, following the guidance of Generic Letter 89-14.

Date of issuance: August 18, 1992

Effective date: August 18, 1992

Amendment No.: 143Possession Only License No. DPR-3: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 24, 1992, (57 FR 28208). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 18, 1992.No significant hazards consideration comments received: No

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear PowerStation, Franklin County, Massachusetts

Date of application for amendment: June 5, 1992,

Brief description of amendment: Revise the Fire Protection Program following the guidance of NRC Generic Letters 86-10 and 88-12.

Date of issuance: August 20, 1992

Effective date: August 20, 1992

Amendment No.: 144Possession Only License No. DPR-3: Amendment revised the Technical Specifications and a license condition.

Date of initial notice in **Federal Register:** July 8, 1992, (57 FR 30265). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 20, 1992.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 20555, 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 amendment. By October 16, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 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 amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 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 N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, 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).

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: August 26, 1992

Brief description of amendments: The amendments changed the Technical Specifications to incorporate a portion of a Westinghouse Owners' Group topical report (WCAP-10271 and supplements) that, among other things, provides for longer surveillance intervals and changes the action requirements for a failed channel.

Date of issuance: August 28, 1992

Effective date: August 28, 1992

Amendment Nos.: 135 and 114

Facility Operating License Nos. DPR-70 and DPR-75: Amendments 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 State of New Jersey and final no significant hazards considerations determination are contained in a Safety Evaluation dated August 28, 1992.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW, Washington, D.C., 20005-3502.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: August 17, 1992

Brief description of amendment: The amendment changes the Technical Specifications by adding a footnote to Note 11 of Table 4.3-1 which states that the complete verification of the operability of the shunt trip relay circuitry shall be implemented prior to Wolf Creek's startup from the first shutdown to Mode 3 occurring after August 14, 1992. The change was required due to the discovery that the existing surveillance procedure does not adequately verify the operability of the shunt trip contacts associated with the manual reactor trip function.

Date of issuance: August 27, 1992

Effective date: August 27, 1992

Amendment No.: Amendment No. 55

Facility Operating License No. NPF-42. 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 August 27, 1992.

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.

Dated at Rockville, Maryland, this 9th day of September 1992.

For the Nuclear Regulatory Commission

Bruce A. Boger,

Director, Division of Reactor Projects-III, IV, V Office of Nuclear Reactor Regulation

[Doc. 92-22200 Filed 9-15-92; 8:45 am]

BILLING CODE 7590-01-F

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, October 8, 1992
Thursday, October 22, 1992

The meetings will start at 10:45 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information of these matters may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, room 1340, 1900 E Street, NW., Washington, DC 20415 (202) 606-1500.

Dated: September 8, 1992.

Anthony F. Ingrassia,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 92-22331 Filed 9-15-92; 8:45 am]

BILLING CODE 6325-01-M

Hispanic Federal Employment Advisory Group; Meeting

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice of open meeting.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that the first meeting of the Hispanic Federal Employment Advisory Group will be held at the time and place shown below:

Date: September 30, 1992, 9 a.m.

Place: U.S. Office of Personnel Management's Conference Center, room 1350, 1900 E Street NW., Washington, DC.

Agenda: The focus of the September 30th meeting will be the discussion of employment issues facing Hispanics in the Federal Government.

FOR FURTHER INFORMATION CONTACT: Evelyn Day, Special Assistant for Hispanic Employment, Office of Personnel Management, room 6332, 1900 E Street, NW., Washington, DC 20415.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. If time permits, an opportunity will be provided for members of the public in attendance at the meeting to provide their views. Persons wishing to address the Advisory Group orally at the meeting should submit a written request no later than the close of business on September 22, 1992.

The request must include the name and address of the person wishing to appear, the capacity in which the appearance will be made, a short summary of the intended presentation, and the amount of time desired.

U.S. Office of Personnel Management.

Douglas A. Brook,

Acting Director.

[FR Doc. 92-22330 Filed 9-15-92; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-31174, File No. SR-CBOE-91-40]

Self-Regulatory Organizations: Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change Relating to Exchange Policy with Respect to Joint Account Trading in OEX and SPX Options

September 10, 1992.

On October 25, 1991, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change that modifies Exchange policies and procedures regarding permissible trading activity by joint account participants in Standard and Poor's ("S&P") 100 Index options ("OEX") and S&P 500 Index options ("SPX") classes.

The proposed rule change was published in Securities Exchange Act Release No. 30299 (January 28, 1992), 57 FR 4505.[3] No comments were received on the proposed rule change.

Currently, Exchange policies and procedures regarding permissible joint account trading activity by Exchange members in OEX and SPX classes are contained in four separate Exchange documents, specifically (1) an Exchange Memo to members regarding joint account members simultaneously trading in the same class of options, dated May 31, 1984; (2) an Exchange Bulletin to members regarding joint account participants simultaneously trading in the same class of options, dated April 15, 1987; (3) an Exchange Surveillance Memo, dated 1980; and (4) an Exchange Circular to members regarding joint account identification, dated August 14, 1990.

The Exchange proposes to codify these existing policies and procedures in one circular and to make three modifications to existing Exchange policy regarding permissible joint account trading activity by Exchange members in OEX and SPX options.[4] First, the Exchange proposes that joint accounts participants, who are not trading in-person in an index option trading crowd, may enter orders for the joint account with floor brokers, even if other joint account participants are trading the same joint account in-person in the same trading crowd. Second, the Exchange proposes that managers of groups that participate in the Exchange's Retail Automatic Execution System ("RAES") be permitted to enter orders with floor brokers for the RAES joint account even if the manager is trading in-person for his individual account in the same index option crowd. Third, joint account members may alternate trading in-person for their individual account and their joint account while in the crowd.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6,[5] and the rules and regulations thereunder. Specifically, the Commission believes that it is appropriate for the CBOE to modify certain joint account trading policies for OEX and SPX options, while keeping restrictions in place that are designed to ensure market integrity. First, the Commission believes that it will facilitate hedging and thereby contribute to improvements in market quality to permit joint account participants who are not trading in-person in an index option trading crowd to enter orders for the joint account with floor brokers even if other joint account participants are trading in the same trading crowd. Second, the Commission recognizes the need of managers of OEX and SPX RAES group accounts to manage effectively not only the RAES group account for which they are the manager, but also their individual account. Accordingly, the Commission believes that it is appropriate that RAES group managers be permitted to enter orders with floor brokers for the RAES joint account even if the RAES group manager is trading in-person for his individual account in the same index option crowd. The Commission notes, however, that the RAES group manager still may not enter an order for the joint account with a floor broker if the RAES group manager is trading in-person for the joint account. Third, the Commission believes that it may contribute to market liquidity as well as facilitate hedging to permit joint account members to alternate trading in-person for their individual account and their joint account while in a stock index option trading crowd.

As mentioned above, the Commission notes that the CBOE's proposed circular contains provisions designed to ensure that joint account participants do not engage in abusive or illegal trading, thereby ensuring the maintenance of fair and orderly markets and market integrity. Specifically, the proposed circular provides that "member must ensure that they do not trade in-person or by orders such that any of the following results: (a) A trade occurs between a joint account participant's individual market maker account and the joint account he or she is a

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 250.19b-4 (1989).

[3] The Exchange originally submitted its proposal pursuant to Section 19(b)(3) of the Act, but on November 25, 1992, the CBOE submitted Amendment No. 1 to its proposal which indicated that the Exchange was submitting its proposal pursuant to Section 19(b)(2) of the Act. On December 5, 1991, the CBOE sent the Commission additional information on the Exchange's existing joint account trading procedures for OEX and SPX options classes. *See* letter from Patricia L. Cerney, Director, Department of Market Surveillance, CBOE to Thomas Gira, Branch Chief, Options Regulation, Division of Market Regulation, dated December 5, 1991. Finally, on August 14, 1992, the Exchange further amended its proposal to stipulate that members of a joint account may not participate on opposite sides of an options transaction involving the account. *See* letter from Joanne Moffic-Silver, Associate General Counsel & Chief Enforcement Attorney, CBOE, to Sharon Lawson, Assistant Director, Division of Market Regulation, dated August 14, 1992.

[4] As noted *supra* note 3, the Exchange also clarified its existing policies by specifically stating that members of a joint account may not participate on opposite sides of an options transaction involving the account.

[5] 15 U.S.C. 78f (1982).

participant of, or (b) a trade occurs between two joint accounts that have common participants, or (c) a trade occurs in which the buyer and seller are representing the same joint account and are on opposite sides of a transaction." In addition, the Commission notes that the CBOE has surveillance procedures designed to detect and deter abusive trading by joint account participants. Accordingly, the Commission believes that expanding the ability of joint account participants to trade in OEX and SPX options classes in limited circumstances will not threaten the integrity of CBOE's market.

Finally, the Commission believes that it is beneficial for the CBOE to codify into one circular existing Exchange policies and procedures regarding permissible joint account trading activity by Exchange members in OEX and SPX options. Specifically, the Commission believes that this consolidation will make it easier for joint account participants to understand and have access to all relevant trading policies and procedures with respect to joint account activity in OEX and SPX option classes.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (SR–CBOE–91–40) hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–22361 Filed 9–15–92; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

September 10, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Consolidated-Tomoka Land Co.
Common Stock, $1.00 Par Value (File No. 7–9069)

Cousins Properties, Incorporated
Common Stock, $1.00 Par Value (File No. 7–9070)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Intersted persons are invited to submit on or before October 1, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–22307 Filed 9–15–92; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Midwest Stock Exchange, Inc. Findings and Order Granting Application for Unlisted Trading Privileges in One Over-the-Counter Issue and Application To Withdraw Unlisted Trading Privileges in One Over-the-Counter Issue

September 8, 1992.

On August 3, 1992, the Midwest Stock Exchange, Inc. ("MSE") submitted an application for unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") security, *i.e.,* a security not registered under section 12(b) of the Act:

File No.	Symbol	Issuer
7–8890	ADPT	Adaptec, Inc. Common Stock $.001 par value.

The MSE also applied to withdraw UTP pursuant to section 12(f)(4) of the Act in the following issue:

File No.	Symbol	Issuer
7–8891	TSQM	T [2] Medical, Inc. Common Stock $.01 par value.

The Commission published notice of the application in Securities Exchange Act Release No. 31050 (August 17, 1992), 57 FR 38706, but did not receive any comments.

In considering an application for extension of UTP to an OTC security under section 12(f)(1)(C), the Commission is required to consider, among other matters, the public trading activity in the security, the character of that trading, the impact of an extension of UTP on the existing markets for the security, and the desirability of removing impediments to and the progress that has been made toward the development of a National Market System. The Commission believes that granting the MSE's application for UTP is consistent with the maintenance of fair and orderly markets and the protection of investors. Transactions in the subject security, regardless of the market in which they occur, will be reported in the consolidated transaction reporting system established under a joint transaction reporting plan between the MSE and the National Association of Securities Dealers.[1] The availability of last sale information for the subject security should contribute to pricing efficiency and to assuring that transactions on the MSE are executed at prices that are reasonably related to those occurring in the OTC market.

The MSE also applied to the Commission pursuant to section 12(f)(4) to withdraw UTP in one issue. The MSE requested that T [2] Medical, Inc. will be listed on the New York Stock Exchange, rendering it ineligible for the OTC/UTP program.

Section 12(f)(4) provides that the Commission may approve such an application if it determines that a termination of UTP is necessary or appropriate in the public interest or for the protection of investors. The Commission believes that approving the MSE's application to withdraw UTP in this issue is appropriate in the public interest because the issue was listed on the NYSE.

For these reasons, the MSE's application for UTP in the above-named security, and to withdraw UTP in the above-named security, is approved pursuant to section 12(f) of the Act.

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[6] 15 U.S.C. 78s(b)(2) (1982).

[7] 17 CFR 200.30–3(a)(12) (1989).

[1] See Securities Exchange Act Release Nos. 28146, 28147 (June 26, 1990), 55 FR 27917, 28122. One precondition to the grant of OTC/UTP to exchanges was the development of a joint transaction reporting plan to accommodate OTC/UTP.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30–3(a)(2).

Jonathan G. Katz,

Secretary.

[FR Doc. 92–22309 Filed 9–15–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31166; File No. SR–NASD–92–32]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Prefiling of Advertisements Relating to Collateralized Mortgage Obligations

September 9, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 15, 1992, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend Article III, Section 35 of the NASD's Rules of Fair Practice and Section 8 of the NASD's Government Securities Rules to require members to file advertisements concerning collateralized mortgage obligations issued by a corporation or an agency of the United States government with the Association prior to use. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

Communications With the Public

Sec. 35.

* * * * *

(c) Filing Requirements and Review Procedures

[(1) Advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts and unit investment trusts) shall be filed with the Association's Advertising Department within 10 days of first use or publication by any member. Filing in advance of use is recommended. Members are not required to file advertising and sales literature which have previously been filed and which are used without change.]

[(2) Advertising and sales literature concerning public direct participation programs as defined in Article III, Section 34 of the Rules of Fair Practice shall be filed with the Association's Advertising Department for review within 10 days of first use or publication. Filing in advance of use is recommenced. Members need not file for review advertising and sales literature which has been filed by the sponsor, general partner or underwriter of the program or by another member.]

(1) Advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts and unit investment trusts) and public direct participation programs (as defined in Article III, Section 34 of the Rules of Fair Practice) shall be filed with the Association's Advertising Department within 10 days of first use or publication by any member. Filing in advance of use is recommended. Members are not required to file advertising and sales literature which have previously been filed and which are used without change.

(2) Advertisements concerning collateralized mortgage obligations registered under the Securities Act of 1933 shall be filed with the Association's Advertising Department for review at least 10 days prior to use (or such shorter period as the Department may allow in particular circumstances) for approval and, if changed or expressly disapproved by the Association, shall be withheld from publication or circulation until any changes specified by the Association have been made or, in the event of disapproval, until the advertisement or sales literature has been refiled for, and has received, Association approval. This subsection (c)(2) shall remain in effect for one year from (the date of SEC approval) unless modified or extended prior thereto by the Board of Governors.

Government Securities Rules

Communications With the Public

Sec. 8

* * * * *

(c) Filing Requirements and Review Procedures

(1) *Members shall file advertisements for review with the Association's Advertising Department as follows:*

(A) Advertisements concerning government securities (as defined in Section 3(a)(42) of the Securities Exchange Act of 1934) *other than collateralized mortgage obligations* shall be filed by members with the Association's Advertising Department of review within 10 days of first use or publication*; and*

(B) Advertisements concerning collateralized mortgage obligations shall be filed with the Association's Advertising Department for review at least 10 days prior to use (or such shorter period as the Department may allow in particular circumstances) for approval and, if changed or expressly disapproved by the Association, shall be withheld from publication or circulation until any changes specified by the Association have been made or, in the event of disapproval, until the advertisement or sales literature has been refiled for, and has received, Association approval. This subsection (c)(1)(B) shall remain in effect for one year from (the date of SEC approval) unless modified or extended prior thereto by the Board of Governors.

(2) [(A)] Each member of the Association that has not previously filed advertisements with the Association shall file its initial advertisement concerning government securities with the Association's Advertising Department at least 10 days prior to use and shall continue to file its advertisements concerning government securities at least 10 days prior to use for a period of one year.

[(B) Each member that, on the effective date of this section, had been filing advertisements with the Association for a period of less than one year shall continue to file its advertisements concerning government securities at least 10 days prior to use, until the completion of one year from the date the first advertisement was filed with the Association.]

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 NASD included statements concerning

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[1] The NASD filed Amendment Nos. 1 and 2 to the proposed rule change on September 1 and September 2, 1992, respectively. Amendment No. 1 provides the results of the NASD member vote on the proposed rule. The proposal was approved by the membership, with 1,810 voting in favor, 298 opposed, 9 not voting and 33 unsigned, out of 2,150 ballots received. Amendment No. 2 amends the text of the proposal in order to codify the fact that the proposed amendments will be effective for one year unless modified or extended by the Board of Governors and approved by the Commission. As provided below, the text of the proposal reflects the changes filed in Amendment No. 2.

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 NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD is proposing to amend Article III, section 35 of the NASD's Rules of Fair Practice and Section 8 of the NASD's Government Securities Rules to require members to file advertisements concerning collateralized mortgage obligations ("CMOs") issued by a corporation or an agency of the United States government with the Association prior to use. The requirement would be temporary, lasting for a period of one year. Prior to the end of the firstyear the Association will evaluate the efficacy of the rule and determine whether to extend the rule, propose alternative requirements or eliminate it.[2]

The proposed amendments resulted from the NASD's increasing concern over misleading advertisements for CMOs and an increase in the number of complaints associated with advertisements for CMOs. NASD believes that CMOs are extremely complex and require full and fair disclosure to assist the investor in understanding them. CMO advertisements generally are brief and emphasize high yields, safety, government guarantees (where applicable) and liquidity. The NASD has found, however, that it is difficult to distinguish between CMOs based on the content of such advertisements. Even though two CMOs have the same underlying collateral, they may differ substantially in their prepayment predictability or volatility. In particular, the terms "interest only" or "principal only" are generally inadequately explained.

As a result of these concerns, the NASD issued Notice to Members 92–27 (May 1992) (attached to the rule filing as Exhibit 2) detailing the problems relating to CMO advertising and recommending that members' CMO advertisements comply with certain standards set forth in the Notice. For example, the NASD believes that an advertisement which includes the "yield" of a CMO is misleading without disclosure of the prepayment assumption used to calculate the yield and that the anticipated yield and average life of the security will fluctuate depending on the actual prepayment experience and current interest rates.

The NASD also recommended in Notice to members 92–27 (May 1992) that CMO advertisements not contain comparisons between CMOs and any other investment vehicles. The NASD is particularly concerned that advertising CMOs as alternatives to certificates of deposit ("CDs") falsely implies that CMOs offer the same level of safety and guarantee of interest and principal as CDs.

In light of these concerns, the NASD believes that CMO advertisements should be subject to a pre-use filing to provide NASD staff an opportunity to comment on the fairness and reasonableness of such advertisements prior to use and permit potentially misleading advertisements to be identified and withheld from publication. At present, advertisements concerning government securities must be filed with the NASD within 10 days of first use or publication. Additionally, advertisements and sales literature concerning registered investment companies and direct participation programs must be filed within 10 days of first use. Advertising and sales literature pertaining to options must be approved in advance of its use or publication. While the NASD believes that a pre-use filing requirement for CMO advertisements, similar to the requirement for options advertising, is appropriate, the NASD recognizes that the flexibility of member firm advertising programs is impaired. Accordingly, the NASD is proposing that the rule be approved on a temporary basis for one year only. During that year, the NASD's Fixed Income Committee will review the impact of the proposed rule and determine whether additional or alternative requirements should be put in place to ensure that CMO advertising is not misleading.

The NASD is, therefore, proposing to amend Article III, section 35 of the NASD's Rules of Fair Practice to consolidate the current filing requirements with respect to registered investment companies and public direct participation programs set forth in subsections (c) (1) and (2), respectively, into new subsection (c)(1). The requirements regarding registered investment companies and public direct participation programs are not proposed to be changed.

The new requirement with respect to CMO advertising is proposed to be set forth in proposed new subsections (c)(2) of section 35. The new provision would require that all advertisements concerning corporate collateralized mortgage obligations be filed with the Association's Advertising Department at least 10 days prior to first use unless the Department permits a shorter period in particular circumstances. The advertisement must be approved prior to use and if changed or expressly disapproved by the Association shall be withheld from publication or circulation until any changes specified by the Association have been made. In the event of disapproval by the Association, the advertisement must be refiled for, and have received, Association approval prior to publication or circulation. The proposed new provision is similar to that previously adopted with respect to options advertisements that is contained in subsection (c)(1) to Article III, section 35A to the Rules of Fair Practice.[3]

The NASD is also proposing to add a new subsection 8(c)(1)(B) to its Government Securities Rules with respect to collateralized mortgage obligations issued by an agency of the United States government. A technical amendment is also proposed to delete current subsection 8(c)(2)(B) which applied to the filing of advertisements concerning government securities during the first year of the operation of the Government Securities Rules which were adopted by the NASD in 1989.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act [4] which requires the rules of the NASD be designed to prevent fraudulent and manipulative acts and practices and, in general, to protect investors and the public interest. The proposed rule change strengthens the NASD's regulatory framework for reviewing communications relating to CMOs and enhances the industry's ability to police such communications.

The NASD is requesting that the proposed rule change be effective immediately on SEC approval.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that any burden on competition resulting from the proposed rule change is outweighed by

[2] Any changes, other than elimination of the rule, must be filed with the Commission pursuant to Section 19(b) of the Act.

[3] Article III, section 35A adopted by the NASD after SEC approval of SR–NASD–91–02, filed January 8, 1991. Securities Exchange Act Release No. 29682 (September 13, 1991); 56 FR 47973 (September 23, 1991).

[4] 15 U.S.C. 78*o*–3 (1988).

the enhanced investor protection which will result from prefiling of CMO advertising and is otherwise necessary and appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by October 7, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

[FR Doc. 92–22308 Filed 9–15–92; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Incorporated

September 10, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following security:

Society Corporation
Common Stock, $1.00 Par value (File No. 7–9068)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 1, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–22306 Filed 9–15–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18943; 811–854]

IIC Industries Inc.; Notice of Application

September 10, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("the Act").

APPLICANT: IIC Industries Inc. (formerly Israel Investors Corporation).

RELEVANT ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed November 23, 1990, and amended on June 11, 1991, March 23, 1992, and June 24, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 5, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 475 Park Avenue South, New York, New York 10016.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Staff Attorney, at (202) 272–7648, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end management company, registered under the Act since 1959. Applicant's assets had a fair value of approximately $52,787 thousand as of June 30, 1982. Of that amount, over $40,543 thousand (over 70%) consisted of investment securities. On August 25, 1982, a proxy statement was submitted to applicant's stockholders in connection with a proposal to deregister applicant as an investment company and to convert it to an industrial company. The proxy statement also provided that applicant, in connectiofn with its deregistration, reserved the right to change its policy of investing in enterprises located or doing business in the State of Israel and in enterprises located or doing business elsewhere that furthered the

development of Israel's economy. Applicant's stockholders approved the proposal to deregister applicant and convert it to an industrial company on August 19, 1982.

2. Following shareholder approval of the proposal to deregister, applicant commenced selling equity interests held by it in companies it did not control or wholly own. A portion of the proceeds from the sale of these interests was used to make additional investments in and loans to operating companies controlled by applicant. The balance of those proceeds was placed in liquid assets to be used to acquire industrial companies.

3. Until July 1989, applicant's principal shareholder, Koor USA, Inc. ("Koor"), was affiliated with Israel's largest industrial enterprise, making it difficult for applicant to find a suitable acquisition candidate. On July 25, 1989, CP Holdings Limited ("CP"), an English company engaged in the business of selling, hiring, and utilizing for its own business purposes tractors and other related heavy machinery, acquired from Koor and one other shareholder a majority of applicant's shares.[1] CP's primary reasons for acquiring a majority interest of applicant's voting securities were operations related; applicant's then sole operating subsidiary, Israel Tractors and Equipment Co., Ltd. ("Israel Tractors"), was a distributor of tractors and engaged in essentially the same business as CP. CP is committed to applicant's plan to deregister as an investment company.

4. In May 1991, through its interest in Balton C.P. Limited ("Balton"), applicant acquired from a Koor affiliate, for a purchase price of $3.5 million, an indirect majority interest in certain companies engaged in the trading business in Kenya, Ghana, Zambia, and Tanzania and a controlling interest in a company engaged in the trading business in Nigeria. Balton is owned 51% by applicant and 49% by the Koor affiliate. Balton's assets consist primarily of operating subsidiaries and other assets relating to its operations. Applicant controls Balton's board of directors and designates Balton's chairman of the board and chief financial officer. Balton's day-to-day operating decisions are subject to the supervision and control of its board of directors. The Koor affiliate designates the general manager.

5. On January 30, 1992, applicant purchased from the State Property Agency for the Republic of Hungary, a 60% interest in Investor R.T. ("Investor") for a purchase price of $34 million. Investor's assets consist of majority interests in operating subsidiaries and other assets relating to its operations. Investor's subsidiaries' principal areas of business activity include trade in agricultural products, retail shops and supermarkets, the distribution of fuel, auto dealerships, and foreign trading. Applicant's 60% equity stake in Investor, under Investor's organizational documents and under Hungarian law, gives it control over Investor's management. Applicant has exercised this control since consummation of the acquisition by appointing applicant's president as Investors' chairman and appointing other of applicant's directors and their nominees to senior posts within Investors' group of companies.

[1] Koor held 49.71% of applicant's outstanding voting securities through July 25, 1989. According to a Schedule 13D filed by applicant, Koor sold the entire 49.71% interest held by it to CP in the July 25, 1989 transaction.

Applicant's Legal Analysis

1. On June 30, 1982, applicant's investment securities constituted the major portion of its total assets, excluding cash items and United States government securities. Applicant states that it has since disposed of the majority of its investment securities and acquired two operating businesses. Applicant states that it anticipates that over 90% of its revenues will be derived from its subsidiaries. Accordingly, applicant argues that it is no longer an investment company under section 3(a)(1) or (3) and requests deregistration as such under section 8(f).

2. Section 3(a)(1) of the Act defines an investment company as an issuer which "is or holds itself out as being engaged primarily. * * * in the business of investing, reinvesting or trading in securities." Section 3(a)(3) of the Act defines an investment company as any issuer which "is engaged * * * in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities [2] having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis."

3. With respect to section 3(a)(1), applicant states that it ceased to hold itself out as an investment company following the 1982 shareholder vote. Applicant also states that since 1982 its principal business activities have been the management and operation of Israel Tractors, a 100% owned subsidiary since 1972, the conversion of its investment securities to cash, and the utilization of such cash toward the acquisition of operating businesses. In addition, applicant asserts that its majority shareholder is committed to applicant's deregistration as an investment company under the Act, and, in that connection, to acquiring operating businesses outside of Israel.

4. As set forth in section 3(a)(3) of the Act, securities issued by majority-owned subsidiaries of the owner which are not investment companies are not "investment securities." Applicant states that its total assets had a fair value of approximately $61,989 thousand as of the date of filing of the application. Of that amount, applicant had assets with a fair value of approximately $55,384 thousand, or over 89%, consisting of interests in majority or wholly owned subsidiaries engaged in operating businesses. Accordingly, applicant argues that it has ceased to be an investment company under section 3(a)(3) of the Act.

[2] Investment securities are defined in the last paragraph of section 3(a) to include all securities except (A) Government securities, (B) securities issued by employees' securities companies, and (C) securities issued by majority owned subsidiaries of the owner which are not investment companies.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-22362 Filed 9-15-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-18941; 812-7693]

ML Venture Partners II, L.P., et al.; Notice of Application

September 10, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: ML Venture Partners II, L.P. ("MLVP"), Merrill Lynch Venture Capital Inc., (the "Management Company"), ML Oklahoma Venture Partners, Limited Partnership ("ML Oklahoma"), Merrill Lynch Interfunding Inc. ("MLIF"), Merrill Lynch & Co., Inc. ("ML & Co."), and DLJ Capital Management Corporation (the "Sub-Manager").

RELEVANT 1940 ACT SECTIONS: Order requested under sections 57(c) and 57(i) of the 1940 Act and Rule 17d-1 thereunder authorizing certain transactions otherwise prohibited by sections 57(a)(1) and 57(a)(4) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek exemptions from sections 57(a)(1) and 57(a)(4) of the 1940 Act in

connection with the proposed acquisition by MLVP and ML Oklahoma of securities of SMG–II Holdings Corporation ("SMG–II Holdings") from the Management Company.

FILING DATES: The application was filed on March 6, 1991, and amended and restated applications were filed on August 1, 1991 and August 12, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 5, 1992 and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. MLVP, the Management Company, MLIF and ML & Co., North Tower, World Financial Center, New York, New York 10281. ML Oklahoma, 6100 South Yale, One Warren Place, Suite 2019, Tulsa, Oklahoma 74136. The Sub-Manager, 140 Broadway, New York, New York 10005.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 272–3030 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. MLVP, a Delaware limited partnership, is a business development company under the 1940 Act whose investment objective is to seek long-term capital appreciation through venture capital investment. MLVP has five General Partners, consisting of four individuals (the "MLVP Individual General Partners") and one managing general partner, MLVP II Co., L.P. (the "MLVP Managing GP"). The MLVP Individual General Partners include three MLVP Independent General Partners (individuals who are not "interested persons" of MLVP within the meaning of section 2(a)(19) of the 1940 Act) and one individual who is an affiliated person of the MLVP Managing GP.

2. The MLVP Individual General Partners supervise the operations of MLVP and perform all duties that the 1940 Act imposes on directors of business development companies organized in corporate form. The MLVP Independent General Partners assume the responsibilities and obligations the 1940 Act imposes on the non-interested directors of a business development company. The MLVP Managing GP, subject to the supervision of the MLVP Individual General Partners, is authorized to arrange for management services relative to the venture capital investments of MLVP. The Management Company, an indirect subsidiary of ML & Co. and the general partner of the MLVP Managing GP, performs management and administrative services for MLVP pursuant to a management agreement with MLVP. Both the MLVP Managing GP and the Management Company are registered investment advisers under the Investment Advisers Act of 1940.

3. On May 23, 1991, MLVP, the MLVP Managing GP, and the Management Company retained the Sub-Manager, a registered investment adviser that is an indirect wholly-owned subsidiary of Donaldson, Lufkin & Jenrette, Inc., to assume primary responsibility for evaluating and making the venture capital investments of MLVP pursuant to a Sub-Management Agreement (the "Sub-Management Agreement"). Under the Sub-Management Agreement, the Sub-Manager receives from the Management Company 95 percent of the compensation paid to the Management Company under its management agreement with MLVP. In addition, under the partnership agreement of the MLVP Managing GP, the Sub-Manager and its affiliates have been allocated that portion of the profits allocable to the Managing GP that previously were allocated to the Management Company as general partner of the MLVP Managing GP.

4. ML Oklahoma, an Oklahoma limited partnership, is a business development company under the 1940 Act and a "qualified venture capital company" under Oklahoma law. The investment objective of ML Oklahoma is to seek long-term capital appreciation by making venture capital investments, and it intends to invest at least 55% of its capitalization in companies that constitute "Oklahoma business ventures" under Oklahoma law. ML Oklahoma has five General Partners, consisting of four individuals (the "ML Oklahoma Individuals General Partners") and one managing general partner, MLOK Co., Limited Partnership (the "ML Oklahoma Managing GP"). The ML Oklahoma Individual General Partners include the three ML Oklahoma Independent General Partners who are not "interested persons" of ML Oklahoma and one individual who is an affiliated person of the ML Oklahoma Managing GP. The Management Company is the general partner of the ML Oklahoma Managing GP.

5. The ML Oklahoma Individual General Partners supervise the operations of ML Oklahoma and perform all duties that the 1940 Act imposes on directors of business development companies organized in corporate form. The ML Oklahoma Independent General Partners bear the responsibilities imposed by the 1940 Act on the non-interested directors of a business development company. The ML Oklahoma Managing GP, a registered investment adviser, is responsible for identification and management of ML Oklahoma's venture capital investments. The Management Company performs management and administrative services for ML Oklahoma pursuant to a management agreement with ML Oklahoma.

6. ML & Co. is a diversified financial services holding company which, through its subsidiaries, provides investment and financing, insurance, real estate and related services. Its principal subsidiary, Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPF&S") engages through subsidiaries in a broad range of activities in the securities and investment banking industries. MLIF, an indirect wholly-owned subsidiary of ML & Co., specializes in leveraged buyout, bridge loans and other short-term financings.

7. Supermarkets General Holdings Corporation ("SG Holdings"), a Delaware corporation formed in 1987 as the successor to the business of Supermarkets General Corporation, is a diversified retailer primarily engaged in the operation of large supermarket-drug stores in the northeastern United States. SG Holdings acquired Supermarkets General Corporation in October 1987 through a leveraged buyout structured by Merrill Lynch Capital Partners, Inc., a wholly-owned subsidiary of ML & Co.

8. Prior to the Financing (defined in the following paragraph), SG Holdings' equity securities were owned by certain members of Supermarket General's management, certain affiliates of ML & Co., MH Capital Partners Inc. (formerly Manufacturers Hanover Venture Capital Corporation), and The Equitable Life Assurance Society of the United States (the indirect parent of the Sub-Manager) and certain of its affiliates ("Equitable

Life" and, with such affiliates, the "Equitable Investors"). Affiliates of ML & Co., beneficially owned approximately 84% (approximately 76% on a fully diluted basis) of the outstanding shares of the SG Holdings voting common stock (representing approximately 56% of the total number of shares of SG Holdings common stock outstanding).

9. As a result of the Financing (defined immediately below), SG Holdings now is wholly-owned by SMG–II Holdings, a Delaware corporation organized as the holding company for SG Holdings. SMG–II Holdings was formed to effect a series of transactions that collectively were intended to enable SG Holdings to adjust its capital structure to provide greater financial flexibility and to reduce its future aggregate cash interest and dividend expenses (the "Financing"). As a result of an equity exchange offer made relating to the Financing, the owners of SG Holdings common stock now own a corresponding number of shares of SMG–II Holdings common stock. The investment banking division of MLPF&S received a fee of approximately $1.2 million for acting as dealer-manager in connection with certain tender offers made relating to the Financing.

10. As part of the Financing, SMG–II Holdings offered shares of its Series A Cumulative Convertible Preferred Stock, with a stated value of $200 per share (the "Series A Preferred Stock") and its Series B Cumulative Convertible Preferred Stock, with a stated value of $200 per share (the "Series B Preferred Stock" and, together with the Series A Preferred Stock, the "SMG–II Holdings Preferred Stock") in a private placement to a limited number of institutional investors at $200 per share raising $83.5 million. The proceedings of the offering were used by SMG–II Holdings to purchase SG Holdings preferred shares and debt securities pursuant to a tender offer, in open market purchases, and otherwise for general corporate purposes of SG Holdings.

11. The SMG–II Holdings Preferred Stock bears dividends at the annual rate of 10% of the stated value per share. The holders of shares of the Series A Preferred Stock are entitled to one vote per share of SMG–II Holdings Class A Common Stock into which such preferred stock is convertible on all matters to be voted on by stockholders. As described more fully in the application, the holders of the Series B Preferred Stock will have more limited voting rights. Subject to compliance with certain procedures and the provisions of SMG–II Holdings' Certificate of Designation (which sets forth the terms of the SMG–II Holdings Preferred Stock), holders of Series B Preferred Stock may exchange their shares for Series A Preferred Stock, and holders of Series A Preferred Stock may exchange their shares for Series B Preferred Stock, on a share-for-share basis.

12. On February 4, 1991, MLIF purchased 43,498 shares of Series A Preferred Stock for $8,699,600; [1] certain partnerships affiliated with ML & Co. purchased 175,733 shares of Series A Preferred Stock for $35,146,600; MH Capital Partners, Inc. purchased 12,500 shares of Series B Preferred Stock for $2.5 million; and the Equitable Investors purchased 168,269 shares of Series B Preferred Stock for $33,653,800.

13. Limited partners in certain of the partnerships affiliated with ML & Co. that purchased Series A Preferred Stock were institutional investors that were not otherwise required to participate in an investment in SMG–II Holdings. Nineteen institutional investors, who invested more than $22 million in partnerships investing in the Series A Preferred Stock, did not have a prior investment or economic interest in SG Holdings and were thus making an initial investment decision to invest in SMG–II Holdings on terms no more favorable than those offered to MLVP and ML Oklahoma.

14. The investment opportunity in the Series A Preferred Stock was brought to the attention of the Management Company in November 1990. The MLVP Managing GP and the ML Oklahoma Managing GP conducted separate evaluations of the proposed investment in SMG–II Holdings and independently determined to approve investments of up to $3 million and $500,000 for MLVP and ML Oklahoma, respectively. The investments by MLVP and ML Oklahoma could not be made concurrently with MLIF and the ML & Co. affiliated partnerships on February 4, 1991, however, without the requested exemptive relief. Accordingly, on that date, the Management Company purchased 15,000 shares of Series A Preferred Stock for $200 a share on behalf of MLVP and 2,500 shares of Series A Preferred Stock at the same price on behalf of ML Oklahoma.

[1] In accordance with the terms of the organizational documents relating to the other ML & Co. affiliated partnerships, certain of which had been formed expressly to acquire SMG–II Holdings Preferred Stock, ML & Co. had committed to purchase through its affiliates SMG–II Holdings Preferred Stock amounting to 25% of the amount purchased by such ML & Co., affiliated partnerships. The amount proposed to be invested by MLVP and ML Oklahoma in SMG–II Holdings Preferred Stock was not included in this 25% commitment by ML & Co.

15. The price to be paid by MLVP and ML Oklahoma, respectively, to the Management Company for the Series A Preferred Stock will be the lower of (i) the fair value of the investment on the date MLVP and ML Oklahoma acquire the Preferred Stock (as determined by the MLVP Independent General Partners and ML Oklahoma Independent General Partners and ML Oklahoma Independent General Partners, respectively) or (ii) the cost to the Management Company of purchasing and holding the investment. With respect to clause (i), the value of the investment shall be determined in the manner specified in the conditions below. With respect to clause (ii), such cost shall be the original purchase price of $ 3 million and $500,000 paid by the Management Company, respectively, for the Series A Preferred Stock on February 4, 1991, plus carrying costs related to such investment as separately determined for MLVP and ML Oklahoma. Neither MLVP nor ML Oklahoma will pay carrying costs in respect of the period prior to February 4, 1991, which is subsequent to the dates the MLVP Independent General Partners and the ML Oklahoma Independent General Partners respectively authorized the proposed investment. For purposes of these transactions, carrying costs would consist of interest charges computed at the lower of (i) the prime commercial lending rate charged by Citibank, N.A., during the period for which carrying costs are being paid or (ii) the effective cost of borrowings by ML & Co. during such period. The effective cost of borrowings by ML & Co. is its actual "Average Cost of Funds," as calculated monthly by dividing its consolidated financing expenses by the total amount of borrowings during the period.

Applicants' Legal Analysis

A. Exemptive Relief Under Section 57(c)

1. The Management Company is an "affiliated person," within the meaning of section 2(a)(3)(D) of the 1940 Act, of the MLVP Managing GP, which in turn is an "affiliated person" of MLVP also within the meaning of section 2(a)(3)(D). The Management Company is thus an affiliated person of an affiliated person of ML Oklahoma. As a result, sales of securities on a principal basis by the Management Company to MLVP or ML Oklahoma are prohibited by section 57(a)(1) of the 1940 Act without an order under section 57(c) thereof.

2. Section 57(c) provides for the issuance of such an order if, as here relevant, the evidence establishes that (a) the terms of the transaction,

including the consideration paid, are reasonable and fair and do not involve overreaching of the business development company or its partners on the part of any person concerned; (b) the transaction is consistent with the policies of the business development company as recited in its registration statement, reports to shareholders, and other documents; and (c) the transaction is consistent with the general purposes of the 1940 Act. Applicants request an order pursuant to section 57(c) exempting from the provisions of Section 57(a)(1) both the proposed sale by the Management Company of 15,000 shares of Series A Preferred Stock to MLVP and the proposed sale by the Management Company of 2,500 shares of Series A Preferred Stock to ML Oklahoma on the terms described above.

3. As indicated in condition 1 below, the Sub-Manager will be required to review and evaluate the proposed investment in SMG–II Holdings. Such review will be supervised by a senior officer of the Sub-Manager who was not previously employed by the Management Company,[2] and the Sub-Manager will provide a written report to the MLVP Independent General Partners with an investment recommendation. From the perspective of ML Oklahoma as indicated in the introductory part to the conditions below, if the exemptive order is granted and MLVP does not acquire securities of SMG–II Holdings, ML Oklahoma will not acquire securities of SMG–II Holdings without obtaining an amendment to the order.

4. Applicants further submit that the involvement of the Sub-Manager provides protection against potential conflicts of interest. The Sub-Manager has primary control over the venture capital investments of MLVP and operates independently from the Management Company. In this regard, while the Sub-Management Agreement may be terminated by the MLVP Individual General Partners, the limited partners of MLVP, or by the Sub-Manager, it is not terminable by the Management Company. Since the Sub-Manager and its affiliates have been allocated that portion of the performance allocation payable by MLVP previously allocated to the Management Company, the Sub-Manager has a direct financial incentive to approve investments for MLVP that are appropriate solely on the basis of their investment merits.

[2] Three officers of the Management Company became officers of the Sub-Manager in connection with MLVP's retention of the Sub-Manager

5. Following their investment in the Series B Preferred Stock on February 4, 1991, the Equitable Investors, consisting of investors affiliated with entities controlling the Sub-Manager, owned an aggregate of 31% of the capital stock of SMG–II Holdings on a fully-diluted basis. Applicants do not believe, however, that this fact impacts the value of the protections afforded by the Sub-Manager's participation in the investment decision-making process, which is carried out independently from its parent companies, including Equitable Life. Nor do Applicants believe that the sale of the Series A Preferred Stock proposed by the application would have any identifiable effect on the investment of the Equitable Investors.[3]

6. Applicants believe that the retention of an independent consultant (the "Independent Consultant") also provides protection to MLVP and ML Oklahoma. The Independent Consultant will be required to consider the factors specified in condition 3 below in reaching its opinion. The provision to the MLVP Independent General Partners of a separate opinion from an independent third party will assist the decision-making process of MLVP and ML Oklahoma. Also, conditions 4 and 5 below require the MLVP and ML Oklahoma Independent General Partners to approve the investment and to make an independent determination as to the value of the investment, taking into account the report of the Independent Consultant.

7. Furthermore, the MLVP Managing GP (on behalf of MLVP) and the ML Oklahoma Managing GP (on behalf of ML Oklahoma) already have reviewed the proposed investments in detail. In this regard, the MLVP Managing GP and ML Oklahoma Managing GP considered all information deemed relevant, including the nature of the investments by affiliates of ML & Co. and the fairness of the purchase prices proposed to be paid by MLVP and ML Oklahoma. The Managing General Partners both determined that the proposed investments by MLVP and ML Oklahoma will not directly or indirectly benefit ML & Co. or entities affiliated with ML & Co. At meetings of the MLVP Independent General Partners held on December 7, 1990 and January 21, 1991, MLVP's investment in SMG–II Holdings was approved after consideration of each of the factors set forth in section 57(c). At a meeting of the ML Oklahoma Independent General Partners held on December 26, 1990, ML Oklahoma's investment in SMG–II Holdings also was approved after consideration of the same factors.

[3] The Division of Investment Management notes that the interests of the Equitable Investors would not appear to be affected by any determination as to whether the Management Company will continue to own the SMG–II Holdings Series A Preferred Stock or such securities will be resold to MLVP and ML Oklahoma. While the Equitable Investors own securities of SMG–II Holdings, the value of this interest should not be affected by the identity of other owners of SMG–II Holdings securities. As a result, there is a diminished likelihood that Equitable Life or any other parent company of the Sub-Manager would seek to exercise undue influence on the Sub-Manager's review of the proposed investment.

8. The MLVP and ML Oklahoma Independent General Partners also considered the fact that the proposed purchase prices to be paid by MLVP and ML Oklahoma, respectively, will include carrying costs incurred by an affiliated person (*i.e.*, the Management Company) if the value of the investment at the time of acquisition by MLVP or ML Oklahoma, as applicable, is more than the sum of the purchase price plus the Management Company's carrying costs. MLVP and ML Oklahoma believe that it is appropriate to reimburse the Management Company for carrying costs in a situation where the Management Company purchased the investments as, in effect, their nominee and they would have purchased such investments directly if it had not been deemed necessary to obtain the requested exemptive relief.

9. The proposed investments are not otherwise available to MLVP or ML Oklahoma. The MLVP Managing GP and ML Oklahoma Managing GP have approved such investments after review of a considerable number of possible investments for MLVP and ML Oklahoma. MLVP and ML Oklahoma thus submit that their respective investment programs will be prejudiced if they are not permitted to make the investments in SMG–II Holdings. Furthermore, the proposed transactions in the Series A Preferred Stock are consistent with MLVP's and ML Oklahoma's investment objectives and the kinds of transactions in which it was contemplated MLVP and ML Oklahoma would participate. Accordingly, MLVP and ML Oklahoma also submit that the relief requested pursuant to section 57(c) is consistent with the purposes of MLVP and ML Oklahoma and their stated policies.

B. Exemptive Relief under section 57(i) and Rule 17d–1

1. Section 57(a)(4) of the 1940 Act makes it unlawful for any person who is related to a business development company in a manner described in section 57(b)(2), acting as principal,

knowingly to effect any transaction in which such business development company is a joint participant with such person in contravention of such rules and regulations as the SEC may prescribe to limit or prevent such participation by the business development company on a basis less advantageous than that of such person. The persons specified in section 57(b)(2) include the Management Company and persons under common control with the Management Company. The Management Company, MLVP, ML Oklahoma, MLIF, and the ML & Co. affiliated partnerships might be deemed to be under the common control of ML & Co.

2. The SEC has not adopted any rules or regulations under section 57(a)(4). Section 57(i) of the 1940 Act provides that, until the adoption of rules and regulations under section 57(a), the rules and regulations of the SEC under section 17(d) applicable to registered investment companies shall apply to transactions subject to section 57(a). Accordingly, Applicants request that, pursuant to section 57(i) of the 1940 Act and Rule 17d–1 thereunder, the order authorize the joint investment by MLVP and ML Oklahoma in securities of SMG–II Holdings. Paragraph (b) of Rule 17d–1 provides, in part, that, in passing on applications subject to that Rule, the SEC must consider whether the participation of a registered company in the joint arrangement on the basis proposed is consistent with the provisions, policies, and purposes of the 1940 Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

3. With respect to the relief requested pursuant section 57(i) and Rule 17d–1, the MLVP Managing GP and the ML Oklahoma Managing GP reviewed the proposed investment in the Series A Preferred Stock and determined that such investment was consistent with MLVP's and ML Oklahoma's objectives of seeking long-term capital appreciation. They also determined that the investment by MLIF and the ML & Co. affiliated partnerships would not disadvantage MLVP or ML Oklahoma in making such investment, maintaining their investment position or disposing of such position. The MLVP Independent General Partners and the ML Oklahoma Independent General Partners also made such determinations with respect to the proposed investment.

4. In reaching such determinations, the MLVP Managing GP, the MLVP Independent General Partners, the ML Oklahoma Managing GP and the ML Oklahoma Independent General Partners considered several factors, including the difference in the amount proposed to be invested by the entities affiliated with ML & Co. It was recognized that the terms of purchase by such participants would be the same in terms of the price paid per share of stock. With respect to the different number of shares to be purchased, however, it was recognized that the participants were each at different points in their investment programs and had different amounts of assets available for investment. MLVP and ML Oklahoma believe that this factor does not make MLVP or ML Oklahoma's proposed investment any more or less advantageous than the investment by any other participant. To the extent that the investment proves to be successful, MLVP, ML Oklahoma and the other participants will profit equally in proportion to their respective investments.

5. Accordingly, Applicants submit that the terms of the proposed investments are not unfair or less advantageous to MLVP or ML Oklahoma, but rather are the result of business considerations. It is further submitted that the proposed investments would be consistent with the provisions, policies, and purposes of the 1940 Act.

Applicants' Conditions

If the requested order is granted, Applicants agree to the conditions set forth below.[4] If the requested order is granted and MLVP does not acquire securities of SMG–II Holdings, ML Oklahoma will not acquire securities of SMG–II Holdings under such order unless an amendment to the order is obtained.

1. If the requested order is issued, the Sub-Manager will review the proposed investment by the Partnership; such review will be conducted under the supervision of a senior officer of the Sub-Manager who was not previously an employee of the Management Company. The Sub-Manager will provide a written report to the Independent General Partners setting forth its preliminary valuation of the investment and its recommendation as to the acquisition of the investment, based on the Sub-Manager's analysis of all factors it deems relevant.

2. If (i) the Sub-Manager recommends that the investment be made and (ii) the Independent General Partners determine that it continues to be appropriate for the Partnership to acquire the investment, the Partnership will retain an Independent Consultant to provide a valuation of the Series A Preferred Stock proposed to be acquired by the Partnership. Any Independent Consultant retained by the Partnership must be a firm or individual that the Sub-Manager and the Individual General Partners determine has sufficient professional expertise that it is able to provide a valuation of the proposed investment that can be relied upon by the Independent General Partners. To ensure that the Independent Consultant is independent with respect to the proposed transaction, the Independent Consultant will not be eligible to serve in this capacity if it is an "affiliated person," within the meaning of the 1940 Act, of the Partnership, its Managing General Partner, the Sub-Manager, or the Management Company and it must have had no material business relationship, within the last two fiscal years of the Partnership, with any of such entities.[5] MLVP and ML Oklahoma may utilize the same or different firms as the Independent Consultant. To the extent a single consultant is utilized, the portions of the fees of the Independent Consultant to be borne by each Partnership will be allocated on the basis of the number of shares acquired by the Management Company for each entity.

3. In retaining the Independent Consultant, the Partnership will require that the Independent Consultant consider the following factors in preparing the valuation, together with any other factors deemed relevant by the Independent Consultant: the historical and prospective growth of SMG–II Holdings, industry and company profitability, the competitive position of SMG–II Holdings, the current liquidity of SMG–II Holdings and comparative data as to the price payable by the Partnership for SMG–II Holdings stock and prices paid by others to comparable

[4] The conditions will be identical for MLVP and ML Oklahoma (the "Partnerships"), except that references to the Sub-Manager in the context of MLVP are to be considered references to the ML Oklahoma Managing GP in the case of ML Oklahoma. Otherwise, references to the "Partnership," the "Managing General Partner," the "Independent General Partners," and the "Individual General Partners" shall be applicable to both MLVP and ML Oklahoma.

[5] For this purpose, a "material business relationship" will be deemed not to exist so long as the aggregate total revenues received by any Independent Consultant from MLVP, ML Oklahoma, the Sub-Manager, or ML & Co. or any of its subsidiaries during the past two years (other than fees to be paid in connection with the transactions that are the subject of the application) represent no more than 10% of the aggregate total revenues earned by such Independent Consultant during the same period.

companies. The Partnership will require that the Independent Consultant review financial statements prepared by SMG–II Holdings and public information relating to SMG–II Holdings' competitors and industry. The Partnership will also require the preparation and submission of a report of the Independent Consultant to the Independent General Partners and that such report be submitted to the Independent General Partners in the form of a written opinion that outlines tasks performed and significant factors considered in reaching the conclusion in such report.

4. If the report by the Independent Consultant on the proposed investment by the Partnership indicates a valuation in excess of the cost to the Management Company of purchasing and holding such investment as described in paragraph 15 of the representations above (referred to in these conditions as "Cost"), and the Independent General Partners, taking into account the Sub-Manager's recommendation at that time, (i) concur that the fair value of such investment is higher than its Cost and (ii) determine that the investment in SMG–II Holdings continues to be appropriate for the Partnership, the Partnership will acquire the investment at a purchase price equal to its Cost. If the Independent General Partners do not make the finding described in clause (ii), the Partnership will not acquire the investment. If the Independent General Partners do not make the determination in clause (i), the Partnership will acquire the investment at a price equal to the value as determined by the Independent General Partners, subject to the right of the Management Company under such circumstances to determine not to sell the security to the Partnership.

5. If the report by the Independent Consultant on the proposed investment by the Partnership indicates a value less than Cost, the Independent General Partners, taking into account the report of the Independent Consultant and the Sub-Manager's recommendation at that time, will determine (i) whether the investment continues to be appropriate for the Partnership and (ii) if so, their valuation of the investment at that time. If the Independent General Partners determine that the investment continues to be appropriate, the Partnership will purchase the investment at the valuation determined by the Independent General Partners, subject to the right of the Management Company under such circumstances to determine not to sell the security to the Partnership.

6. The Partnership will maintain at its office written records concerning the purchase of the Series A Preferred Stock, including a copy of the written report prepared by the Sub-Manager, the valuation report prepared by the Independent Consultant, and written records of the factors considered by the Independent General Partners in approving such investment.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–22359 Filed 9–15–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18940; 812–7513]

Counsellors Tandem Securities Fund, Inc. and Sequoia Partners, L.P.; Notice and Order for Hearing

September 10, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of and Order for Hearing on Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Counsellors Tandem Securities Fund, Inc. ("Fund") and Sequoia Partners, L.P. ("Sequoia").

RELEVANT ACT SECTIONS: Order for hearing issued under section 40(a) and rule 0–5(c); exemption requested under section 17(d) and rule 17d–1.

SUMMARY OF APPLICATION: Applicants request an order of the SEC permitting the Fund, a closed-end investment company, to reimburse Sequoia $240,000 in expenses incurred in connection with a proxy contest instituted by Sequoia as a means of effecting either an open-ending or liquidation of the Fund.

FILING DATE: The application was filed on May 1, 1990, and supplemented by letter dated May 22, 1990, affidavit, memorandum, and letter dated August 2, 1990, letter dated July 26, 1990, supplemental affidavit dated September 5, 1990, and letters dated September 11 and 12, 1990.

NOTICE OF AND ORDER FOR HEARING ON APPLICATION: Notice is given that the Commission has determined that it is appropriate in the public interest and for the protection of investors that a hearing be held with respect to the application.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant: Counsellors Tandem Securities Fund, Inc., 466 Lexington Avenue, New York, New York 10017; Sequoia Partners, L.P., c/o Delta Management Group, 308 Pondfield Road, Bronxville, New York 10708.

FOR FURTHER INFORMATION CONTACT: Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Sequoia is a Delaware limited partnership formed for the purpose of investing in publicly-traded equity securities of closed-end investment companies that trade at a discount to net asset value ("NAV").

2. The Fund is a closed-end management investment company registered under the Act, with both common and preferred shares issued and outstanding. Historically, the Fund's common shares have traded on the New York Stock Exchange at a discount to NAV.

3. Sequoia made its initial purchase of Fund common shares in March 1989. In July 1989 Sequoia filed with the Commission an initial Schedule 13D that disclosed its beneficial ownership of 8.7% of the Fund's common stock then outstanding, and Sequoia's intention to contact Fund management to discuss means to reduce the common stock's trading discount. In August, Sequoia's representatives met with members of Fund management and urged them to recommend that shareholders approve either the Fund's conversion to an open-end investment company or the Fund's liquidation.

4. In February 1990 the Fund announced that it would hold a combined annual and special meeting of shareholders on April 10, 1990. The meeting agenda include election of directors and consideration of two non-binding advisory proposals, one relating to converting the company to an open-end investment company and the other to liquidating it. The Fund did not announce its position on either proposal. Sequoia then advised in a press release that it intended to nominate its own slate of directors, who were committed to conversion or liquidation of the Fund; Sequoia nominated its directors on February 16, 1990. Thereafter, by letter dated March 5, 1990, Sequoia proposed to withdraw its nomination proposal if the Fund, among other things, agreed to recommend that shareholders approve one of the Fund's non-binding proposals and to implement the proposal if approved. By this time Sequoia owned 485,000 shares of Fund common stock, or 10% of the outstanding common shares.

In addition, other persons acting in concert with Sequoia (together with Sequoia, the "13D Group") owned in the aggregate another 750,700 common shares of the Fund, representing an additional 15.5% of the Fund's outstanding common shares.

5. Fund management countered Sequoia's offer by urging Sequoia to abandon the contest and support one of the advisory proposals. Sequoia responded by mailing its proxy statement to Fund shareholders. On or about March 10, 1990, the Fund mailed to all shareholders of record a Notice of Combined Annual and Special Meeting of Stockholders to be held on April 10, 1990. The Fund also mailed materials soliciting proxies for management's slate of directors who opposed structural changes to the Fund. The Fund's board of directors recommended that the holders of common stock vote against the advisory proposals regarding open-ending or liquidating the company.

6. On April 5, 1990, five days before the scheduled meeting, the Fund and Sequoia executed a settlement agreement that ended the proxy contest. Independent legal counsel represented the Fund's non-interested directors in connection with their approval of the settlement agreement.

7. The settlement agreement required that Sequoia terminate its proxy contest and withdraw its slate of directors. It also required the Fund to make an all-cash tender offer for (1) up to 2,000,000 shares (about 41%) of its outstanding common stock at a price equal to 95% of the net asset value per share as of the close of business on a specified date, and (2) 303,030 shares (about 34%) of its outstanding preferred stock at $49.50 per share plus accrued dividends to the date of purchase. The Fund agreed to terminate the tender offer without purchasing any tendered shares and call a special shareholders meeting to vote upon a binding proposal to liquidate the Fund, which the Fund directors would support, if, upon the expiration of the tender offer, 2,500,000 or more (at least 51.5% of the outstanding) common shares were tendered. The Fund also agreed to reimburse Sequoia for its "reasonable, documented and direct out-of-pocket expenses incurred in connection with the proxy contest, up to a maximum of $240,000, plus any interest earned thereon," if the Commission permitted such reimbursement.

8. As the agreement required, the Fund deposited in a segregated account with its custodian cash in the amount of $240,000 shortly after the settlement was reached.

9. Sequoia incurred direct out-of-pocket expenses totalling $316,888 in connection with the proxy contest and in the negotiation of the settlement agreement.

10. The Fund commenced the tender offer on April 13, 1990. The Fund's board of directors unanimously recommended that common stockholders reject the offer and not tender their shares. In its letter to shareholders, the board stated its belief in the Fund's long-term prospects and stressed that the board had structured the tender offer to increase the net asset value of the common stock not tendered.

11. The Fund and Sequoia filed an application for an order under section 17(d) of the Act and rule 17d–1 thereunder to permit the Fund to comply with the reimbursement provision of the settlement agreement on May 1, 1990; the tender offer was to expire by its terms on May 10, 1990. On May 7, 1990, in accordance with the terms of the settlement agreement, the Fund fixed the tender offer price for its common shares. By that date the Fund had accrued as a $240,000 expense its commitment to reimburse Sequoia's proxy expenses.

12. Approximately 2.247 million shares of common stock (46% of that outstanding) and 693,970 shares of preferred shares (78% of that outstanding) had been validly tendered when the offer expired on May 10, 1990. The percentage of common stock tendered was not sufficient to trigger the special meeting/liquidation provision of the settlement agreement.

13. Sequoia and other members of the 13D Group tendered their 1.24 million common shares and 1600 preferred shares in the offer. Like other tendering shareholders, Sequoia received $10.85 cash per share for its common stock and $49.50 plus accrued dividends for its preferred stock. The closing price of the common stock on the date the tender offer price was set was $10.25; the NAV per share was $11.42. The tender offer price for preferred shares was $2.50 higher than the $47.00 market price.

14. The tender offer reduced the Fund's assets (approximately $100 million before the tender offer) by about $36.7 million.

15. Applicants submit that the proposed reimbursement is consistent with the provisions, policies and purposes of the Act and that the Fund's participation in the arrangement is not disadvantageous to it. Applicants assert that the settlement agreement benefited all Fund shareholders; applicants note that the board of directors of the Fund, including all of the disinterested directors, unanimously approved the settlement agreement as being in the best interests of the Fund and its shareholders. Applicants also assert that the benefits conferred by the settlement resulted from Sequoia's efforts. Accordingly, applicants reason it is appropriate that the Fund underwrite a reasonable portion of Sequoia's expenses in the proxy contest

Applicable Standards

1. Sequoia was an "affiliated person" of the Fund under section 2(a)(3) of the Act because at the time of the settlement with the Fund it owned ten percent of the Fund's outstanding common shares.

2. Section 17(d) and rule 17d–1 prohibit any affiliated person of a registered investment company from participating in or effecting any transaction in connection with any joint enterprise or other joint arrangement in which such registered investment company is a participant without prior Commission approval.

3. Rule 17d–1 provides that, in reviewing applications for orders under section 17(d), the Commission will consider whether the participation of the investment company in a joint enterprise or arrangement on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from, or less advantageous than, that of other participants.

4. It appears to the Commission that it is appropriate in the public interest and in the interest of investors that a hearing be held with respect to the application. Accordingly,

It is ordered, Under section 40(a) of the Act and rule 0–5(c) thereunder, that a hearing on the application under the applicable provisions of the Act and rules of the Commission be held at a time and place to be fixed by further order as provided by rule 6 of the Commission's Rules of Practice (17 CFR 201.6), and that an administrative law judge to be designated by further order preside at the hearing. Any person, other than applicants, who desires to be heard or otherwise wishes to participate in the proceeding is directed to file with the Secretary of the Commission, on or before October 6, 1992, an application as described in rule 9(c) of the Commission's Rules of Practice (17 CFR 201.19(c)). The request should set forth the nature and extent of the requestor's interest in the proceeding, any issues of fact or law which the requestor desires to controvert, and any additional issues which the requestor deems raised by this Notice and Order or by the

exemptive application. A copy of the request should be served on applicants, personally or by mail. Proof of such service on applicants, in the form of an affidavit or, for lawyers, a certificate of service, shall be filed contemporaneously with the request. Persons filing an application to participate or to be heard will receive notice of the date and place of the hearing, any adjournments, and other actions of the Commission involving the subject matter of this proceeding.

The Division of Investment Management has advised the Commission that it has examined the application and all supplemental materials and that, upon the basis thereof, the following matters and questions are presented for consideration without prejudice to its specifying additional matters and questions upon further examination:

(1) Whether the Commission should deny an application under section 17(d) and rule 17d–1 as untimely because, notwithstanding the requirement of rule 17d–1 that the Commission issue an order permitting any joint transaction before it is effected, applicants have engaged substantially in a joint transaction.

(2) With respect to the merits of the application,

(a) whether the Fund's participation in the joint transaction on the basis proposed is consistent with the provisions, policies, and purposes of the Act; and

(b) whether such participation is on a basis different from or less advantageous than that of other participants.

It is further ordered That at the hearing attention shall be given to the foregoing matters.

It is further ordered That the Division of Investment Management shall be a party to the proceeding.

It is further ordered That the Secretary of the SEC shall give notice of the hearing by mailing a copy of this Notice and Order by certified mail to applicants at the addresses noted above; that notice to all other persons be given by publication of this Notice and Order in the **Federal Register**; that a copy of this Notice and Order shall be published in the SEC Docket; and that an announcement of the hearing shall be included in the SEC News Digest.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–22358 Filed 9–15–92; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 18944; International Series Rel. No. 453; 812–8012]

Sanford C. Bernstein Fund, Inc.; Notice of Application

September 10, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANT: Sanford C. Bernstein Fund, Inc.

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from the provisions of section 12(d)(3) of the Act and rule from 12d3–1 thereunder.

SUMMARY OF APPLICATION: Applicant seeks a conditional order under section 6(c) of the Act exempting its Bernstein International Value Portfolio (the "Portfolio") and certain other registered investment companies and series thereof from the provisions of section 12(d)(3) of the Act and rule 12d3–1 thereunder to the extent necessary to permit the Portfolio and such other investment companies and series to invest in equity and convertible debt securities of foreign issuers that, in each of their most recent fiscal year, derived more than 15% of their gross revenues from their activities as a broker, dealer, underwriter, or investment adviser, provided such investments meet the conditions in the proposed amendments to rule 12d3–1.

FILING DATE: The application was filed on July 31, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. On October 5, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC 450 5th Street, NW., Washington, DC 20549. Applicant, 767 Fifth Avenue, New York, New York 10153.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist (202) 272–3023, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representation

1. Applicant is an open-end management investment company registered under the Act. Applicant is organized as a series company and currently has seven separate investment series, including the Portfolio. Applicant is managed and advised by Bernstein, a registered investment adviser.

2. Applicant seeks relief for the Portfolio and for any other registered investment company or series thereof that is managed by Bernstein or for which Bernstein serves as principal underwriter from the provision of section 12(d)(3) and rule 12d3–1 thereunder.[1] The relief would permit them to invest in foreign issuers that, in each of their most recent fiscal years, derived more than 15% of their gross revenues from their activities as a broker, dealer, underwriter, or investment adviser ("Foreign Securities Companies").

Applicant's Legal Conclusions

1. Section 12(d)(3) of the Act prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter, or investment adviser. Rule 12d3–1 under the Act provides an exemption from section 12(d)(3) for investment companies acquiring securities of an issuer that derived more than 15% of its gross revenues in its most recent fiscal year from securities-related activities,provided the acquisitions satisfy certain conditions set forth in the rule.

2. Subparagraph (b)(4) of rule 12d3–1 provides that "any equity security of the issuer * * * [must be] a 'margin security' as defined in Regulation T

[1] Applicant, by its counsel, advised the Commission staff in a supplemental letter dated September 1, 1992 that no existing registered investment companies other than applicant and its series currently intend to rely on any relief granted pursuant to the application. Applicant, by its counsel, further represented that, in the future, any other registered investment companies or series thereof for which Bernstein acts as investment manager or for which Bernstein acts as principal underwriter may make investments in equity or convertible debt securities, or both, of Foreign Securities Companies, as defined in this notice, provided such registered investment companies or series thereof act in accordance with the representations and comply with the conditions set forth in this notice and any order issued by the Commission pursuant to this notice.

promulgated by the Board of Governors of the Federal Reserve System." While margin securities are securities that are principally traded in the United States, certain equity securities issued outside the United States can now qualify as margin securities under recent amendments to Regulation T. Any foreign equity security meeting specified qualification requirements will be eligible as a margin security provided it appears on a list of "foreign margin stocks" published quarterly by the Board of Governors of the Federal Reserve System. However, because the requirements for inclusion on the list of "foreign margin stocks" are substantially more stringent than the requirements for inclusion on the list of "over-the-counter margin stocks," many securities issued outside the United States will not be margin securities for purposes of rule 12d3–1.

3. Proposed amended rule 12d3–1 provides that the "margin security" requirement would be excused if the acquiring company purchases the equity securities of Foreign Securities Companies that meet criteria comparable to those applicable to equity securities of United States securities-related businesses. The criteria, as set forth in the proposed amendments, "are based particularly on the policies that underlie the requirements for inclusion on the list of over-the-counter stocks." Investment Company Act release No. 17096 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989).

Applicant's Condition

Applicant agrees to the following condition in connection with the relief requested:

Applicant will company with the provisions of the proposed amendments to Rule 12d3–1 [Investment Company Act Release No. 17096 (Aug. 3, 1989); 54 FR 33027 (Aug. 11, 1989)] as such amendments are currently proposed, or as they may be reproposed, adopted, or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–22357 Filed 9–15–92; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice #1693]

Study Group 9 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 9 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will hold an open meeting October 2, 1992, at the Federal Communication Commission, 1919 M Street, NW., Washington, DC in room 315 commencing at 10 a.m. The meeting will be continued on October 28, 1992, at 10 a.m. in room 535 at the same location.

Study Group 9 deals with matters relating primarily to the study of radio relay systems. The purpose of the meeting is to prepare for the November 1992 meetings of Working parties 9A–9D and Task Group 9/1.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Requests for further information should be directed to Mr. Alex Latker, International Conference Staff, Common Carrier Bureau, Federal Communication Commission, Washington, DC 20554, phone (202) 632–3214.

Dated: September 1, 1992.

Warren G. Richards,

Chairman, U.S. CCIR National Committee.

[FR Doc. 92–22316 Filed 9–15–92; 8:45 am]

BILLING CODE 4710–45–M

Shipping Coordinating Committee; Meeting

Subcommittee on Safety of Life at Sea Working Group on Lifesaving, Search and Rescue

The Working Group on Lifesaving, Search and Rescue of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 9:30 a.m. on September 30, 1992 in room 4315 at Coast Guard Headquarters, 2100 Second Street SW., Washington, DC.

The purpose of the meeting is to prepare U.S. positions for the 24th Session of the International Maritime Organization (IMO) Sub-Committee on Lifesaving, Search and Rescue (LSR), scheduled for February 15–19, 1993, at the IMO Headquarters in London. Among other things, the items of particular interest are:

—Continue work on review and amendment of SOLAS Chapter III, to clarify the intent of the chapter and to cover more specifically various lifesaving arrangements (such as free-fall lifeboats and marine evacuation systems) which are recently gaining wider application
—406 MHz satellite Emergency Position Indicating Radio Beacon (EPIRB) coding and registration
—Method and content of safety instruction of passengers on ships, and safety awareness and training
—Role of the human element in maritime casualties (including on board communication problems)
—International approval of life-saving appliances.

The IMO LSR Sub-Committee works to develop international agreements, guidelines, and standards for Search and Rescue and for lifesaving equipment installed on commercial ships. In many cases, the work of the Sub-Committee forms the basis for national standards and regulations and classification society rules. The U.S. SOLAS Working Group supports the U.S. Representative to the LSR Sub-Committee in developing U.S. positions on issues raised at those meetings. Because of the potential impact of the Sub-Committee's work on U.S. regulations and standards, the U.S. SOLAS Working Group serves as an excellent forum for the U.S. maritime industry to express their ideas in the areas under the Sub-Committee's purview. Since these meetings are open to the public, anyone may attend up to the seating capacity of the room.

For further information contact Mr. Kurt J. Heinz at (202) 267–1444, U.S. Coast Guard Headquarters (G–MVI–3/1404), 2100 Second Street SW., Washington, DC 20593–0001.

Dated: September 2, 1992.

Bruce Carter,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 92–22320 Filed 9–15–92; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 92–044]

Certification of Alternative Advisory Group in lieu of a Council

AGENCY: Coast Guard, DOT.

ACTION: Notice of certification.

SUMMARY: Under the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990 (the Act), the Coast Guard may certify, on an annual basis, a voluntary advisory group in lieu of a Regional Citizens' Advisory Council for Cook Inlet, Alaska. This certification allows the advisory group to monitor the activities of oil tankers and facilities under the Cook Inlet Program established by the Act. The purpose of this notice is to inform the public that the Coast Guard has certified an alternative voluntary advisory group for Cook Inlet, Alaska.

EFFECTIVE DATE: July 24, 1992 through May 31, 1993.

FOR FURTHER INFORMATION CONTACT: Mrs. Janice Jackson, Project Manager, Marine Environmental Protection Division, (G–MEP), (202) 267–0500, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: As part of the Oil Pollution Act of 1990 (section 5002) Congress passed the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990 (the Act), 33 U.S.C. 2732, to foster the long-term partnership between industry, government, and local communities in overseeing compliance with environmental concerns in the operation of crude oil terminals and oil tankers.

Paragraph (o) of the Act (33 U.S.C. 2732(o)), permits a voluntary advisory group in lieu of a council of the type specified in 33 U.S.C. 2732(d) to represent the communities and interests in the vicinity of the oil terminal facilities in Cook Inlet, if certain conditions are met. The advisory group's purpose is to monitor the operations of the oil tankers and terminal facilities and provide advice and recommendations to industry and government.

The Act requires annual certification by the President that any alternative voluntary advisory group in the Cook Inlet area fosters the general goals and purposes of the Act and is broadly representative of the community and interests in the vicinity of the terminal facilities in order for that group to function in lieu of the specified council. Accordingly, in 1991 the President granted certification to the Cook Inlet Regional Citizens' Advisory Council, an alternative voluntary advisory group. That certification has expired. The authority to certify alternative advisory groups was delegated to the Commandant of the Coast Guard and has been redelegated to the Chief, Office of Marine Safety, Security and Environmental Protection.

The Coast Guard received a request from the Cook Inlet Regional Citizens' Advisory Council requesting recertification in 1992 as the alternative voluntary advisory group for Cook Inlet. The request to recertify the group in accordance with 33 U.S.C. 2732(o) was evaluated without the benefit of formal standards and was approved. The Coast Guard is currently developing standards for recertification of voluntary advisory groups which are in the process of being finalized. In the future, recertification requests will be approved only if the advisory groups meet the criteria developed by the Coast Guard.

Certification

By letter dated July 24, 1992 the Chief, Office of Marine Safety, Security and Environmental Protection certified that the Cook Inlet Regional Citizens' Advisory Council qualifies as an alternative voluntary advisory group under the provisions of 33 U.S.C. 2732(o). This certification terminates on May 31, 1993.

Dated: September 9, 1992.

R. C. North,

Acting Chief, Office of Marine Safety, Security and Environmental Protection

[FR Doc. 92–22351 Filed 9–15–92; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Blair County Airport, Altoona, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Blair County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before October 16, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. L. W. Walsh, Manager Harrisburg Airports District Office, 3911 Hartzdale Drive, Suite 1, Camp Hill, Pennsylvania 17011.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Joseph McKelvey, Airport Manager of the Blair County Airport Authority at the following address: Blair County Airport Authority, 2 Airport Drive, Martinsburg, Pennsylvania 16662.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Blair County Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. L. W. Walsh, Manager Harrisburg Airports District Office, 3911 Hartzdale Drive, Suite 1, Camp Hill, Pennsylvania 17011 (Tel (717)–975–3423). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Blair County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 20, 1992, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Blair County Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 10, 1992.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: January 1, 1993.

Proposed charge expiration date: September 30, 1995.

Total estimated PFC revenue: $198,000.

Brief description of proposed projects:

—Land Acquisition to complete entrance road
—Construct Airport entrance road
—Terminal building improvements
—Rehabilitate North Apron
—Construct T-Hangar access Taxiways
—Acquisition of navigational easements
—Design of Runway 2/20 extension (Impose Only)
—Design Runway 12/30 extension (Impose Only)
—Environmental Assessment for airfield improvements (Impose Only)

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **"FOR FURTHER INFORMATION CONTACT"** and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Blair County Airport Authority.

Issued in Jamaica, New York State on August 27, 1992.

Louis P. DeRose,

Manager, Airports Division, Eastern Region.

[FR Doc. 92–22386 Filed 9–15–92; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Westchester County Airport, White Plains, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Westchester County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before October 16, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Philip Brito, Manager New York Airports District Office, 181 South Franklin Avenue, room 305, Valley Stream, New York, 11581.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Eric B. Langeloh, Commissioner of Transportation of the County of Westchester, New York, at the following address: Department of Transportation, 112 East Post Road, White Plains, New York 10601.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Westchester County under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Brito, Manager of the New York Airports District Office, 181 South Franklin Avenue, room 305, Valley stream, New York, 11581, Tel. (718) 553–18182. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Westchester County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 7, 1992, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Westchester County Department of Transportation was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 5, 1992.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: October 1, 1992.

Proposed charge expiration date: September 30, 2023.

Total estimated PFC revenue: $29,483,000.

Brief description of proposed projects:

—Construct Crash Fire Rescue Training Facility
—Construct Airport Peripheral Safety Road
—Construct Parallel Taxiway System
—Construct Heated Storage Facility
—Construct General Aviation Infrastructure
—Acquire land for Airport Approach Protection Zone

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Charter Operators.

Any person may inspect the application in person at the FAA office listed above under **"FOR FURTHER INFORMATION CONTACT"** and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Westchester County Airport.

Issued in Jamaica, New York State on August 27, 1992.

Louis P. DeRose,

Manager, Airports Division, Eastern Region.

[FR Doc. 92–22197 Filed 9–15–92; 8:45 am]

BILLING CODE 4910–13–M

UNITED STATES SENTENCING COMMISSION

Revisions to the Sentencing Guidelines for the United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of final action regarding amendments to sentencing guidelines and policy statements effective November 1, 1992.

SUMMARY: The Sentencing Commission hereby gives notice of several actions taken pursuant to its authority under Section 217(a) of the Comprehensive Crime Control Act of 1984 (28 U.S.C. 994 (a) and (u)). The Commission has reviewed amendments submitted to Congress on April 30, 1992, that may result in a lower guideline range and has designated one such amendment for inclusion in policy statement § 1B1.10 (Retroactivity of Amended Guideline Range). An earlier commentary amendment, (effective November 1, 1991), which the present amendment ratifies, was also designated for inclusion in § 1B1.10. In addition, the Commission has made a number of editorial, clarifying, and conforming amendments to the Guidelines Manual.

DATES: The Commission has specified an effective date of November 1, 1992, for these actions.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Information Officer, Telephone: (202) 626–8500.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the U.S. Government. The Commission is empowered by 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for Federal sentencing courts. Sections 994 (o) and (p) of Title 28, United States Code, further direct the Commission to periodically review and revise guidelines and policy statements previously promulgated, and require that guideline amendments be submitted to Congress for review. Absent action of the Congress to the contrary, guideline amendments become effective following 180 days of Congressional review on the date specified by the Commission (i.e., November 1, 1992). Unlike new guidelines and amendments thereto issued pursuant to 28 U.S.C. 994 (a) and (p), sentencing policy statements, commentary, and amendments thereto promulgated by the Commission are not required to be submitted to Congress for 180 days' review prior to their taking effect.

In connection with its ongoing review of the Guidelines Manual, the Commission continues to welcome comment on any aspect of the sentencing guidelines, policy statements, and official commentary. Comments should be sent to: The United States Sentencing Commission, 1331 Pennsylvania Avenue, NW., suite 1400, Washington, DC 20004, Attn: Public Information Officer. Effective November 16, 1992, comments should be sent to: The United States Sentencing Commission, One Columbus Circle, NE., suite 2–500, Washington, DC 20002–8002, Attn: Public Information Officer.

Authority: Section 217(a) of the Comprehensive Crime Control Act of 1984 (28 U.S.C. 994(a)).

William W. Wilkins, Jr.,

Chairman.

Additional Revisions to the Guidelines Manual

(1) Section 1B1.10(d) is amended by deleting "and 380" and inserting in lieu thereof "380, 433, and 461".

This amendment expands the listing in subsection (d) to implement the directive in 28 U.S.C. 994(u) in respect to guideline amendments that may be considered for retroactive application.

(2) Section 1B1.11 (Policy Statement) is amended in subsection (b)(1) by inserting "of conviction" immediately following "offense".

The commentary to § 1B1.11 captioned "Background" is amended in the first sentence by inserting "and policy statements" immediately following "guidelines".

This amendment clarifies the operation of this section.

(3) The commentary to § 2D1.1 captioned "Application Notes," as amended, is further amended in Note 10 in the "Drug Equivalency Tables" in the subdivision captioned "Cocaine and Other Schedule I and II Stimulants" by inserting the following additional entries:

"1 gm of Aminorex=100 gm of marihuana
1 gm of Methcathinone=380 gm of marihuana".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in the "Drug Equivalency Tables" by inserting an asterisk immediately following each of the following subdivision captions: "Schedule I or II Opiates", "Cocaine and Other Schedule I or II Stimulants (and their immediate precursors)", and "LSD, PCP, and Other Schedule I and II Hallucinogens (and their immediate precursors)"; and by inserting the following additional sentence at the end of each of the above noted subdivisions:

"**Provided*, That the minimum offense level from the Drug Quantity Table for any of these controlled substances individually, or in combination with another controlled substance, is level 12.".

The Commentary to § 2D1.1 captioned "Application Notes," as amended is further amended by inserting the following additional note:

"15. Certain pharmaceutical preparations are classified as Schedule III, IV, or V controlled substances by the Drug Enforcement Administration under 21 CFR 1308.13–15 even though they contain a small amount of a Schedule I or II controlled substance. For example, Tylenol 3 is classified as a Schedule III controlled substance even though it contains a small amount of codeine, a Schedule II opiate. For the purposes of the guidelines, the classification of the controlled substance under 21 CFR 1308.13–15 is the appropriate classification.".

This amendment adds equivalencies for two controlled substances to make the Drug Equivalency Tables more comprehensive, adds notes to the Drug Equivalency Tables to make clear the interaction between the minimum offense level for certain types of controlled substances in the Drug Quantity Table and the instructions for determining a combined offense level in a case with multiple controlled substances, and clarifies the treatment of certain pharmaceutical preparations that are classified as Schedule III, IV, or V substances under 21 CFR 1308.13–15.

(4) The commentary to § 2F1.1 captioned "Application Notes" is amended in Note 7 in the first paragraph by inserting the following additional sentence as the second sentence:

"As in theft cases, loss is the value of the money, property, or services unlawfully taken; it does not, for example, include interest the victim could have earned on such funds had the offense not occurred.".

The Commentary to § 2F1.1 captioned "Application Notes" is amended in Note 7(b) by deleting:

"In fraudulent loan application cases and contract procurement cases where the defendant's capabilities are fraudulently represented, the loss is the actual loss to the victim (or if the loss has not yet come about, the expected loss). For example, if a defendant fraudulently obtains a loan by misrepresenting the value of his assets, the loss is the amount of the loan not repaid at the time the offense is discovered, reduced by the amount the lending institution has recovered, or can expect to recover, from any assets pledged to secure the loan.",

and inserting in lieu thereof:

"In fraudulent loan application cases and contract procurement cases, the loss is the actual loss to the victim (or if the loss has not yet come about, the expected loss). For example, if a defendant fraudulently obtains a loan by misrepresenting the value of his assets, the loss is the amount of the loan not repaid at the time the offense is discovered, reduced by the amount the lending institution has recovered (or can expect to recover) from any assets pledged to secure the loan. However, where the intended loss is greater than the actual loss, the intended loss is to be used.".

This amendment clarifies that interest is not included in the determination of loss. In addition, it clarifies that in fraudulent loan application cases, as in other types of fraud, if the intended loss is greater than the actual loss, the intended loss is used. Finally, it makes an editorial improvement in this commentary by deleting an unnecessary phrase.

(5) The Commentary to § 2K1.3 captioned "Application Notes" is amended by inserting the following additional note:

"11. As used in subsections (b)(3) and (c)(1), 'another felony offense' and 'another offense' refer to offenses other than explosives or firearms possession or trafficking offenses. However, where the defendant used or possessed a firearm or explosive to facilitate another firearms or explosives offense (e.g., the defendant used or possessed a firearm to protect the delivery of an unlawful shipment of explosives), an upward departure under § 5K2.6 (Weapons and Dangerous Instrumentalities) may be warranted.".

The Commentary to § 2K2.1 captioned "Application Notes" is amended in Note 15 by deleting "or (a)(5)" and inserting in lieu thereof "(a)(4)(B), or (a)(6)".

The Commentary to 2K2.1 captioned "Application Notes" is amended by inserting the following additional note:

"18. As used in subsections (b)(5) and (c)(1), 'another felony offense' and 'another offense' refer to offenses other than explosives or firearms possession or trafficking offenses. However, where the defendant used or possessed a firearm or explosive to facilitate another firearms or explosives offense (e.g., the defendant used or possessed a firearm to protect the delivery of an unlawful shipment of explosives), an upward departure under § 5K2.6 (Weapons and Dangerous Instrumentalities) may be warranted.".

This amendment clarifies the meaning of the terms "another felony offense" and "another offense," and corrects a clerical error.

(6) The Commentary to § 3C1.1 captioned "Application Notes" is amended by inserting the following additional note:

"7. Under this section, the defendant is accountable for his own conduct and for conduct that he aided or abetted, counseled, commanded, induced, procured, or willfully caused.".

The Commentary to § 3C1.2 captioned "Application Notes," as amended, is further amended by renumbering Note 5 as Note 6 and by inserting the following additional note:

"5. Under this section, the defendant is accountable for his own conduct and for conduct that he aided or abetted, counseled, commanded, induced, procured, or willfully caused.".

This amendment clarifies the scope of the conduct for which the defendant is accountable under §§ 3C1.1 and 3C1.2.

(7) The Commentary to § 4A1.2 captioned "Application Notes" is

amended in Note 8 by deleting the last sentence as follows:

"If the government is able to show that a sentence imposed outside this time period is evidence of similar misconduct or the defendant's receipt of a substantial portion of income from criminal livelihood, the court may consider this information in determining whether to depart and sentence above the applicable guideline range.",

and by inserting in lieu thereof:

"If the court finds that a sentence imposed outside this time period is evidence of similar, or serious dissimilar, criminal conduct, the court may consider this information in determining whether an upward departure is warranted under § 4A1.3 (Adequacy of Criminal History Category).".

This amendment clarifies that dissimilar, serious prior offenses outside the applicable time period may be considered in determining whether an upward departure is warranted under § 4A1.3. The amendment provides additional Commission guidance on an issue that has produced conflicting decisions among the courts of appeals. Compare, e.g., *United States* v. *Leake*, 908 F.2d 550, 554 (9th Cir. 1990) (upward departure impermissible for remote prior convictions dissimilar to instant offense) and *United States* v. *Samuels*, 938 F.2d 210, 215 (D.C. Cir. 1991) (suggesting the same) with *United States* v. *Williams*, 910 F.2d 1574, 1579 (7th Cir. 1990), rev'd on other grounds, 112 S. Ct. 1112 (1992) (although older prior crimes dissimilar to instant offense, upward departure permissible if convictions are reliable information of increased recidivism risk) and *United States* v. *Russell*, 905 F.2d 1439, 1444 (10th Cir. 1990) (same).

(8) The Commentary to § 7B1.1 captioned "Application Notes" is amended by deleting Notes 2 and 3 as follows:

"2. 'Crime of violence' has the same meaning as set forth in § 4B1.2(1), and includes any offense under federal or state law punishable by imprisonment for a term exceeding one year that—

(i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or

(ii) is burglary of a dwelling, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another.

A crime of violence includes murder, manslaughter, kidnapping, aggravated assault, forcible sex offenses, robbery, arson, extortion, extortionate extension or credit, and burglary of a dwelling. Other offenses are included where (A) that offense has as an element the use, attempted use, or threatened use of physical force against the person of another, or (B) the conduct set forth in the violation charged involved use of explosives or, by its nature, presented a serious potential risk of physical injury to another. A crime of violence also includes the offenses of aiding and abetting, conspiring, and attempting to commit such offenses.

3. 'Controlled substance offense' includes any offense under a federal or state law prohibiting the manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with the intent to manufacture, import, export, distribute, or dispense. A controlled substance offense also includes the offenses of aiding and abetting, conspiring, and attempting to commit such offenses.",

and by inserting in lieu thereof:

"2. 'Crime of violence' is defined in § 4B1.2 (Definitions of Terms Used in Section 4B1.1). See § 4B1.2(1) and Application Notes 1 and 2 of the Commentary to § 4B1.2.

3. 'Controlled substance offense' is defined in § 4B1.2 (Definitions of Terms Used in Section 4B1.1). See § 4B1.2(2) and Application Note 1 of the Commentary to § 4B1.2.".

This amendment clarifies the Commission's intent that the terms "crime of violence" and "controlled substance offense" in § 7B1.1 have the same meaning as these terms have in § 4B1.2.

In addition, the Commission has updated the "Historical Notes" following the amended guideline sections, and has made a number of additional minor conforming and editorial revisions to improve the internal consistency and appearance of the Manual.

[FR Doc. 92-22332 Filed 9-15-92 8:45 am]

BILLING CODE 2210-40-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 180
Wednesday, September 16, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Wednesday, September 16, 1992, 10:00 a.m.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

Enforcement Matter OS #5736.

The staff will brief the Commission on issues concerning enforcement matter OS #5736.

For a Recorded Message Containing the Latest Agenda Information, Call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 504–0800.

Dated: September 10, 1992.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 92–22567 Filed 9–14–92; 1:41 pm]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Thursday, September 17, 1992, 10:00 a.m.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: *Open to the Public.*

MATTERS TO BE CONSIDERED:

1. *Pride in Public Service Award.*

The Commission will present the Pride in Public service award to September's recipient.

2. *Labeling Requirements for Art Materials.*

The Commission will consider a draft **Federal Register** notice containing the final codification of ASTM D–4236, final chronic hazard guidelines, and final supplemental definition of "toxic."

For a Recorded Message Containing the Latest Agenda Information, Call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 504–0800.

Dated: September 10, 1992.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 92–22568 Filed 9–14–92; 1:41 pm]

BILLING CODE 6335–01–M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., September 23, 1992.

PLACE: 1st Floor Hearing Room—Federal Maritime Commission, 800 North Capitol St., NW, Washington, DC. 20573–0001.

STATUS: Part of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTER(S) TO BE CONSIDERED:

Portion open to the public:

1. Docket No. 92–16—Conference Independent Action Provisions—Consideration of comments.
2. Docket No. 92–31—Service Contracts—Consideration of comments.
3. Docket No. 92–35—Notice of Inquiry Concerning Various Regulatory Issues—Consideration of comments on Issue No. 4.

Portion closed to the public:

1. Docket No. 91–24—Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Korea Trade—Consideration of comments.
2. Docket No. 92–42—Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Korea Trade—Consideration of comments.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 92–22466 Filed 9–14–92; 1:26 pm]

BILLING CODE 6730–01–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–92–25]

TIME AND DATE: September 22, 1992 at 2:30 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public, except for a closed portion.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings
2. Minutes
3. Ratification List
4. Inv. No. 731–TA–527 (Final) (Extruded Rubber Thread from Malaysia)
5. Consideration of all action jackets which have been outstanding for 30 days or longer as of August 31, 1992:
   1. Notice of proposed final rulemaking for 19 CFR Parts 210 and 211
   2. Breach of the administrative protective order (APO) in an investigation under Title VII of the Tariff Act of 1930
   3. Possible breach of the APO in an investigation under Title VII of the Tariff Act of 1930
   4. Breach of the APO in an investigation under section 337 of the Tariff Act of 1930
   5. Possible breach of the APO in an investigation under Title VII of the Tariff Act of 1930
   6. Amendment to the Proposed Outreach Plan for the Trade Remedy Assistance Office
6. Any items left over from previous agenda

On September 11, 1992 the United States International Trade Commission, in conformity with 19 C.F.R. 201.36, unanimously determined to close a portion of the meeting of September 22, 1992. This action was taken pursuant to the specific exemptions of 5 U.S.C. 552b(c)(3), (c)(4), and (c)(5), and in conformity with 19 C.F.R. 201.36(b)(3), (b)(4), and (b)(5), and considering the public interest. Those persons, all members or staff of the Commission, expected to be present at this closed portion are listed with their respective corresponding affiliations as follows:

Don E. Newquist, Chairman
Peter S. Watson, Vice Chairman
David B. Rohr, Commissioner
Anne E. Brunsdale, Commissioner
Carol T. Crawford, Commissioner
Janet A. Nuzum, Commissioner
All members of each Commissioner's personal staff
Paul R. Bardos, Acting Secretary
Karen McGriff, Office of the Secretary
Robert A. Rogowsky, Director of Operations
Lyn M. Schlitt, General Counsel
N. Tim Yaworski, Office of the General Counsel
Charles H. Nalls, Office of the General Counsel

The General Counsel certifies that in her opinion a portion of the meeting may be closed to the public pursuant to 19 C.F.R. 201.36(b)(3), (b)(4), and (b)(5).

CONTACT PERSON FOR MORE INFORMATION: Paul R. Bardos, Acting Secretary, (202) 205–2000.

Issued: September 11, 1992.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92–22477 Filed 9–14–92; 1:27 pm]

BILLING CODE 7020–02–M

Corrections

Federal Register
Vol. 57, No. 180
Wednesday, September 16, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6942

[AK-932-4214-10; F-01981]

Partial Revocation of Public Land Order No. 547 and Public Land Order No. 5187; Alaska

Correction

In rule document 92-20539 beginning on page 38782 in the issue of Thursday, August 27, 1992, in the third column, above the signature, the date should read August 19, 1992.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 51

RIN 1024-AB98

Concession Contracts and Permits

Correction

In rule document 92-20843 beginning on page 40496 in the issue of Thursday, September 3, 1992, make the following correction on page 40503, in the first column, in the third paragraph, "reviewed" should read "revised".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219-AA75

High-Voltage Longwall Equipment Standards for Underground Coal Mines

Correction

In proposed rule document 92-20489 beginning on page 39041 in the issue of Thursday, August 27, 1992, make the following correction:

On page 39044, in the second column, in the second full paragraph, the last line should read "starting without nuisance tripping".

BILLING CODE 1505-01-D

federal register

Wednesday
September 16, 1992

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 71 and 93
Offshore Airspace Reconfiguration, etc.; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 71 and 93

[Docket No. 26968; Notice No. 92-13]

RIN 2120-AE32

Offshore Airspace Reconfiguration; Additional Control Areas; Continental Control Area; Area Low Routes; Control Areas Associated With Jet Routes Outside the Continental Control Area; Reporting Points; Flushing (New York) Airport Traffic Rule; and Valparaiso, Florida Terminal Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend the Federal Aviation Regulations (FAR) by designating additional control areas as offshore airspace areas or en route domestic airspace areas, as appropriate; revising certain additional control areas; adding restricted and prohibited areas in the Continental Control Area; eliminating domestic area low routes; eliminating control areas associated with jet routes outside the Continental Control Area; eliminating domestic high and low altitude reporting points; eliminating the special air traffic rules for Flushing, New York; and replacing the Valparaiso, Florida terminal area and special air traffic rules with the Eglin, Florida Class D airspace area. The proposals in this NPRM respond to recommendations from the National Airspace Review (NAR) and meet a goal of the Airspace Reclassification final rule—to simplify airspace assignment and use.

DATES: Comments must be submitted on or before November 2, 1992.

ADDRESSES: Comments on this NPRM should be mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 26968, 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked Docket No. 26968. The official docket may be examined in the Office of the Chief Counsel, room 915G, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. William M. Mosley, Air Traffic Rules Branch ATP-230, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-9251.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments relating to the overall regulatory, economic, aeronautical, environmental, energy-related, or federalism impacts of the proposals contained in this NPRM are also invited. Substantive comments should be accompanied by actual and anticipated cost impact statements, as appropriate. Comments should identify the regulatory docket number and be submitted in triplicate to the Rules Docket address specified above. Commenters wishing to have the FAA acknowledge receipt of their comments on this NPRM must submit with those comments a self-addressed, stamped postcard with the following statement: "Comments to Docket No. 26968." The postcard will be date stamped and mailed to the commenter. All comments received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed amendments. The proposals contained in this NPRM may be changed in light of comments received. All comments received will be available for examination in the Rules Docket, before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel regarding this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3485. Communications must identify the docket number of this NPRM.

Persons interested in being placed on a mailing list for future NPRM's should request from the above office a copy of Advisory Circular Number 11-2A, "Notice of Proposed Rulemaking Distribution System," which describes the application procedure.

Background

On April 22, 1982, the NAR plan was published in the **Federal Register** (47 FR 17448). The plan reviewed airspace use and the procedural aspects of the air traffic control system. The main objectives of the NAR were to:

(1) Develop and incorporate a more efficient relationship among traffic flows, airspace allocation, and system capacity in the air traffic control system. This relationship would permit improved air traffic flow management to maximize system capacity and improve airspace management;

(2) Review and eliminate, wherever practicable, governmental restraints on system efficiency, thereby simplifying the air traffic control system; and

(3) Revalidate air traffic control services within the National Airspace System (NAS) in light of state-of-the-art and future technological improvements

On December 17, 1991, the final rule on Airspace Reclassification was published (56 FR 65638). The new airspace classes described in the final rule will be effective on September 16, 1993. That final rule amends FAR part 71 (14 CFR part 71) to reclassify U.S. airspace in accordance with the airspace classes adopted by the International Civil Aviation Organization (ICAO).

Under the Airspace Reclassification final rule, effective September 16, 1993, positive control areas (PCA's), jet routes, and area high routes are classified as Class A airspace areas; terminal control areas (TCA's) are classified as Class B airspace areas; airport radar service areas (ARSA's) are classified as Class C airspace areas; control zones for airports with operating control towers and airport traffic areas that are not associated with the primary airport of a TCA or an ARSA are classified as Class D airspace areas; all other controlled airspace is classified as Class E airspace; and airspace that is not otherwise designated as controlled airspace is classified as Class G airspace.

In addition, the Airspace Reclassification final rule incorporated part 75 into part 71 and established subpart M-Jet Routes and Area High Routes in existing part 71, effective December 17, 1991. This new subpart includes the sections formerly found in part 75, which has been removed and reserved. The Airspace Reclassification final rule also amended parts 1, 45, 61, 65, 91, 93, 101, 103, 105, 121, 127, 135, 137, 139, and 171 and Special Federal Aviation Regulation (SFAR) Nos. 51-1, 60, and 62, effective September 16, 1993, to change the terminology and integrate the adopted airspace classifications into the respective regulations that relate to airspace assignments and operating rules.

Related Agency Actions

The Airspace Reclassification final rule discussed the need to revise, by separate rulemaking actions, certain existing controlled airspace areas to implement the new airspace classification. These actions are addressed in this NPRM and in another rulemaking action. These actions are being issued after the publication of the Airspace Reclassification final rule, but before the reclassification effective date of September 16, 1993. Therefore, the actions proposed in this notice use both existing and future terminology. However, the actual airspace areas are essentially the same, whether the airspace area is entitled, for example, and "additional control area" (existing terminology) or a "Class E airspace area" (future terminology). The actions would not change the basic requirements for operations under visual flight rules (VFR) or instrument flight rules (IFR).

The final rule on the first rulemaking action, "Terminal Airspace Reconfiguration," which addressed control zones, transition areas, and specific TCA's and ARSA's, was published on August 27, 1992 (Docket No. 26852; 57 FR 38962).

This NPRM is the second rulemaking action. It addresses offshore airspace and other areas related to the reclassification of airspace. This proposal, if adopted, would be effective no later than September 16, 1993.

The Proposal

The FAA proposes to revise certain existing airspace areas designated in FAA Order 7400.7, effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. This NPRM also proposes to revise the corresponding airspace areas and to establish airspace areas in FAA Order 7400.9, effective September 16, 1993, which is also incorporated by reference in 14 CFR 71.1.

The FAA also proposes other revisions in this NPRM, which are in concert with the goal of the Airspace Reclassification final rule—to simplify airspace assignment and use. This NPRM proposes to eliminate the special air traffic rules at Flushing, New York airport and to replace the Valparaiso, Florida terminal area with the Eglin, Florida, Class D airspace area.

Additional Control Areas

As part of the implementation of the Airspace Reclassification final rule, the FAA is proposing to designate additional control areas as either offshore airspace areas or en route domestic airspace areas, as appropriate. This NPRM is in accordance with Executive Order 10854, which requires the FAA to consult with the Departments of State and Defense before designating international airspace as controlled airspace.

This NPRM also revises controlled airspace in accordance with Presidential Proclamation No. 5928, "Territorial Sea of the United States of America," signed on December 27, 1988, which extended the sovereignty of the U.S. Government for international purposes to 12 nautical miles from the coast of the United States (including its territories) in accordance with international law. On January 4, 1989, the FAA published Amendment Nos. 71–12 and 91–207, "Applicability of Federal Aviation Regulations in the Airspace Overlying the Waters Between 3 and 12 Nautical Miles From the United States Coast" (54 FR 264). These amendments extended controlled airspace and applied certain flight rules to the airspace overlying the waters between 3 and 12 nautical miles from the U.S. coast.

The proposed revisions to additional control areas would: (1) Designate additional control areas as offshore airspace areas or en route domestic airspace areas, as appropriate; (2) implement, to the extent practicable, a uniform base of 5,500 feet MSL for offshore airspace areas; (3) identify offshore airspace areas by name, to the extent possible; (4) classify offshore airspace as Class A or Class E airspace areas, as appropriate; and (5) classify en route domestic airspace areas as Class E airspace areas. These proposals are addressed below under the title "Offshore Airspace Areas" or "En Route Domestic Airspace Areas."

The proposed separation of additional control areas into offshore airspace areas or en route domestic airspace areas would only apply to the airspace areas found in subpart E of FAA Order 7400.9, which is effective September 16, 1993. Specifically, the FAA proposes to revise, effective September 16, 1993, § 71.33 to designate Class A offshore airspace areas, § 71.71(e) to designate Class E en route domestic airspace areas, and to add § 71.71(f) to designate Class E offshore airspace areas.

Offshore Airspace Areas

The FAA proposes to modify the additional control areas in § 71.163 of FAA Order 7400.7 as discussed below. These are airspace areas for which the United States has jurisdiction through an ICAO regional agreement.

As noted above, the FAA has decided to establish a uniform base of 5,500 feet MSL to the extent possible for offshore airspace areas. This is higher than the NAR recommendation of a uniform base of 1,200 feet above the surface for offshore airspace areas. After reviewing the requirement for air traffic control services over the high seas, the FAA has decided to propose establishing this higher uniform base, except in areas that require air traffic control services below 5,500 feet MSL. This decision is based upon the limited volume of air traffic, and the reduced requirement for air traffic control services over the high seas below 5,500 feet MSL. In most cases, a proposed uniform base of 5,500 feet MSL would raise the floor of existing airspace areas.

In addition to the modifications discussed specifically for each airspace description, all modifications to offshore airspace areas are being proposed to: (1) Replace the existing lateral boundaries designated at 3 nautical miles from the U.S. coast with lateral boundaries designated at 12 nautical miles from the U.S. coast; and (2) replace all references to distances in statute miles to the corresponding nearest equivalent in nautical miles.

The FAA proposes to eliminate the existing control areas entitled Newport, Oregon; San Francisco, California; and Santa Barbara, California, and to establish the Pacific High and Pacific Low offshore airspace areas. The lateral boundaries of the Pacific High and Pacific Low offshore airspace areas would be based upon the existing lateral boundaries of the Newport, Oregon; San Francisco, California; and Santa Barbara, California control areas except that the eastern boundaries would be changed from 3 to 12 nautical miles. The Pacific Low would extend upward from 5,500 feet MSL up to, but not including, 18,000 feet MSL. The overlying Pacific High would have a floor of 18,000 feet MSL and a ceiling of flight level (FL) 600.

The FAA proposes to eliminate the existing control areas entitled Barnegat, New Jersey; Brunswick, Maine; North Atlantic; and South Atlantic; to revise the South Florida control area; and to establish the Atlantic Low and Atlantic High offshore airspace areas.

The FAA proposes to revise the existing South Florida control area by aligning its lateral boundaries with the Miami Oceanic control area (CTA)/flight information region (FIR) lateral boundaries. This revised boundary would include the existing portion of the South Atlantic control area south of latitude 28°00'00" North. Because of the high volume of air traffic and the requirement for air traffic control services below 5,500 feet MSL, the South Florida Low offshore airspace area

would extend upward from 2,700 feet MSL up to, but not including, 18,000 feet MSL. However, the proposed floor of 2,700 feet MSL would be higher than the current floor of 1,200 feet MSL.

The lateral boundaries of the Atlantic Low would be based upon the existing boundaries of the Brunswick, Maine; North Atlantic; and South Atlantic control areas, north of latitude 28°00'00" North except that the western boundaries would be changed from 3 to 12 nautical miles. The Atlantic Low would extend upward from 5,500 feet MSL up to, but not including, 18,000 feet MSL.

The FAA proposes to establish the Atlantic High offshore airspace area, which would have a floor of 18,000 feet MSL and a ceiling of FL 600. The lateral boundaries of the Atlantic High would be based upon the existing boundaries of the following control areas: (1) Brunswick, Maine; (2) North Atlantic; and (3) South Atlantic, north of latitude 28°00'00" North; as well as the proposed boundaries of the South Florida Low offshore airspace area. As with the Atlantic Low, the western boundary would begin at 12 nautical miles from the parallel to the shore.

The FAA proposes to revise the existing Gulf of Mexico control area by dividing it into two airspace areas: The Gulf of Mexico Low and Gulf of Mexico High offshore airspace areas. The lateral boundaries of the proposed areas would be based on the existing lateral boundaries for the Gulf of Mexico control area, except the eastern boundaries of the proposed areas would be aligned with the Houston Oceanic CTA/FIR and the northern boundaries would be changed from 3 to 12 nautical miles. The Gulf of Mexico Low would extend upward from 1,200 feet MSL up to, but not including, 18,000 feet MSL. The floor of the proposed Gulf of Mexico Low would remain at 1,200 feet MSL due to the high volume of air traffic and the requirement for air traffic control services below 5,500 feet MSL. The Gulf of Mexico High would have a floor of 18,000 feet MSL and a ceiling of FL 600.

The FAA proposes to revise the existing control area for San Juan, Puerto Rico, which is currently a portion of the San Juan, Puerto Rico transition area in § 71.181 of FAA Order 7400.7. The floor would be raised from 2,000 feet MSL to 5,500 feet MSL. However, the low altitude, inter-island traffic in the vicinity of Saint-Martin and Anguilla would require a floor of 2,700 feet MSL. The offshore airspace area would be redesignated as the San Juan Low, and listed in § 71.163 of FAA Order 7400.7.

Controls 1141, 1142, 1143, 1144, and 1146 are each proposed to be redesignated with an "L" suffix to denote a low area. The floors for these offshore airspace areas are proposed to be raised to 5,500 feet MSL and the ceilings would extend up to, but not including, 18,000 feet MSL.

Control 1155, Control 1156, Control 1176, Control 1177, Control 1316, Control 1318, Control 1415, Control 1416, Control 1418, Control 1419, Control 1486, and Control 1487 are each proposed to be divided into two offshore airspace areas. These areas would retain their current lateral boundaries. One offshore airspace area would extend upward from 5,500 feet MSL up to, but not including, 18,000 feet MSL. The other offshore airspace area would have a floor at 18,000 feet MSL and a ceiling at FL 450. To distinguish between the offshore airspace areas with the same identification, the titles of those offshore airspace areas proposed to be below 18,000 feet MSL would have an "L" suffix and the titles of those that are proposed to be above 18,000 feet MSL would have an "H" suffix.

Control 1154 and Control 1173 are proposed to be divided into two offshore airspace areas each. The western boundaries of the areas would be revised to meet the current western boundary of the Oakland Oceanic CTA/FIR. The current areas were established to meet the western boundary of the Oakland Oceanic CTA/FIR that existed at the time. However, they were never revised when the western boundary of the Oakland Oceanic CTA/FIR was moved to its current position. The current southeast boundary of Control 1173 would also be revised to meet Warning Area 283, Warning Area 285A, and Warning Area 285B, which are adjacent controlled airspace areas. Control 1154L and Control 1173L would have floors of 5,500 feet MSL and ceilings of up to, but not including, 18,000 feet MSL. Control 1154H and Control 1173H would have floors at 18,000 feet MSL and ceilings at FL 450.

Control 1234 would also be divided into two offshore airspace areas. Control 1234L would retain the existing floor of Control 1234, which is 2,000 feet above the surface, so that aircraft operating under IFR at low altitudes over the Alaskan Peninsula, the Aleutian Islands, and the surrounding waters would remain within controlled airspace. Control 1234L would extend up to, but not including, 18,000 feet MSL. Control 1234H would have a floor at 18,000 feet MSL and a ceiling at FL 450. Both Control 1234L and Control 1234H would retain the current lateral boundaries of Control 1234.

The Gulf of Alaska control area would be divided into two offshore airspace areas. Both areas would retain the current lateral boundaries except the northern boundaries would be changed from 3 to 12 nautical miles. The Gulf of Alaska Low would extend upward from 700 feet MSL to, but not including, 18,000 feet MSL. The Gulf of Alaska High would have a floor of 18,000 feet MSL and a ceiling of FL 450.

The control areas for Norton Sound and Woody Island, Alaska, are proposed to be divided into two offshore airspace areas. Both areas would retain their current lateral boundaries except the eastern boundaries for Norton Sound would be changed from 3 to 12 nautical miles. The Norton Sound and Woody Island Low areas would extend upward from 14,500 feet MSL to, but not including, 18,000 feet MSL. The Norton Sound and Woody Island High areas would have floors of 18,000 feet MSL and ceilings of FL 450.

The FAA proposes to designate Control 1485 as Control 1485H. The revised offshore airspace area would retain its existing lateral boundaries, and would have a floor of FL 230, and a ceiling of FL 450.

The FAA proposes to revise subparts A and E of FAA Order 7400.9, effective September 16, 1993, by: (1) Revising, as described above, the areas that correspond to the proposed revisions to the offshore airspace areas in § 71.163 of FAA Order 7400.7; and (2) designating these control areas as Class A or Class E airspace areas as noted below.

The FAA proposes to designate those offshore airspace areas listed below, which would have a floor of 18,000 feet MSL, or higher, as Class A airspace areas. The Airspace Reclassification final rule established 18,000 feet MSL as the floor of Class A airspace areas. These offshore airspace areas meet the criteria of Class A airspace as adopted by ICAO and the United States. For example, pilots who operate in these areas are already required to conduct operations under IFR and the pilots are subject to air traffic control clearances and instructions. By designating these areas as Class A airspace areas, the FAA would simplify airspace by designating airspace with a floor of 18,000 feet MSL, or more, as Class A airspace.

Proposed Offshore Airspace Areas That Would Become Class A Airspace

Atlantic High
Control 1154H
Control 1155H
Control 1156H
Control 1173H
Control 1176H
Control 1177H

Control 1234H
Control 1316H
Control 1318H
Control 1415H
Control 1416H
Control 1418H
Control 1419H
Control 1485H
Control 1486H
Control 1487H
Gulf of Alaska High, Alaska
Gulf of Mexico High
Norton Sound High, Alaska
Pacific High
Woody Island High, Alaska

The offshore airspace areas listed below would be designated as Class E airspace. These airspace areas would have a floor set at a specified altitude and extend up to, but not including, 18,000 feet MSL.

Proposed Offshore Airspace Areas That Would Become Class E Airspace

Atlantic Low
Control 1141L
Control 1142L
Control 1143L
Control 1144L
Control 1146L
Control 1154L
Control 1155L
Control 1156L
Control 1173L
Control 1176L
Control 1177L
Control 1234L
Control 1316L
Control 1318L
Control 1415L
Control 1416L
Control 1418L
Control 1419L
Control 1486L
Control 1487L
Gulf of Alaska Low, Alaska
Gulf of Mexico Low
Norton Sound Low, Alaska
Pacific Low
San Juan Low, Puerto Rico
South Florida Low
Woody Island Low, Alaska

En Route Domestic Airspace Areas

The FAA proposes to revise § 71.163 in FAA Order 7400.7. The additional control areas entitled Kirksville, Missouri and Ottumwa, Iowa, would be eliminated. The airspace described for these areas is already encompassed in the statewide transition areas for Iowa and Missouri, which have floors at 1,200 feet above the surface. The additional control area entitled Sault Sainte Marie, Michigan, would be renamed Upper Peninsula, Michigan. This would distinguish the additional control area entitled Sault Sainte Marie, Michigan, from the transition area entitled Sault Sainte Marie, Michigan.

The FAA also proposes to modify subpart E of FAA Order 7400.9, effective September 16, 1993, by eliminating the corresponding airspace designations that are proposed to be eliminated in § 71.163 of FAA Order 7400.7, and by renaming the area entitled Sault Sainte Marie, Michigan, as Upper Peninsula, Michigan. In addition, the FAA proposes to designate the following en route domestic airspace areas as Class E airspace areas.

Proposed En Route Airspace Areas That Would Become Class E Airspace

Badlands, South Dakota
Boardman, Oregon
Boise, Idaho
Bozeman, Montana
Browerville/Barter Island, Alaska
Burley, Idaho
Colville, Washington
Lakeview, Oregon
Ogden, Utah
Olympic Peninsula, Washington
Omak, Washington
Rattlesnake, Wyoming
Reveille, Nevada
Schloredt, Wyoming
Sidney, Montana
Upper Peninsula, Michigan
Zuni, New Mexico

Continental Control Area

Currently, the Continental Control Area consists of the airspace at and above 14,500 feet MSL overlying the 48 contiguous States including the waters 12 nautical miles from the coast, the District of Columbia, and Alaska including the waters 12 nautical miles from the coast, excluding the Alaska peninsula west of longitude 160°00'00" West. The Continental Control Area does not include: Airspace less than 1,500 feet above the surface; prohibited areas; or restricted areas other than the restricted areas currently listed in part 71, subpart D. Effective September 16, 1993, the Continental Control Area will be designated as Class E airspace extending upward from 14,500 feet MSL to, but not including 18,000 feet MSL.

The FAA proposes that the Continental Control Area include the airspace in any prohibited area and restricted area that extends at or above 14,500 feet MSL. To ensure that the following discussion is clear, it refers to the Continental Control Area (existing terminology); however, the proposal would also include the corresponding Class E airspace area (future terminology).

The proposal to include the airspace in any prohibited and restricted area that extends at or above 14,500 feet MSL in the Continental Control Area would not have an adverse effect on flight operations. The current practice of automatically excluding prohibited areas or restricted areas other than the restricted areas currently listed in part 71, subpart D from the Continental Control Area does not facilitate the goal of real time joint use of special use airspace. Regardless of whether a restricted area is in the Continental Control Area, a pilot still requires permission from the using or controlling agency before entering the area. Additionally, the inclusion of a restricted area in the Continental Control Area would promote the use of this airspace by pilots who are operating aircraft under IFR when the airspace is released to air traffic control by the using agency.

Because of the proposal to include any prohibited and restricted area that extends above 14,500 feet MSL in the Continental Control Area, the FAA proposes to: (1) Revise existing § 71.9 "Continental control area" by deleting the provision to exclude prohibited and restricted areas; (2) revise § 71.71(a), effective September 16, 1993, by deleting the provision to exclude prohibited and restricted areas; (3) remove and reserve § 71.151 in FAA Order 7400.7, which lists all restricted areas included in the Continental Control Area; and (4) revise subpart E of FAA Order 7400.9, effective September 16, 1993, by eliminating the restricted areas included in the Class E airspace area described in § 71.71(a), effective September 16, 1993.

Area Low Routes

Currently, in the national airspace system, no area low routes exist and the FAA has no plans to create any new area low routes. Therefore, the FAA proposes to remove the provisions for establishing area low routes.

To accomplish this, the FAA proposes to: (1) Remove and reserve existing § 71.6, "Extent of area low routes"; (2) remove and reserve § 71.301 in FAA Order 7400.7 which, if any existed, would list the airspace designations for area low routes; (3) remove and reserve § 71.77, "Extent of area low routes," effective September 16, 1993; (4) revise subpart E of FAA Order 7400.9, effective September 16, 1993, by deleting the provision that would list the airspace designations for area low routes; and (5) revise § 71.71(d), effective September 16, 1993, by eliminating the reference to area low routes.

Control Areas Associated with Jet Routes Outside the Continental Control Area

To provide protection for expanding air carrier activity outside the

Continental Control Area, the FAA designated control areas to be associated with jet route segments outside the Continental Control Area. They have a floor of 18,000 feet MSL and a ceiling at FL 450.

The FAA proposes to revise subpart E of FAA Order 7400.7 which is currently in effect, and subpart A of FAA Order 7400.9, effective September 16, 1993, by eliminating control areas associated with jet routes outside the Continental Control Area. The FAA is of the opinion that these areas are no longer necessary; they were first established in 1964 and have not been revised since 1978. If the proposal to designate airspace areas off the U.S. coast and over Alaska, that extend upward from 18,000 feet MSL to FL 450 is adopted, these areas would encompass the airspace in the control areas associated with jet routes outside of the Continental Control Area. Therefore, retaining these control areas associated with jet routes outside of the Continental Control Area would be unnecessarily duplicative.

Reporting Points

The FAA proposes to eliminate the provisions for designating mandatory reporting points. This action would remove and reserve existing § 71.203, "Domestic Low Altitude Reporting Points," and § 71.207, "Domestic High Altitude Reporting Points," in FAA Order 7400.7. In addition, the FAA proposes to revise subpart H of FAA Order 7400.9, effective September 16, 1993, by deleting domestic low altitude reporting points and domestic high altitude reporting points.

Because of extensive domestic radar coverage, pilots are seldom required to report passing these points. For example, whenever an air traffic controller advises a pilot of "radar contact," the pilot can discontinue reporting over compulsory reporting points. Nevertheless, air traffic controllers would retain the option of requiring pilots to make position reports in instances of radar system limitations or as circumstances warrant.

Flushing (New York) Airport Traffic Rule

The special air traffic rules for Flushing, New York, specified in subpart P of FAR part 93 establish special communications, operations, and equipment requirements for arriving and departing aircraft at Flushing Airport.

The Flushing, New York airport is now closed and no known plans exist to reopen it in the immediate future. Therefore, this NPRM proposes to eliminate the special air traffic rules for the Flushing, New York airport. Under this proposal, the FAA would remove and reserve subpart P of part 93.

Valparaiso, Florida Terminal Area

The special air traffic rules for Valparaiso, Florida, are specified in subpart F of FAR part 93. The rules require a pilot who desires to enter that area to establish two-way radio communications with air traffic control and to receive an air traffic control advisory on operations being conducted in the vicinity of Eglin Air Force Base. The area is divided into a north-south corridor and an east-west corridor.

The FAA proposes to replace the Valparaiso, Florida Terminal Area, with the Eglin, Florida, Class D airspace areas: one for the north-south corridor and one for the east-west corridor. Under the Airspace Reclassification final rule, a pilot who operates an aircraft in Class D airspace is required to establish two-way radio communications with the air traffic control facility having jurisdiction in that airspace. Therefore, the operating rules for a pilot who operates in the Valparaiso, Florida terminal area would not change if it were replaced with the Eglin, Florida, Class D airspace areas. The FAA believes this proposal contributes to the goal of simplifying airspace by replacing special rules with standard rules.

The FAA proposes to revise the lateral boundary that currently separates the existing north-south and east-west corridors. The separation between the corridors would be moved from north of Eglin Air Force Base to south of Eglin Air Force Base. This revision would ensure restricted access to the north-south corridor during military testing without constraining access to the east-west corridor.

The FAA also proposes to revise the current vertical limits of the area. The existing east-west corridor extends upward from the surface up to, but not including 8,500 feet MSL. The FAA proposes that the corresponding portion of the Eglin, Florida, Class D airspace area also have a ceiling of 8,500 feet MSL, except that the portion of the existing corridor that does not underlie Restricted Areas R–2915C, R–2929B, and R–2914B is proposed to extend upward from the surface to, but not including, 18,000 feet MSL. The existing north-south corridor does not have a specified ceiling; the FAA proposes that the corresponding portion of the Eglin, Florida, Class D airspace area have a vertical limit up to, but not including, 18,000 feet MSL.

Under this proposal, the FAA would remove and reserve subpart F of part 93, "Valparaiso, Florida, Terminal Area" and would revise subpart D of FAA Order 7400.9, effective September 16, 1993, by establishing the Eglin, Florida, Class D airspace areas. The Eglin Air Force Base and Eglin AF Aux No. 3 Duke Field, Florida, Class D airspace areas would be encompassed by the proposed Eglin, Florida, Class D airspace area. Therefore, the FAA proposes to revise subpart D of FAA Order 7400.9, effective September 16, 1993, by deleting these areas. A portion of the Hurlburt Field, Florida, Class D airspace area and the Crestview, Florida, Class E airspace area would overlap a portion of the proposed Eglin, Florida, Class D airspace area; therefore, the FAA proposes to revise subpart D and subpart E of FAA Order 7400.9 by modifying these areas to exclude that airspace in the proposed Eglin, Florida, Class D airspace area.

Incorporation by Reference

The FAA proposes to amend the airspace descriptions of certain additional control areas and to eliminate domestic low altitude reporting points, domestic high altitude reporting points, restricted areas included in the Continental Control Area, area low routes, and control areas associated with jet routes outside the Continental Control Area. The descriptions of these airspace areas, reporting points, and routes are not listed in the Code of Federal Regulations (CFR) and are not set forth in the full text of this NPRM. The full listing for all additional control areas, domestic low altitude reporting points, domestic high altitude reporting points, restricted areas included in the Continental Control Area, area low routes, and control areas associated with jet routes outside the Continental Control Area are contained in FAA Order 7400.7, Compilation of Regulations, effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The airspace descriptions proposed to be amended or created by this notice would be published subsequently in the Handbook.

Under the Airspace Reclassification final rule, descriptions of additional control areas, restricted areas included in the Continental Control Area, area low routes, and control areas associated with jet routes outside the Continental Control Area are set forth as Class E airspace areas in subpart E of FAA Order 7400.9, and descriptions of domestic low altitude reporting points and domestic high altitude reporting points are set forth in subpart H of FAA Order 7400.9. Class D airspace areas are set forth in subpart D of FAA Order 7400.9. FAA Order 7400.9, Airspace

Reclassification, effective September 16, 1993, is also incorporated by reference in 14 CFR 71.1. These descriptions are not listed in the CFR and are not set forth in the full text of this NPRM.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no requirements for information collection associated with this proposed rule.

Regulatory Evaluation Summary

This section summarizes the regulatory evaluation prepared by the FAA. The regulatory evaluation provides more detailed information on estimates of the potential economic consequences of this proposal. This summary and the evaluation quantify, to the extent practicable, estimated costs of the proposal to the private sector, consumers, and Federal, State, and local governments, as well as the anticipated benefits.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The executive order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. Executive Order 12291 defines a "major" rule as one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, productivity, or innovation.

The FAA has determined that this proposal is not "major" as defined in the executive order. Therefore, a full regulatory impact analysis, which includes the identification and evaluation of cost-reducing alternatives to the proposal, has not been prepared. Instead, the agency has prepared a more concise document termed a "regulatory evaluation," which analyzes only this proposed rule without identifying alternatives. In addition to summarizing the regulatory evaluation, this section also contains an initial regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (Pub. L. 96–354) an an international trade impact assessment. If the reader desires more detailed economic information than this summary contains, the reader should consult the regulatory evaluation contained in the docket.

Costs

The costs of the offshore airspace proposal are encompassed within the $1.9 million cost of the Airspace Reclassification final rule, including modification of manuals, charts, and training materials. For a detailed discussion of how these costs were derived, the reader is directed to the regulatory evaluation summary of the Airspace Reclassification final rule (56 FR 65638; December 17, 1991). A brief discussion explaining each of these costs is presented below.

Revisions to Aeronautical Charts

The cost to modify the aeronautical charts to reflect the new offshore airspace areas is part of the total estimated $1.2 million discounted cost specified in the Airspace Reclassification final rule. This cost estimate was provided by the National Ocean Service, which publishes and distributes aeronautical charts. The estimate represents the cost of changing the airspace dimensions and symbols on the plates from which aeronautical charts are printed.

Revisions of Air Traffic Training Courses

The cost of revising the courses used to instruct air traffic controllers in offshore airspace areas is part of the estimated $53,000 (discounted) in controller training costs noted in the Airspace Reclassification final rule. This includes developing and conducting a 1-week seminar for FAA student controllers ($10,000) and revising lesson plans, visual aids, handouts, laboratory exercises, and tests ($43,000).

Re-education of the Pilot Community

The cost of re-educating the pilot community on the modifications in the offshore airspace proposal is part of the estimated $625,000 (discounted) specified in the Airspace Reclassification final rule. This includes the publication and mailing of an advisory circular ($550,000) and the production of a videotape documenting the new airspace classifications ($75,000).

Conversion of Statute Miles to Nautical Miles

The statute mile designations in FAA Order 7400.7, Compilation of Regulations, and FAA Order 7400.9, Airspace Reclassification, are being converted to nautical miles as part of the Airspace Reclassification final rule. The offshore airspace proposal would share some of the $1.2 million (discounted) cost to complete the revision to aeronautical charts.

Revising Offshore Airspace Areas

The current base levels of offshore airspace areas, except those off the coast of Alaska, range from 700 feet MSL to 6,000 feet MSL. Most of the base levels, however, are below 5,500 feet MSL, so the proposal would, in effect, raise them. This would convert controlled airspace into uncontrolled airspace and consequently lower the minimum visibility and cloud clearance requirements. The volume of air traffic offshore and the requirement for air traffic control services are minimal below 5,500 feet MSL. Thus, the FAA contends that raising the base levels would not result in a decrease in safety or impose any costs on the FAA or the flying public.

Deletion of Area Low Routes

Because no area low routes currently exist, and the FAA has no need to create any, no monetary cost or decrease in safety would occur if their reference is removed from the FAR.

Removal of High and Low Altitude Reporting Points

Advances in radar technology have increased domestic radar coverage so extensively that reporting points have become an unnecessary redundancy in the air traffic control system. Therefore, there would be no reduction in safety if domestic high and low altitude reporting points are removed.

Continental Control Area

The proposal to include prohibited and restricted areas above 14,500 feet MSL in the Continental Control Area would not impose costs or decrease safety. This is because restricted or prohibited airspace would be released to air traffic control only with the permission of the using agency; and then IFR aircraft operators would be allowed in only with a clearance from air traffic control.

Benefits

The offshore airspace proposal would enhance aviation safety and operational efficiency, like the Airspace Reclassification final rule. Like the costs, most of the benefits of this proposal have already been attributed to the Airspace Reclassification final rule. However, some additional unique safety and efficiency benefits of this proposal are discussed below.

Offshore Airspace Reconfiguration

The proposal would reclassify certain airspace areas that were not specifically addressed in the Airspace Reclassification final rule. However, these changes would be carried out in conjunction with that rule. The areas that would be reclassified by the offshore proposal are as follows:

- Offshore airspace areas from 18,000 feet MSL to FL 600 would be designated as Class A airspace.
- Offshore airspace areas between 5,500 feet MSL, or other specified altitude, and 18,000 feet MSL, would be designated as Class E airspace.

These new offshore airspace classifications would enhance aviation safety by simplifying the airspace classifications and by reducing airspace complexity. The airspace areas affected by the proposal would be designated on aeronautical charts with fewer airspace names, terms, and symbols. Furthermore, the new airspace classifications would mirror those established by ICAO, making U.S. airspace more standardized and more familiar to foreign pilots. All of these changes would generate easier and more precise navigation and safer operation in offshore airspace areas.

Uniform Base Levels

Establishing a uniform base of 5,500 feet MSL for offshore areas would convert controlled offshore airspace into uncontrolled airspace and lower the minimum visibility and cloud clearance requirements. Pilots would benefit by being able to operate in more uncontrolled offshore airspace with less stringent requirements.

Continental Control Area

By eliminating the automatic exclusion of prohibited and restricted areas from the Continental Control Area, these areas automatically revert to controlled airspace when released to air traffic control by the using agency. This action benefits aircraft operators and air traffic control by allowing air traffic control to route IFR aircraft through the special use airspace.

Simplification of U.S. Airspace

The offshore airspace proposal would generate a simpler and more efficient airspace system. This would be accomplished by deleting several airspace designations that have become obsolete or redundant due to advances in radar technology, expansion of radar and radio coverage, and changes in air traffic control and aircraft operator's airspace requirements.

High and Low Altitude Reporting Points

Advances in radar technology have increased domestic radar coverage so extensively that domestic reporting points have become an unnecessary redundancy in the air traffic control system. Currently, air traffic control is able to determine the location of an aircraft with radar and pilots are not required to report passing such points. Therefore, there would be no reduction in safety if domestic high and low altitude reporting points are removed.

Area Low Routes

Deleting area low routes would not reduce aviation safety because no routes exist.

Conclusion

The cost of the offshore proposal is part of the estimated $1.9 million cost (discounted, 1990 dollars) previously accounted for in the Airspace Reclassification final rule. The benefits of the proposal would be a simpler, more efficient, and more uniform airspace system. This would ultimately result in increased safety to the aviation community. Thus, the FAA contends that the proposal is cost beneficial.

International Trade Impact Analysis

Because the proposed rule would only affect U.S. airspace and airspace over which the United States has jurisdiction, it would not impose any adverse operating requirements on foreign aircraft operators. By September 16, 1993, virtually all foreign aircraft operators will be operating under requirements similar to those proposed in this NPRM and the Airspace Reclassification final rule. These requirements are based on those established by ICAO's airspace reclassification. Thus, this proposal would have no effect on the sale of foreign aviation products or services in the United States, nor would it affect the sale of U.S. products or services in foreign countries.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules that may have "a significant cost impact on a substantial number of small entities." The small entities that the proposed rule could potentially affect are pilot training schools.

Training materials used in the courses offered by the pilot training schools would have to be modified to reflect the changes of the airspace reclassification. However, pilot training schools would not incur any cost impact because the documents they use must be regularly updated as a normal cost of doing business. Thus, the proposal would not have a significant cost impact on pilot schools classified as small entities. Therefore, this proposal would not have a significant cost impact on a substantial number of small entities.

Federalism Implications

The amendments proposed herein would not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, the FAA has determined that this proposed rule would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Initial Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not major under Executive Order 12291. In addition, the FAA certifies that this proposal, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). An initial regulatory evaluation of the proposal, including an initial Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects

14 CFR Part 71

Airspace, Airways, Incorporation by reference.

14 CFR Part 93

Special air traffic rules.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend parts 71 and 93 of the Federal Aviation Regulations (14 CFR parts 71 and 93) as follows:

The following proposed amendments are to part 71 currently in effect:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS, JET ROUTES, AND AREA HIGH ROUTES

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

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; Executive Order 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

2. Section 71.1 is revised to read as follows:

§ 71.1 Applicability.

The complete listing for all jet routes, area high routes, Federal airways, control zones, transition areas, terminal control areas, airport radar service areas, positive control areas, reporting points, and other controlled airspace can be found in FAA Order 7400.7, Compilation of Regulations, which was last published April 30, 1991, and effective November 1, 1991. This incorporation be reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The approval to incorporate by reference FAA Order 7400.7 is effective as of December 17, 1991 through September 15, 1993. During the incorporation by reference period, proposed changes to the listings of jet routes, area high routes, Federal airways, control zones, transition areas, terminal control areas, airport radar service areas, positive control areas, reporting points, and other controlled airspace will be published in full text as proposed rule documents in the **Federal Register**. Amendments to the listings of jet routes, area high routes, Federal airways, control zones, transition areas, terminal control areas, airport radar service areas, positive control areas, reporting points, and other controlled airspace will be published in full text as final rules in the **Federal Register**. Periodically, the final rule amendments will be integrated into a revised edition of the compilation and submitted to the Director of the Federal Register for approval for incorporation by reference in this section. Copies of this order may be obtained from the Document Inspection Facility, APA–220, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–3484. Copies may be inspected in Docket Number 26968 at the Federal Aviation Administration, Office of the Chief Counsel, AGC–10, room 915G, 800 Independence Avenue, SW., Washington, DC 20591 weekdays between 8:30 a.m. and 5 p.m., or at the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC. This section is effective as of December 17, 1991, through September 15, 1993.

§ 71.6 [Removed]

3. Section 71.6 is removed and reserved.

4. Section 71.9 is revised to read as follows:

§ 71.9 Continental control area.

The Continental Control Area consists of the airspace at and above 14,500 feet MSL overlying the 48 contiguous States, including the waters within 12 nautical miles from the coast of the 48 contiguous States; the District of Columbia; Alaska, including the waters within 12 nautical miles from the coast of Alaska; excluding the Alaska peninsula west of longitude 16°00'00"W.; but does not include the airspace less than 1,500 feet above the surface of the earth.

The following proposed amendments are to part 71 in effect as of September 16, 1993:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; Executive Order 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

2. Section 71.33 is amended by adding paragraph (c) to read as follows:

§ 71.33 Class A airspace areas.

* * * * *

(c) The airspace areas listed as offshore airspace areas in subpart A of FAA Order 7400.9 (incorporated by reference, see § 71.1) that are designated in international airspace within areas of domestic radio navigational signal or ATC radar coverage, and within which domestic ATC procedures are applied.

3. Section 71.71 is amended by revising paragraphs (a), (d), and (e), and by adding paragraph (f) to read as follows:

§ 71.71 Class E airspace.

* * * * *

(a) The airspace of the United States, including that airspace overlying the waters within 12 nautical miles of the coast of the 48 contiguous states and Alaska, extending upward from 14,500 feet MSL to, but not including, 18,000 feet MSL, and excluding—

(1) The Alaska peninsula west of longitude 16°00'00" W.; and

(2) The airspace below 1,500 feet above the surface of the earth.

* * * * *

(d) The Federal airways described in subpart E of FAA Order 7400.9 (incorporated by reference, see § 71.1).

(e) The airspace areas listed as en route domestic airspace areas in subpart E of FAA Order 7400.9 (incorporated by reference, see § 71.1). Unless otherwise specified, each airspace area has a lateral extent identical to that of a Federal airway and extends upward from 1,200 feet above the surface of the earth to the overlying or adjacent controlled airspace.

(f) The airspace areas listed as offshore airspace areas in subpart E of FAA Order 7400.9 (incorporated by reference, see § 71.1) that are designated in international airspace within areas of domestic radio navigational signal or ATC radar coverage, and within which domestic ATC procedures are applied. Unless otherwise specified, each airspace area extends upward from a specified altitude up to, but not including, 18,000 feet MSL.

§ 71.77 [Removed]

4. Section 71.77 is removed and reserved.

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

5. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. app. 1302, 1303, 1348, 1354(a), 1421(a), 1424, 2451 *et seq.* 49 U.S.C. 106(g).

Subpart F—[Removed]

6. Part 93 is amended by removing and reserving subpart F (§§ 93.81 and 93.83).

Subpart P—[Removed]

7. Part 93 is amended by removing and reserving subpart P. (§§ 93.181, 93.183, 93.185, 93.187, 93.189, and 93.191).

Issued in Washington, DC on September 3, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92–21969 Filed 9–15–92; 8:45 am]

BILLING CODE 4910–13–M

federal register

Wednesday
September 16, 1992

Part III

Office of Management and Budget

Cumulative Report on Budget Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

September 1, 1992.

This report is submitted in fulfillment of the requirement of section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) requires a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to Congress.

This report gives the status, as of September 1, 1992, of 128 rescission proposals and 12 deferrals contained in the special messages for FY 1992. These messages were transmitted to Congress on September 30, and December 19, 1991, and on February 19, March 10, March 20, April 8, April 9, June 25, and August 26, 1992.

Rescissions (Table A and Attachment A)

The President proposed 128 rescissions totaling $7,879.5 million. Public Law 102–298 (approved June 4, 1992) rescinded $2,066.9 million of the $7,879.5 million proposed by the President. Attachment A shows the history and status of each rescission proposed during FY 1992.

Deferrals (Table B and Attachment B)

As of September 1, 1992, $1,243.0 million in budget authority was being deferred from obligation. Attachment B shows the history and status of each deferral reported during FY 1992.

Information from Special Messages

The special messages containing information on the rescission proposals and deferrals that are covered by this cumulative report are printed in the **Federal Register** cited below:

56 FR 50620, Monday, October 7, 1991
56 FR 67402, Monday, December 30, 1991
57 FR 6644, Wednesday, February 26, 1992
57 FR 11140, Wednesday, April 1, 1992
57 FR 11528, Friday, April 3, 1992
57 FR 13151, Wednesday, April 15, 1992
57 FR 13779, Friday, April 17, 1992
57 FR 29610, Thursday, July 2, 1992
57 FR 40566, Thursday, September 3, 1992

Richard Darman,
Director.

BILLING CODE 3110–01–M

TABLE A

STATUS OF FY 1992 RESCISSIONS

	Amounts (In millions of dollars)
Rescissions proposed by the President	7,879.5
Accepted by Congress as of September 1, 1992	2,066.9
Rescission proposals for which funding was previously withheld and has been released	7,330.1
Rescission proposals for which funding was not withheld	25.0
Rescission proposals for which funding is currently being withheld	---

TABLE B

STATUS OF FY 1992 DEFERRALS

	Amounts (In millions of dollars)
Deferrals proposed by the President	5,791.8
Routine Executive releases through August 1, 1992 (OMB/Agency releases of $6,411.9 million, partially offset by cumulative positive adjustments of $1,863.0 million)	-4,548.9
Overturned by the Congress	---
Currently before the Congress	1,243.0

Attachments

ATTACHMENT A
Status of FY 1992 Rescission Proposals – As of September 1, 1992
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Amount Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
DEPARTMENT OF AGRICULTURE								
Cooperative State Research Service								
Building and facilities	R92-36		250	3-20-92	250	5-29-92		
	R92-37		500	3-20-92	500	5-29-92		
	R92-38			3-20-92	500	5-29-92	500	P.L. 102-298
	R92-39		2,710	3-20-92	2,710	5-29-92		
	R92-40		375	3-20-92	375	5-29-92		
	R92-41		3,050	3-20-92	3,050	5-29-92		
	R92-42		225	3-20-92	225	5-29-92		
Cooperative State Research Service	R92-43		225	3-20-92	225	5-29-92		
	R92-44			3-20-92	750	5-29-92	750	P.L. 102-298
	R92-45		94	3-20-92	94	5-29-92		
	R92-46		39	3-20-92	39	5-29-92		
	R92-47		387	3-20-92	387	5-29-92		
	R92-48		85	3-20-92	85	5-29-92		
	R92-49			3-20-92	49	5-29-92	49	P.L. 102-298
	R92-50		125	3-20-92	125	5-29-92		
	R92-51		185	3-20-92	185	5-29-92		
	R92-52		120	3-20-92	120	5-29-92		
	R92-53		134	3-20-92	134	5-29-92		
	R92-54		100	3-20-92	100	5-29-92		
	R92-55		46	3-20-92	46	5-29-92		
	R92-56		200	3-20-92	200	5-29-92		
	R92-57		250	3-20-92	250	5-29-92		
	R92-58			3-20-92	50	5-29-92	50	P.L. 102-298
	R92-59		187	3-20-92	187	5-29-92		
	R92-60		140	3-20-92	140	5-29-92		
	R92-61		76	3-20-92	76	5-29-92		
Extension Service								
Extension Service	R92-62		647	3-20-92	647	5-29-92		
	R92-63		150	3-20-92	150	5-29-92		

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National Agricultural Library								
National Agricultural Library	R92–64		500	3–20–92	462 1/	5–29–92		
Animal and Plant Inspection Service								
Salaries and expenses	R92–35		100	3–20–92	100	5–29–92		
DEPARTMENT OF COMMERCE								
National Telecommunications and Information Administration								
Public telecommunications facilities, planning and construction	R92–2		18,425	3–10–92	21,425	5–11–92	3,000	P.L. 102–298
DEPARTMENT OF DEFENSE								
Operation and Maintenance								
Operation and maintenance, Army	R92–3		80,798	3–10–92	92,850	5–11–92	12,052	P.L. 102–298
Operation and maintenance, Navy	R92–4		104,520	3–10–92	104,650	5–11–92	130	P.L. 102–298
Operation and maintenance, Marine Corps	R92–5		14,834	3–10–92	22,000	5–11–92	7,166	P.L. 102–298
Operation and maintenance, Air Force	R92–6		3,848	3–10–92	4,500	5–11–92	652	P.L. 102–298
Operation and maintenance, Defense Agencies	R92–7		20,200	3–10–92	20,200	5–11–92		
Procurement								
Aircraft procurement, Army	R92–103		133,000	4–9–92	133,000	6–19–92		
Procurement of weapons and tracked combat vehicles, Army	R92–9		60,000	3–10–92	110,000	5–11–92	50,000	P.L. 102–298
	R92–104		225,000	4–9–92	225,000	6–19–92		
	R92–105			4–9–92			196,300	P.L. 102–298
	R92–106		17,600	4–9–92	17,600	6–19–92		
Procurement of ammunition, Army	R92–10		1,000	3–10–92	1,000	5–11–92		
Aircraft procurement, Navy	R92–11		223,000	3–10–92	262,000	5–11–92	39,000	P.L. 102–298

1/ Only $462,000 was withheld from obligation

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	R92–107			4–9–92			15,000	P.L. 102–298
	R92–108		8,000	4–9–92	8,000	6–19–92		
Weapons procurement, Navy	R92–12		13,200	3–10–92	13,200	5–11–92		
	R92–109		130,000	4–9–92	130,000	6–19–92		
	R92–110			4–9–92			4,000	P.L. 102–298
	R92–111			4–9–92			60,000	P.L. 102–298
Shipbuilding and conversion, Navy	R92–13		238,100	3–10–92	238,100	5–11–92		
	R92–101		1,615,900	3–20–92	2,765,900	5–21–92	1,150,000	P.L. 102–298
Other procurement, Navy	R92–14		41,300	3–10–92	41,300	5–11–92		
	R92–102			3–20–92	189,400	5–21–92	189,400	P.L. 102–298
	R92–112		10,000	4–9–92	10,000	6–19–92		
	R92–113		4,000	4–9–92	4,000	6–19–92		
	R92–114		2,000	4–9–92	2,000	6–19–92		
Procurement, Marine Corps	R92–15		40,200	3–10–92	40,200	5–11–92		
	R92–115		6,500	4–9–92	6,500	6–19–92		
Procurement, Defense Agencies	R92–16		154,800	3–10–92	154,800	5–11–92		
National guard and reserve equipment	R92–116		21,000	4–9–92	21,000	6–19–92		
	R92–117		799,300	4–9–92	799,300	6–19–92		
	R92–118		67,000	4–9–92	67,000	6–19–92		
	R92–119		9,300	4–9–92	9,300	6–19–92		
	R92–120		45,000	4–9–92	45,000	6–19–92		
	R92–121		15,000	4–9–92	15,000	6–19–92		
	R92–122		20,000	4–9–92	20,000	6–19–92		
	R92–123		60,000	4–9–92	60,000	6–19–92		
	R92–124		15,000	4–9–92	15,000	6–19–92		
Research, Development, Test and Evaluation								
Research, development, test, and evaluation, Army	R92–18		102,200	3–10–92	102,200	5–11–92		
	R92–125		4,000	4–9–92	4,000	6–19–92		
Research, development, test, and evaluation, Navy	R92–19		140,600	3–10–92	140,600	5–11–92		

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Research, development, test, and evaluation, Air Force	R92–20		127,100	3–10–92	127,100	5–11–92		
	R92–21		320,900	3–10–92	375,900	5–11–92	55,000	P.L. 102–298
	R92–126		3,000	4–9–92	3,000	6–19–92		
	R92–127			4–9–92			248,800	P.L. 102–298
Research, development, test, and evaluation, Defense Agencies	R92–128		5,000	4–9–92	5,000	6–19–92		
	R92–129		6,000	4–9–92	6,000	6–19–92		
	R92–130		70,000	4–9–92	70,000	6–19–92		
Military Construction								
Military construction, Army	R92–22		200	3–10–92	9,050	5–11–92	8,850	P.L. 102–298
Military construction, Navy	R92–23		17,400	3–10–92	17,400	5–11–92		
Military construction, Air Force	R92–24		6,000	3–10–92	6,000	5–11–92		
Military construction, Defense Agencies	R92–25		39,000	3–10–92	48,000	5–11–92	9,000	P.L. 102–298
Military construction, Army National Guard	R92–26		16,565	3–10–92	16,565	5–11–92		
Military construction, Air National Guard	R92–27			3–10–92	306	5–11–92	306	P.L. 102–298
Military construction, Army Reserve	R92–28		2,749	3–10–92	2,749	5–11–92		
Military construction, Naval Reserve	R92–29		25,100	3–10–92	36,000	5–11–92	10,900	P.L. 102–298
DEPARTMENT OF DEFENSE–CIVIL								
Corps of Engineers								
Construction, general	R92–91		3,000	3–20–92	3,000	5–21–92		
Operation and maintenance, general	R92–92		1,350	3–20–92	1,350	5–21–92		
DEPARTMENT OF ENERGY								
Energy Programs								
Fossil energy research and development	R92–34		1	4–8–92	1	6–18–92	144	P.L. 102–298

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DEPARTMENT OF HEALTH AND HUMAN SERVICES								
Health Resources and Services Administration								
Health resources and services	R92-30		25,000 2/	3-10-92				
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Housing Programs								
Annual contributions for assisted housing	R92-65		547,659	3-20-92	547,659	5-21-92		
	R92-66		1,500	3-20-92	1,500	5-21-92		
	R92-67		1,000	3-20-92	1,000	5-21-92		
	R92-68		2,000	3-20-92	2,000	5-21-92		
	R92-69		150	3-20-92	150	5-21-92		
	R92-70		100	3-20-92	100	5-21-92		
	R92-71		1,200	3-20-92	1,200	5-21-92		
	R92-72		1,000	3-20-92	1,000	5-21-92		
	R92-73		1,300	3-20-92	1,300	5-21-92		
	R92-74		3,900	3-20-92	3,900	5-21-92		
	R92-75		2,500	3-20-92	2,500	5-21-92		
	R92-76		1,500	3-20-92	1,500	5-21-92		
	R92-77		500	3-20-92	500	5-21-92		
	R92-78		1,000	3-20-92	1,000	5-21-92		
	R92-79		1,000	3-20-92	1,000	5-21-92		
	R92-80		505	3-20-92	505	5-21-92		
	R92-81		65	3-20-92	65	5-21-92		
	R92-82		101	3-20-92	101	5-21-92		

2/ Funding was never withheld

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Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Amount Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
	R92–83		1,500	3–20–92	1,500	5–21–92		
	R92–84		700	3–20–92	700	5–21–92		
	R92–85		1,000	3–20–92	1,000	5–21–92		
Annual contributions for assisted housing	R92–86		800	3–20–92	800	5–21–92		
Congregate services program	R92–1		16,700	2–19–92	16,700	4–6–92		
Flexible subsidy fund	R92–31		25,000	3–10–92	25,000	5–11–92		
Policy Development and Research								
Research and technology	R92–87		400	3–20–92	400	5–21–92		
DEPARTMENT OF THE INTERIOR								
National Park Service								
Construction	R92–89		7,700	3–20–92	7,700	5–21–92		
Operation of the national park system	R92–90		1,975	3–20–92	1,975	5–21–92		
Bureau of Indian Affairs								
Operation of Indian programs	R92–32		5,880	3–10–92	5,880	5–11–92		
Construction	R92–88		2,696	3–20–92	8,593	5–21–92	5,897	P.L. 102–298
DEPARTMENT OF TRANSPORTATION								
Federal Railroad Administration								
Local rail freight assistance	R92–33		9,880	3–10–92	9,880	5–11–92		

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Status of FY 1992 Rescission Proposals – As of September 1, 1992
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress		Date of Message	Amount Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
		Less than 45 days	More than 45 days					
ENVIRONMENTAL PROTECTION AGENCY								
Research and development	R92–98		116	3–20–92	116	5–21–92		
Abatement, control and compliance	R92–93		1,250	3–20–92	1,250	5–21–92		
	R92–94		390	3–20–92	390	5–21–92		
	R92–95		70	3–20–92	70	5–21–92		
	R92–96		1,450	3–20–92	1,450	5–21–92		
Buildings and facilities	R92–97		20,000	3–20–92	20,000	5–21–92		
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION								
Construction of facilities	R92–99		3,400	3–20–92	3,400	5–21–92		
Research and development	R92–100		750	3–20–92	750	5–21–92		
TOTAL RESCISSIONS		0	5,812,527		7,330,191		2,066,946	

ATTACHMENT B
Status of FY 1992 Deferrals – As of September 1, 1992
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(–): Cumulative OMB/ Agency	Releases(–): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 9–1–92
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund	D92–1	244,777		09–30–91					
	D92–1A		1,623,312	12–19–91	2,413,863			1,108,866	563,092
Foreign military financing	D92–8	1,908,000		12–19–91					
	D92–8A		93,038	06–25–92	2,672,877			695,578	23,799
Agency for International Development									
International disaster assistance,									
Executive	D92–2	40,704		09–30–91					
	D92–2A		12,483	02–19–92	65,032			34,068	22,224
Demobilization and transition fund	D92–9	13,000		12–19–91					13,000
Housing guaranty program	D92–12	17,630		08–26–92	14,986				2,645
DEPARTMENT OF AGRICULTURE									
Forest Service									
Cooperative work	D92–3	482,378		09–30–91	135,434				346,944
Expenses, brush disposal	D92–10	101,006		12–19–91					101,006
Timber salvage sales	D92–11	131,549		02–19–92					
	D92–11A		50,000	06–25–92	30,000				151,549
DEPARTMENT OF DEFENSE – CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense	D92–4	1,416		09–30–91	93				1,324

ATTACHMENT B
Status of FY 1992 Deferrals – As of September 1, 1992
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(–): Cumulative OMB/ Agency	Releases(–): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 9–1–92
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration									
Limitation on administrative expenses	D92–5	7,317		09–30–91					7,317
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund, executive	D92–6	30,053		09–30–91					
	D92–6A		24,750	12–19–91	69,200			24,520	10,123
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration									
Facilities and equipment (Airport and airway trust fund)	D92–7	1,010,375		09–30–91	1,010,375				0
TOTAL, DEFERRALS		3,988,205	1,803,643		6,411,860	0		1,863,033	1,243,021

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Federal Register

Wednesday
September 16, 1992

Part IV

Environmental Protection Agency

40 CFR Parts 264 and 265

Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Financial Responsibility for Third-Party Liability, Closure, and Post-Closure; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264 and 265

[FRL-4106-2]

RIN 2050-AC71

Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Financial Responsibility for Third-Party Liability, Closure, and Post-Closure

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is amending its financial assurance requirements under subtitle C of the Resource Conservation and Recovery Act (RCRA). On July 1, 1991 (56 FR 30201), the Agency proposed several amendments to the regulations related to third-party liability coverage, namely, the claims reporting provision and the provisions for obtaining a letter of credit. The Agency proposed to expand the use of the non-parent corporate guarantee to owners and operators of hazardous waste facilities for demonstrating financial responsibility for closure and post-closure care. In this action the Agency is promulgating those changes.

EFFECTIVE DATE: September 16, 1992.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline at 1-800-424-9346 (in Washington, DC, call 260-3000), or Ed Coe at (202) 260-6259, Office of Solid Waste (OS-341), U.S. Environmental Protection Agency, Washington DC, 20460.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority
II. Amendments to the September 1, 1988 Rule Regarding Third-Party Liability Coverage
  A. Background
  B. Claims Reporting Requirement
  C. Standby Trust for Owners and Operators Who Use a Letter of Credit to Demonstrate Liability Coverage
  D. Instruments Available to Owners and Operators that No Longer Meet the Requirements of the Financial Test
III. The Expanded Guarantee for Demonstrating Financial Assurance for Closure and Post-Closure Care
IV. Effective Date
V. State Authorization
  A. Applicability of Rules in Authorized States
  B. Effect of Rule on State Authorization
VI. Regulatory Analysis
  A. Regulatory Impact Analysis
  B. Regulatory Flexibility Act

I. Authority

This proposed rule is issued under the authority of section 3004 of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. 6924.

II. Amendments to the September 1, 1988 Rule Regarding Third Party Liability Coverage

A. Background

On September 1, 1988, the Agency issued a final rule that expanded the instruments available to owners and operators to demonstrate financial responsibility for third party liability. (see 53 FR 33938). Prior to the September 1, 1988 rule, the RCRA regulations at 40 CFR 264.147 allowed the use of a financial test, a parent corporate guarantee, or insurance for third party liability assurance. In the September 1, 1988 rulemaking, the Agency expanded the options to include the letter of credit, surety bond, trust fund, and non-parent corporate guarantee. The September 1, 1988 rulemaking also established in §§ 264.147 and 265.145 a claims reporting requirement for third-party claims.

Chemical Waste Management, Inc. (CWM) challenged several provisions of the September 1, 1988 rulemaking, in particular, several provisions related to the letter of credit and the claims reporting requirement. On February 23, 1990 the parties entered into a Joint Stipulation of Settlement in which the Agency agreed to: (1) Revise the claims reporting requirement of §§ 264.147 and 265.147 to clarify the type of claims that must be reported; (2) amend § 264.151(k) to authorize the creation of a standby trust fund for owners and operators who obtain letters of credit to demonstrate liability coverage; and (3) issue a correction to §§ 264.147(a)(2) and 265.147(a)(2) to insert a reference to the financial test. In accordance with the February 23 settlement agreement, the Agency proposed changes to the claims reporting requirement of §§ 264.147 and 265.147 and the use of a standby trust fund under § 264.151(k) on July 1, 1991 (56 FR 30201). The technical correction to §§ 264.147(a)(2) and 265.147(a)(2) was also published on that date. Today's notice promulgates the changes pertaining to claims reporting and the standby trust proposed on July 1, 1991.

In addition to the changes resulting from the settlement agreement, today's notice also promulgates a conforming change to §§ 264.147(f)(6) and 265.147(f)(6) to expand the instruments available to owners and operators that no longer meet the requirements of the financial test for liability coverage. This change was proposed in the July 1, 1991 notice.

The July 1, 1991 notice also proposed provisions not promulgated today. First, that notice proposed modifications to the financial tests for closure, post-closure and third-party liability. In addition, it proposed amendments to the post-closure deed requirement at §§ 264.119(b)(2), 264.143(i), 265.119(b)(2), and 265.143(h). EPA is continuing to evaluate comments received on the proposed revisions to the financial tests and has decided not to proceed with those revisions and the revisions to the post-closure deed requirements at this time. EPA believes deferring action on the amendments promulgated today until such time as revisions to the financial tests and all other issues arising from the July 1, 1991 notice are resolved is not necessary to protect human health and the environment and would unduly burden the regulated community. Because the July 1, 1991 notice would have amended the financial tests and other provisions that the Agency is continuing to evaluate, the notice included proposed changes to the wording of the financial assurance instruments in § 264.151 that differ from the language in today's rule. Today's rule amends the language of the financial assurance instruments only to the extent necessary to reflect amendments to §§ 264.143, 264.145, and 264.147, and §§ 265.143, 265.145, 265.147

B. Claims Reporting Requirement

As is discussed above, the September 1, 1988 rule established in §§ 264.147 and 265.147 a requirement that owners and operators report, in writing, to the Regional Administrator whenever: (1) A claim for bodily injury or property damages caused by the operation of a hazardous waste management facility is made against the owner, operator, or instrument providing financial assurance for liability coverage; and (2) the amount of financial assurance for liability coverage is reduced. In its complaint filed in response to the September 1, 1988 rulemaking, CWM asserted that the claims reporting requirement, as worded, was overly broad and thereby unduly burdensome. CWM argued that it required reporting of every claim filed against the owner or operator, no matter how valid.

This reporting requirement was intended to provide the Agency with early warning of potential instrument failure due to pending claims and to provide the Agency with data concerning the incidence of third party claims. EPA certainly did not intend the interpretation of this provision

suggested by CWM. Instead, in a memorandum, from Sylvia K. Lowrance to the RCRA Branch Chiefs, of January 25, 1990, EPA clarified that it expected reporting of valid claims only. Today's rule revises §§ 264.147(a)(2), 264.147(b)(2), 265.147(a)(2), and 265.147(b)(2) to clarify that intent and require reporting of third party claims only when: (1) a claim results in reduction of the amount of an instrument; (2) a Certification of Valid Claim is entered between the owner or operator and third party claimant; or (3) a final court order establishing a judgment is issued.

In general, comments generally favored the revised claims reporting requirement. Commentors felt that the revised reporting requirement would clarify the types of claims that need to be reported to the Regional Administrator. However, one commentor felt that "Certification of Valid Claim" was not defined clearly enough. This commentor should note the regulatory language of § 264.151 (h)(2), (k), (l), (m), and (n). In those sections, the Agency has established precise language for a Certification of Valid Claim. This language is not modified by today's rule. In light of the precise language in § 264.151, the Agency disagrees that further clarification of the term, "Certification of Valid Claim", is required.

Another commentor expressed concern that States that have adopted the September 1, 1988 reporting requirement will not adopt the revised reporting requirement contained in this rule. The Agency understands this commentor's concern. However, as was discussed in the preamble of the July 1, 1992 proposal, the revised rule language promulgated today is not more stringent than the claims reporting requirement of the September 1, 1988 rule. Because authorized States can have requirements that are more stringent than the Federal program, States are free to interpret the September 1, 1988 language more broadly than EPA does. This is explained in more detail in the Effect of Rule on State Authorization section found later in this notice. However, the Agency urges States to accept the interpretation of EPA's January 25, 1990 memorandum and adopt the specific language promulgated today.

C. Standby Trust for Owners and Operators Who Use a Letter of Credit to Demonstrate Liability Coverage

The September 1, 1988 rule, discussed above, required that: (1) owners or operators using letters of credit to demonstrate liability coverage designate third-party claimants as beneficiaries in the event of a valid claim, and (2) the issuer of the letter of credit determine whether a claim against the instrument is valid and should be paid. In the February 23, 1990 settlement agreement with CWM, the Agency agreed to amend the letter of credit requirements (§§ 264.147(h) and 265.147(h)) and the language of the letter of credit mechanism (§ 264.151(k)) to allow for the creation of a standby trust fund and the designation of an independent trustee as beneficiary. Thus, the trustee, rather than the issuer of the letter of credit, is responsible for distributing funds to the claimants when a claim for damages is filed against the owner or operator.

This rule promulgates those changes to the letter of credit instrument by adding new §§ 264.147(l), 265.147(l) and 264.151(n) relating specifically to the requirements and instrument language of the standby trust. The Agency believes that these revisions make the letter of credit more available to owners and operators without reducing its integrity.

Commentors generally favored the addition of this financial instrument to those currently available for use by owners and operators to demonstrate financial responsibility.

One commentor expressed concern that the letter of credit with standby trust mechanism would replace the letter of credit mechanism that is currently allowed for use by owners and operators. The Agency reiterates that the letter of credit mechanism with a standby trust is an additional mechanism that owners and operators can use to demonstrate financial responsibility.

One commentor suggested several modifications to the wording of the letter of credit with standby trust instrument that were unrelated to creation of the standby trust. The Agency did not, in proposing this rule, contemplate modification to its existing financial assurance mechanisms, and did not, therefore, solicit comment on those types of changes. Other wording changes were made that were minor and not addressed by this commentor. Therefore the suggestions received from the commentor are outside the scope of this rule, but the Agency does note these suggested wording changes and may address them at a later date. The wording changes suggested by this commentor are potentially major and need to be fully assessed by the Agency before it can consider proposing them.

D. Instruments Available to Owners and Operators that no Longer Meet the Requirements of the Financial Test

The Agency is also promulgating, as proposed, conforming changes to §§ 264.147(f)(6) and 265.147(f)(6). Before these changes, those sections required owners or operators that have been using the financial test to assure for third party liability, but no longer meet the requirements of the test, to obtain insurance. Today's rule expands the available instruments to allow those owners and operators to obtain insurance or a letter of credit, surety bond, trust fund, or a guarantee. EPA received no comments on this issue. These conforming changes implement the intent of the September 1, 1988 rule expanding the allowable instruments for third party liability coverage.

III. The Expanded Guarantee for Demonstrating Financial Assurance for Closure and Post-Closure Care

The use of a parent corporate guarantee for liability coverage was authorized in the interim final rule on July 11, 1986 (51 FR 25350) and promulgated as a final regulation on November 18, 1987 (52 FR 44314). Several commentors on the interim final rule urged EPA to allow non-parent firms to provide guarantees. After analyzing the validity and enforceability of guarantee contracts by non-parent firms, the Agency in the September 1, 1988 rulemaking discussed earlier in this preamble, authorized guarantees for third-party liability coverage provided by: (1) Corporate grandparents, (2) corporate "sibling" firms, and (3) firms with a "substantial business relationship" with the owner or operator. Further discussion of the parent guarantee can be found in the September 1, 1988 rule (53 FR 33938).

Since authorizing the non-parent guarantee as an allowable mechanism for third-party liability coverage, the Agency has received many requests to extend its use to closure and post-closure care financial responsibility requirements. This rule revises §§ 264.143, 264.145, 265.143 and 265.145 to allow the same non-parent guarantee for closure and post-closure as is currently allowed for third-party liability.

In general, commentors generally favored expanding the use of the non-parent guarantee mechanism to owners and operators who wish to demonstrate financial responsibility for closure and post-closure care.

One commentor felt that the expanded non-parent guarantee should be

classified as more stringent than the current rule. The Agency disagrees. A program that allows an additional instrument for compliance is less stringent than a program that does not allow the use of that instrument. Thus, though this rule expands the allowable instruments under the Federal program, the States can choose whether or not to adopt it. This is explained in more detail in the Effect of Rule on State Authorization section found later in this notice.

IV. Effective Date

Today's rule is effective immediately. Section 3010(b) of RCRA provides that regulations respecting permits for the treatment, storage, or disposal of hazardous waste shall take effect six months after the date of promulgation. However, section 3010(b)(1) of the RCRA allows EPA to shorten the time to the effective date if the Agency finds that the regulated community does not need six months to come into compliance with the new regulation.

The provisions of this rule either reduce the regulatory burden or provide additional flexibility in complying with the regulations for owners and operators.

As a result, the Agency finds that the regulated community does not need six months to come into compliance. Hence, today's rule is immediately effective under section 553(d) of the Administrative Procedure Act.

V. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State (See 40 CFR part 271 for the standards and requirements for authorization). Following authorization, the Agency retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of the Federal program. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in a State where the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized States until the State adopted the requirements as state law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as state law to retain final authorization, the HSWA requirements and prohibitions apply in authorized States in the interim.

B. Effect of Rule on State Authorization

Today's rule proposes standards that are not effective in authorized States because the requirements are not imposed pursuant to HSWA. Thus, the requirements are applicable only in those States that do not have final authorization. In authorized States, the requirements will not be applicable until the State revises its program to adopt equivalent requirements under state law.

In general, 40 CFR 271.21(e)(2) requires States that have final authorization to modify their programs to reflect Federal program changes and to subsequently submit the modifications to EPA for approval. It should be noted, however, that authorized States are only required to modify their programs when EPA promulgates Federal standards that are more stringent or broader in scope than the existing Federal standards. Section 3009 of RCRA allows States to impose standards more stringent than those in the Federal program. For those Federal program changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs (See 40 CFR 271.1(i)).

The provisions of today's rule that expand the allowable instruments for demonstrating financial assurance are less stringent than the current program. Those provisions are: (1) Revisions to § 264.147(h) (4) and (5), §§ 265.147(h) (4) and (5), and 264.151(k), and addition of new § 264.151(n), which provide for the use of a stand-by trust with the letter of credit to demonstrate financial assurance for liability coverage requirements; and (2) revisions to §§ 264.147(f)(6) and 265.147(f)(6), which expand the mechanisms available to owners and operators that no longer meet the requirements of the financial test for liability coverage; and (3) revisions to §§ 264.143(f)(10), 264.145(f)(11), 265.143(e)(11), and 265.145(e)(11), which expand the use of the non-parent guarantee to owners or operators demonstrating financial assurance for closure and post-closure care. For these Federal program changes that are less stringent or reduce the scope of the Federal program, an authorized State is not required to modify its authorized program. If the State does modify its program, EPA must approve the modification for the state requirements to become Subtitle C RCRA requirements.

The September 1, 1988 rule related to liability coverage established a claims reporting requirement at §§ 264.147(a)(7) and (b)(7) and 265.147(a)(7) and (b)(7). The preamble characterized all provisions of that rule as less stringent and, therefore, authorized States were not required to adopt the new provisions, including the claims reporting requirement. However, upon further consideration the Agency has determined that this claims reporting requirement was, in fact, more stringent than the Federal program in effect before that time because there was no reporting requirement before that time.

Because the claims reporting requirement of §§ 264.147(a)(7), 264.147(b)(7), 265.147(a)(7), and 265.147(b)(7) was more stringent than the Federal Program in place prior to the September 1, 1988 rule, States should have been required to modify their programs to include it in order to maintain an equivalent program. In accordance with § 271.21(e)(2), the deadline for States to modify their program to reflect changes adopted on September 1, 1988 was July 1, 1990. However, the States were not notified of this obligation since the rule was originally classified as less stringent. Because of the confusion related to the stringency characterization of the claims reporting requirement and the fact that the Agency is in the process of clarifying that requirement, the Agency will, for purposes of determining applicable deadlines under § 271.21(e)(2), treat the claims reporting requirement of the September 1, 1988 rule as if it were promulgated and amended today. This means that the deadline for adopting the provision is the applicable deadline under § 271.21(e)(2) for today's final rule. States that have not yet adopted the reporting requirement of the September 1, 1988 rule should not do so but should adopt the clarified version promulgated today. In addition, States whose programs have been modified to adopt the current claims reporting requirement but wish to adopt the clarified reporting requirement should

follow the deadlines of 40 CFR 271.21(e)(2) for today's final rule.

The revisions to the claims reporting requirement that are promulgated today, however, are not more stringent than the current claims reporting requirement at §§ 264.147(a)(7) and (b)(7) and 265.147(a)(7) and (b)(7) promulgated in the September 1, 1988 rule. Therefore, States that have already adopted the current claims reporting requirement are not required to adopt the clarified reporting requirement, though EPA urges them to do so.

A commentor suggested that the Agency's treatment of the revised claims notification language as not being more stringent than the language promulgated on September 1, 1988 imposed an arbitrary and unreasonable burden on the regulated community. The commentor believed that EPA's determination that the proposed language was not more stringent than the September 1, 1988 language would require the regulated community to challenge 50 state rules in litigation in 50 States. In the commentor's view, the Agency should vacate the claims reporting provisions of the September 1, 1988 rule, vacate approvals of state program revisions that adopted the September 1, 1988 language, and require States to change their rules to conform to the newly promulgated language.

EPA carefully considered commentor's views and concerns about the state authorization aspects of today's final rule and has determined that it does not have the authority to grant the relief that commentor suggests. Under RCRA section 3009, the Agency cannot require a State to adopt today's language if the State has a claims reporting provisions that is broader (or that the State interprets as being broader) than that required by the RCRA program. However, EPA has taken several steps that it believes will be effective in minimizing the likelihood of and need for the excessive litigation suggested by the commentor. First, on January 25, 1990, EPA issued a memorandum from Sylvia K. Lowrance to the RCRA Branch Chiefs entitled "Clarification of 40 CFR 264.147(a)(7), (b)(7), and § 265.147(a)(7), (b)(7)" in which EPA interpreted the September 1, 1988 language (see Docket Number 91-RCFP-FFFFF). This guidance on implementing the 1988 reporting requirement directs States and Regions to require reporting of only valid claims, that is, those required by today's revised reporting requirement. Thus, in States, that have adopted the 1988 reporting requirement and are following the guidance set forth in the January 25, 1990 memorandum, a failure to revise the state program to adopt today's provisions would have no practical effect on owners and operators (though for purposes of clarity the Agency encourages those States to adopt today's provision).

There are other factors that should reduce the problem cited by the commentor. First, many States have not yet adopted the language of the September 1, 1988 rule; these States will be able to obtain approval by submitting today's language and need not submit the September 1, 1988 language. Second, many States that adopted the September 1, 1988 claims reporting provision automatically conform their regulations and statutes to the provisions of the Federal program; therefore, these States will adopt today's clarified language in due course without litigation. Third, many of the States that adopted the September 1, 1988 language, obtained authorization, and do not automatically use the Federal regulatory language, will want to adopt today's clarification. Therefore, EPA believes the regulated community will not need to challenge these state rules as applied.

For the few States that have adopted the September 1, 1988 provision, that interpret the language more expansively than EPA, and that wish to retain that language, EPA lacks a legal and practical mechanism for requiring these States to adopt today's language. EPA cannot require States to modify their programs to comply with less stringent Federal program changes. However, for the reasons discussed above, EPA anticipates that there will be far fewer States in this position than the commentor suggests.

VI. Regulatory Analysis

A. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a regulation is "major" and thus whether it must prepare and consider a Regulatory Impact Analysis in connection with the rule. Today's rule is not major because it will not result in an annual effect on the economy of $100 million or more, nor will it result in an increase in costs or prices to industry. There will be no adverse impact on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore the Agency has not prepared a Regulatory Impact Analysis for today's rule. This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. at the time an Agency publishes a proposed or final rule, it must prepare a Regulatory Flexibility Analysis that describes the impact of the rule on small entities, unless the Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities. Today's rule expands the instruments available for owner or operator to demonstrate financial responsibility. Therefore, pursuant to 5 U.S.C. 601b, I certify that this regulation will not have a significant economic impact on a substantial number of small entities.

Dated: September 4, 1992.

F. Henry Habicht II,

Acting Administrator.

List of Subjects

40 CFR Part 264

Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

40 CFR Part 265

Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

40 CFR part 264 is amended as follows:

PART 264—STANDARDS FOR OWNERS OR OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924 and 6925.

2. Section 264.143 is amended by revising the introductory text of paragraph (f)(10) to read as follows:

264.143 Financial assurance for closure.

* * * * *

(f) * * *

(10) An owner or operator may meet the requirements of this section by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the

requirements for owners or operators in paragraphs (f)(1) through (8) of this section and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in § 264.151(h). The certified copy of the guarantee must accompany the items sent to the Regional Administrator as specified in paragraph (f)(3) of this section. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the guarantee must provide that:

* * * * *

3. Section 264.145 is amended by revising the introductory text of paragraph (f)(11) to read as follows:

§ 264.145 Financial assurance for post-closure care.

* * * * *

(f) * * *

(11) An owner or operator may meet the requirements for this section by obtaining a written guarantee. The guarantor must be the direct of higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraphs (f)(1) through (9) of this section and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in § 264.151(h). A certified copy of the guarantee must accompany the items sent to the Regional Administrator as specified in paragraph (f)(3) of this section. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the guarantee must provide that:

* * * * *

4. Section 264.147 is amended by revising paragraphs (a)(7), (b)(7), and (f)(6) and by adding new paragraphs (h)(4) and (h)(5) to read as follows:

§ 264.147 Liability requirements.

(a) * * *

(7) An owner or operator shall notify the Regional Administrator in writing within 30 days whenever:

(i) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in paragraphs (a)(1) through (a)(6) of this section; or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under paragraphs (a)(1) through (a)(6) of this section; or

(iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under paragraphs (a)(1) through (a)(6) of this section.

(b) * * *

(7) An owner or operator shall notify the Regional Administrator in writing within 30 days whenever:

(i) A Claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in paragraphs (b)(1) through (b)(6) of this section; or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under paragraphs (b)(1) through (b)(6) of this section; or

(iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under paragraphs (b)(1) through (b)(6) of this section.

* * * * *

(f) * * *

(6) If the owner or operator no longer meets the requirements of paragraph (f)(1) of this section, he must obtain insurance, a letter of credit, a surety bond, a trust fund, or a guarantee for the entire amount of required liability coverage as specified in this section. Evidence of liability coverage must be submitted to the Regional Administrator within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the test requirements.

* * * * *

(h) * * *

(4) An owner or operator who uses a letter of credit to satisfy the requirements of this section may also establish a standby trust fund. Under the terms of such a letter of credit, all amounts paid pursuant to a draft by the trustee of the standby trust will be deposited by the issuing institution into the standby trust in accordance with instructions from the trustee. The trustee of the standby trust fund must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(5) The wording of the standby trust fund must be identical to the wording specified in § 264.151(n).

* * * * *

5. Section 264.151 is amended by revising paragraphs (f), (g), (h), and (k) and adding a new paragraph (n) to read as follows:

§ 264.151 Wording of the instruments.

* * * * *

(f) A letter from the chief financial officer, as specified in § 264.143(f) or 264.145(f), or § 265.143(e) or 265.143(e) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Letter From Chief Financial Officer

[Address to Regional Administrator of every Region in which facilities for which financial responsibility is to be demonstrated through the financial test are located].

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance for closure and/or post-closure costs, as specified in subpart H of 40 CFR parts 264 and 265.

[Fill out the following five paragraphs regarding facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write

"None" in the space indicated. For each facility, include its EPA Identification Number, name, address, and current closure and/or post-closure cost estimates. Identify each cost estimate as to whether it is for closure or post-closure care].

1. This firm is the owner or operator of the following facilities for which financial assurance for closure or post-closure care is demonstrated through the financial test specified in subpart H of 40 CFR parts 264 and 265. The current closure and/or post-closure cost estimates covered by the test are shown for each facility: _____.

2. This firm guarantees, through the guarantee specified in subpart H of 40 CFR parts 264 and 265, the closure or post-closure care of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility: _____. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee _____; or (3) engaged in the following substantial business relationship with the owner or operator _____, and receiving the following value in consideration of this guarantee _____]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].

3. In States where EPA is not administering the financial requirements of subpart H of 40 CFR part 264 or 265, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in subpart H of 40 CFR parts 264 and 265. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility: _____.

4. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanism specified in subpart H of 40 CFR parts 264 and 265 or equivalent or substantially equivalent State mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: _____.

5. This firm is the owner or operator of the following UIC facilities for which financial assurance for plugging and abandonment is required under part 144. The current closure cost estimates as required by 40 CFR 144.62 are shown for each facility: _____.

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in Alternative I if the criteria of paragraph (f)(1)(i) of § 264.143 or § 264.145, or of paragraph (e)(1)(i) of § 265.143 or § 265.145 of this chapter are used. Fill in Alternative II if the criteria of paragraph (f)(1)(ii) of § 264.143 or § 264.145, or of paragraph (e)(1)(ii) of § 265.143 or § 265.145 of this chapter are used.]

Alternative I

1. Sum of current closure and post-closure cost estimate [total of all cost estimates shown in the five paragraphs above] $_____

*2. Total liabilities [if any portion of the closure or post-closure cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4] $_____

*3. Tangible net worth $_____

*4. Net worth $_____

*5. Current assets $_____

*6. Current liabilities $_____

7. Net working capital [line 5 minus line 6] $_____

*8. The sum of net income plus depreciation, depletion, and amortization $_____

*9. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) $_____

10. Is line 3 at least $10 million? (Yes/No) _____

11. Is line 3 at least 6 times line 1? (Yes/No) _____

12. Is line 7 at least 6 times line 1? (Yes/No) _____

*13. Are at least 90% of firm's assets located in the U.S.? If not, complete line 14 (Yes/No) _____

14. Is line 9 at least 6 times line 1? (Yes/No) _____

15. Is line 2 divided by line 4 less than 2.0? (Yes/No) _____

16. Is line 8 divided by line 2 greater than 0.1? (Yes/No) _____

17. Is line 5 divided by line 6 greater than 1.5? (Yes/No) _____

Alternative II

1. Sum of current closure and post-closure cost estimates [total of all cost estimates shown in the five paragraphs above] $_____

2. Current bond rating of most recent issuance of this firm and name of rating service _____

3. Date of issuance of bond _____

4. Date of maturity of bond _____

*5. Tangible net worth [if any portion of the closure and post-closure cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line] $_____

*6. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) $_____

7. Is line 5 at least $10 million ? (Yes/No) _____

8. Is line 5 at least 6 times line 1? (Yes/No) _____

*9. Are at least 90% of firm's assets located in the U.S.? If not, complete line 10 (Yes/No) _____

10. Is line 6 at least 6 times line 1? (Yes/No) _____

I hereby certify that the wording of this letter is identical to the wording specified in 40 CFR 264.151(f) as such regulations were constituted on the date shown immediately below.

[Signature] _____

[Name] _____

[Title] _____

[Date] _____

(g) A letter from the chief financial officer, as specified in § 264.147(f) or § 265.147(f) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Letter From Chief Financial Officer

[Address to Regional Administrator of every Region in which facilities for which financial responsibility is to be demonstrated through the financial test are located].

I am the chief financial officer of [firm's name and address]. This letter is in support of the use of the financial test to demonstrate financial responsibility for liability coverage [insert "and closure and/or post-closure care" if applicable] as specified in subpart H of 40 CFR parts 264 and 265.

[Fill out the following paragraphs regarding facilities and liability coverage. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name, and address].

The firm identified above is the owner or operator of the following facilities for which liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences is being demonstrated through the financial test specified in subpart H of 40 CFR parts 264 and 265: _____

The firm identified above guarantees, through the guarantee specified in subpart H of 40 CFR parts 264 and 265, liability coverage for [insert "sudden" or "nonsudden" of "both sudden and nonsudden"] accidental occurrences at the following facilities owned or operated by the following: _____. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee _____; or (3) engaged in the following substantial business relationship with the owner or operator _____, and receiving the following value in consideration of this guarantee _____]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter.]

[If you are using the financial test to demonstrate coverage of both liability and closure and post-closure care, fill in the following five paragraphs regarding facilities and associated closure and post-closure cost estimates. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA identification number, name, address,

and current closure and/or post-closure cost estimates. Identify each cost estimate as to whether it is for closure or post-closure care.]

1. The firm identified above owns or operates the following facilities for which financial assurance for closure or post-closure care or liability coverage is demonstrated through the financial test specified in subpart H of 40 CFR parts 264 and 265. The current closure and/or post-closure cost estimate covered by the test are shown for each facility: _____.

2. The firm identified above guarantees, through the guarantee specified in subpart H of 40 CFR parts 264 and 265, the closure and post-closure care or liability coverage of the following facilities owned or operated by the guaranteed party. The current cost estimates for closure or post-closure care so guaranteed are shown for each facility: _____.

3. In States where EPA is not administering the financial requirements of subpart H of 40 CFR parts 264 and 265, this firm is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in subpart H or 40 CFR parts 264 and 265. The current closure or post-closure cost estimates covered by such a test are shown for each facility: _____.

4. The firm identified above owns or operates the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanisms specified in subpart H of 40 CFR parts 264 and 265 or equivalent or substantially equivalent State mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: _____.

5. This firm is the owner or operator or guarantor of the following UIC facilities for which financial assurance for plugging and abandonment is required under part 144 and is assured through a financial test. The current closure cost estimates as required by 40 CFR 144.62 are shown for each facility: _____.

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

Part A. Liability Coverage for Accidental Occurrences

[Fill in Alternative I if the criteria of paragraph (f)(1)(i) of § 264.147 or § 265.147 are used. Fill in Alternative II if the criteria of paragraph (f)(1)(ii) of § 264.147 or § 265.147 are used.]

Alternative I

1. Amount of annual aggregate liability coverage to be demonstrated $ _____.

*2. Current assets $ _____.

*3. Current $ _____.

4. Net working capital (line 2 minus line 3) $ _____.

*5. Tangible net worth $ _____.

*6. If less than 90% of assets are located in the U.S., give total U.S. assets $ _____.

7. Is line 5 at least $10 million? (Yes/No) _____.

8. Is line 4 at least 6 times line 1? (Yes/No) _____.

9. Is line 5 at least 6 times line 1? (Yes/No) _____.

*10. Are at least 90% of assets located in the U.S.? (Yes/No) _____. If not, complete line 11.

11. Is line 6 at least 6 times line 1? (Yes/No) _____.

Alternative II

1. Amount of annual aggregate liability coverage to be demonstrated $ _____.

2. Current bond rating of most recent issuance and name of rating service _____.

3. Date of issuance of bond _____.

4. Date of maturity of bond _____.

*5. Tangible net worth $ _____.

*6. Total assets in U.S. (required only if less than 90% of assets are located in the U.S.) $ _____.

7. Is line 5 at least $10 million? (Yes/No) _____.

8. Is line 5 at least 6 times line 1? _____.

9. Are at least 90% of assets located in the U.S.? If not, complete line 10. (Yes/No) _____.

10. Is line 6 at least 6 times line 1? _____.

[Fill in part B if you are using the financial test to demonstrate assurance of both liability coverage and closure or post-closure care.]

Part B. Closure or Post-Closure Care and Liability Coverage

[Fill in Alternative I if the criteria of paragraphs (f)(1)(i) of § 264.143 or § 264.145 and (f)(1)(i) of § 264.147 are used or if the criteria of paragraphs (e)(1)(i) of § 265.143 or § 265.145 and (f)(1)(i) of § 265.147 are used. Fill in Alternative II if the criteria of paragraphs (f)(1)(ii) of § 264.143 or § 264.145 and (f)(1)(ii) of § 264.147 are used or if the criteria of paragraphs (e)(1)(i) of § 265.143 or § 265.145 and (f)(1)(ii) of § 265.147 are used.]

Alternative I

1. Sum of current closure and post-closure cost estimates (total of all cost estimates listed above) $ _____

2. Amount of annual aggregate liability coverage to be demonstrated $ _____

3. Sum of lines 1 and 2 $ _____

*4. Total liabilities (if any portion of your closure or post-closure cost estimates is included in your total liabilities, you may deduct that portion from this line and add that amount to lines 5 and 6) $ _____

*5. Tangible net worth $ _____

*6. Net worth $ _____

*7. Current assets $ _____

*8. Current liabilities $ _____

9. Net working capital (line 7 minus line 8) $ _____

10. The sum of net income plus depreciation, depletion, and amortization $ _____

*11. Total assets in U.S. (required only if less than 90% of assets are located in the U.S.) $ _____

12. Is line 5 at least $10 million? (Yes/No)

13. Is line 5 at least 6 times line 3? (Yes/No)

14. Is line 9 at least 6 times line 3? (Yes/No)

*15. Are at least 90% of assets located in the U.S.? (Yes/No) If, not, complete line 16.

16. Is line 11 at least 6 times line 3? (Yes/No)

17. Is line 4 divided by line 6 less than 2.0? (Yes/No)

18. Is line 10 divided by line 4 greater than 0.1? (Yes/No)

19. Is line 7 divided by line 8 greater than 1.5? (Yes/No)

Alternative II

1. Sum of current closure and post-closure cost estimates (total of all cost estimates listed above) $ _____

2. Amount of annual aggregate liability coverage to be demonstrated $ _____

3. Sum of lines 1 and 2 $ _____

4. Current bond rating of most recent issuance and name of rating service _____

5. Date of issuance of bond _____

6. Date of maturity of bond _____

*7. Tangible net worth (if any portion of the closure or post-closure cost estimates is included in "total liabilities" on your financial statements you may add that portion to this line) _____ $ _____

*8. Total assets in the U.S. (required only if less than 90% of assets are located in the U.S.) $ _____

9. Is line 7 at least $10 million? (Yes/No)

10. Is line 7 at least 6 times line 3? (Yes/No)

*11. Are at least 90% of assets located in the U.S.? (Yes/No) If not complete line 12.

12. Is line 8 at least 6 times line 3? (Yes/No)

I hereby certify that the wording of this letter is identical to the wording specified in 40 CFR 264.151(g) as such regulations were constituted on the date shown immediately below.

[Signature] _____

[Name] _____

[Title] _____

[Date] _____

(h)(1) A corporate guarantee, as specified in § 264.143(f) or § 264.145(f), or § 265.143(e) or § 265.145(e) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Corporate Guarantee for Closure or Post-Closure Care

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the State of [insert name of State], herein referred to as guarantor. This guarantee is made on behalf of the [owner or operator] of [business address], which is [one of the following: "our subsidiary"; "a subsidiary of [name and address of common parent corporation], of which guarantor is a subsidiary"; or "an entity with which guarantor has a substantial

business relationship, as defined in 40 CFR [either 264.141(h) or 265.141(h)]" to the United States Environmental Protection Agency (EPA).

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in 40 CFR 264.143(f), 264.145(f), 265.143(e), and 265.145(e).

2. [Owner or operator] owns or operates the following hazardous waste management facility(ies) covered by this guarantee: [List for each facility: EPA Identification Number, name, and address. Indicate for each whether guarantee is for closure, post-closure care, or both.]

3. "Closure plans" and "post-closure plans" as used below refer to the plans maintained as required by subpart G of 40 CFR parts 264 and 265 for the closure and post-closure care of facilities as identified above.

4. For value received from [owner or operator], guarantor guarantees to EPA that in the event that [owner or operator] fails to perform [insert "closure," "post-closure care" or "closure and post-closure care"] of the above facility(ies) in accordance with the closure or post-closure plans and other permit or interim status requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in subpart H of 40 CFR part 264 or 265, as applicable, in the name of [owner or operator] in the amount of the current closure or post-closure cost estimates as specified in subpart H of 40 CFR parts 264 and 265.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is(are) located and to [owner or operator] that he intends to provide alternate financial assurance as specified in subpart H of 40 CFR part 264 or 265, as applicable, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless [owner or operator] has done so.

6. The guarantor agrees to notify the EPA Regional Administrator by certified mail, of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by an EPA Regional Administrator of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of closure or post-closure care, he shall establish alternate financial assurance as specified in subpart H of 40 CFR part 264 or 265, as applicable, in the name of [owner or operator] unless [owner or operator] has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure or post-closure plan, amendment or modification of the permit, the extension or reduction of the time of performance of closure or post-closure, or any other modification or alteration of an obligation of the owner or operator pursuant to 40 CFR part 264 or 265.

9. Guarantor agrees to remain bound under this guarantee for as long as [owner or operator] must comply with the applicable financial assurance requirements of subpart H of 40 CFR parts 264 and 265 for the above-listed facilities, except as provided in paragraph 10 of this agreement.

10. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator]:

Guarantor may terminate this guarantee by sending notice by certified mail to the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is(are) located and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the EPA Regional Administrator(s) approve(s), alternate closure and/or post-closure care coverage complying with 40 CFR 264.143, 264.145, 265.143, and/or 265.145.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with its owner or operator]

Guarantor may terminate this guarantee 120 days following the receipt of notification, through certified mail, by the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is(are) located and by [the owner or operator].

11. Guarantor agrees that if [owner or operator] fails to provide alternate financial assurance as specified in subpart H of 40 CFR part 264 or 265, as applicable, and obtain written approval of such assurance from the EPA Regional Administrator(s) within 90 days after a notice of cancellation by the guarantor is received by an EPA Regional Administrator from guarantor, guarantor shall provide such alternate financial assurance in the name of [owner or operator].

12. Guarantor expressly waives notice of acceptance of this guarantee by the EPA or by [owner or operator]. Guarantor also expressly waives notice of amendments or modifications of the closure and/or post-closure plan and of amendments or modifications of the facility permit(s).

I hereby certify that the wording of this guarantee is identical to the wording specified in 40 CFR 264.151(h) as such regulations were constituted on the date first above written.

Effective date: _____

[Name of guarantor] _____

[Authorized signature for guarantor] _____

[Name of person signing] _____

[Title of person signing] _____

Signature of witness or notary: _____

(2) A guarantee, as specified in § 264.147(g) or § 265.147(g) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Guarantee for Liability Coverage

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of [if incorporated within the United States insert "the State of _____" and insert name of State; if incorporated outside the United States insert the name of the country in which incorporated, the principal place of business within the United States, and the name and address of the registered agent in the State of the principal place of business], herein referred to as guarantor. This guarantee is made on behalf of [owner or operator] of [business address], which is one of the following: "our subsidiary;" "a subsidiary of [name and address of common parent corporation], or which guarantor is a subsidiary;" or "an entity with which guarantor has a substantial business relationship, as defined in 40 CFR [either 264.141(h)]", to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee.

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in 40 CFR 264.147(g) and 265.147(g).

2. [Owner or operator] owns or operates the following hazardous waste management facility(ies) covered by this guarantee: [List for each facility: EPA identification number, name, and address; and if guarantor is incorporated outside the United States list the name and address of the guarantor's registered agent in each State.] This corporate guarantee satisfies RCRA third-party liability requirements for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences in above-named owner or operator facilities for coverage in the amount of [insert dollar amount] for each occurrence and [insert dollar amount] annual aggregate.

3. For value received from [owner or operator], guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operations of the facility(ies) covered by this guarantee that in the event that [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [sudden and/or nonsudden] accidental occurrences, arising from the operation of the above-named facilities, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor will satisfy such judgment(s), award(s) or settlement agreement(s) up to the limits of coverage identified above.

4. Such obligation does not apply to any of the following:

(a) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert owner or operator]

would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator]; or

(2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert owner or operator]. This exclusion applies:

(A) Whether [insert owner or operator] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert owner or operator];

(2) Premises that are sold, given away or abandoned by [insert owner or operator] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert owner or operator];

(4) Personal property in the care, custody or control of [insert owner or operator];

(5) That particular part of real property on which [insert owner or operator] or any contractors or subcontractors working directly or indirectly on behalf of [insert owner or operator] are performing operations, if the property damage arises out of these operations.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the EPA Regional Administrator[s] for the Region[s] in which the facility[ies] is[are] located and to [owner or operator] that he intends to provide alternate liability coverage as specified in 40 CFR 264.147 and 265.147, as applicable, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such liability coverage unless [owner or operator] has done so.

6. The guarantor agrees to notify the EPA Regional Administrator by certified mail of a voluntary or involuntary proceeding under title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by an EPA Regional Administrator of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor, he shall establish alternate liability coverage as specified in 40 CFR 264.147 or 265.147 in the name of [owner or operator], unless [owner or operator] has done so.

8. Guarantor reserves the right to modify this agreement to take into account amendment or modification of the liability requirements set by 40 CFR 264.147 and 265.147, provided that such modification shall become effective only if a Regional Administrator does not disapprove the modification within 30 days of receipt of notification of the modification.

9. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable requirements of 40 CFR 264.147 and 265.147 for the above-listed facility(ies), except as provided in paragraph 10 of this agreement.

10. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator]:

Guarantor may terminate this guarantee by sending notice by certified mail to the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is(are) located and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the EPA Regional Administrator(s) approve(s), alternate liability coverage complying with 40 CFR 264.147 and/or 265.147.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with the owner or operator]:

Guarantor may terminate this guarantee 120 days following receipt of notification, through certified mail, by the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is(are) located and by [the owner or operator].

11. Guarantor hereby expressly waives notice of acceptance of this guarantee by any party.

12. Guarantor agrees that this guarantee is in addition to and does not affect any other responsibility or liability of the guarantor with respect to the covered facilities.

13. The Guarantor shall satisfy a third-party liability claim only on receipt of one of the following documents:

(a) Certification from the Principal and the third-party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert Principal] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Principal's hazardous waste treatment, storage, or disposal facility should be paid in the amount of $

[Signatures] _____

Principal _____

(Notary) Date _____

[Signatures] _____

Claimant(s) _____

(Notary) Date _____

(b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Principal's facility or group of facilities.

14. In the event of combination of this guarantee with another mechanism to meet liability requirements, this guarantee will be considered [insert "primary" or "excess"] coverage.

I hereby certify that the wording of the guarantee is identical to the wording specified in 40 CFR 264.151(h)(2) as such regulations were constituted on the date shown immediately below.

Effective date: _____

[Name of guarantor] _____

[Authorized signature for guarantor] _____

[Name of person signing] _____

[Title of person signing] _____

Signature of witness of notary: _____

* * * * *

(k) A letter of credit, as specified in § 264.147(h) or 265.147(h) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Irrevocable Standby Letter of Credit

Name and Address of Issuing Institution ——

Regional Administrator(s) _____

Region(s) _____

U.S. Environmental Protection Agency ——

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No _____ in the favor of ["any and all third-party liability claimants" or insert name of trustee of the standby trust fund], at the request and for the account of [owner or operator's name and address] for third-party liability awards or settlements up to [in words] U.S. dollars $_____ per occurrence and the annual aggregate amount of [in words] U.S. dollars $_____, for sudden accidental occurrences and/or for third-party liability awards or settlements up to the amount of [in words] U.S. dollars $_____ per occurrence, and the annual aggregate amount of [in words] U.S. dollars $_____, for nonsudden accidental occurrences available upon presentation of a sight draft bearing reference to this letter of credit No. _____, and [insert the following language if the letter of credit is being used without a standby trust fund: "(1) a signed certificate reading as follows:

Certificate of Valid Claim

The undersigned, as parties [insert principal] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operations of [principal's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of $[ ]. We hereby certify that the claim does not apply to any of the following:

(a) Bodily injury or property damage for which [insert principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert principal] would be

obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert principal] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert principal] arising from, and in the course of, employment by [insert principal]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert principal].

This exclusion applies:

(A) Whether [insert principal] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert principal];

(2) Premises that are sold, given away or abandoned by [insert principal] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert principal];

(4) Personal property in the care, custody or control of [insert principal];

(5) That particular part of real property on which [insert principal] or any contractors or subcontractors working directly or indirectly on behalf of [insert principal] are performing operations, if the property damage arises out of these operations.

[Signatures] _____

Grantor _____

[Signatures] _____

Claimant(s) _____

or (2) a valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.

This letter of credit is effective as of [date] and shall expire on [date at least one year later], but such expiration date shall be automatically extended for a period of [at least one year] on [date and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify you, the USEPA Regional Administrator for Region [Region #], and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us.

[Insert the following language if a standby trust fund is not being used: "In the event that this letter of credit is used in combination with another mechanism for liability coverage, this letter of credit shall be considered [insert "primary" or "excess" coverage]."

We certify that the wording of this letter of credit is identical to the wording specified in 40 CFR 264.151(k) as such regulations were constituted on the date shown immediately below. [Signature(s) and title(s) of official(s) of issuing institution] [Date].

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits published by the International Chamber of Commerce" or "the Uniform Commercial Code"].

* * * * *

(n)(1) A standby trust agreement, as specified in § 264.147(h) or 265.147(h) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Standby Trust Agreement

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator] a [name of a State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert, "incorporated in the State of _____" or "a national bank"], the "trustee."

Whereas the United States Environmental Protection Agency, "EPA," an agency of the United States Government, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility or group of facilities must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas, the Grantor has elected to establish a standby trust into which the proceeds from a letter of credit may be deposited to assure all or part of such financial responsibility for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. *Definitions.* As used in this Agreement:

(a) The term *Grantor* means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term *Trustee* means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. *Identification of Facilities.* This agreement pertains to the facilities identified on attached schedule A [on schedule A, for each facility list the EPA Identification Number, name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this Agreement].

Section 3. *Establishment of Fund.* The Grantor and the Trustee hereby establish a standby trust fund, hereafter the "Fund," for the benefit of any and all third parties injured or damaged by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amounts of _____ [up to $1 million] per occurrence and _____ [up to $2 million] annual aggregate for sudden accidental occurrences and _____ [up to $3 million] per occurrence and _____ [up to $6 million] annual aggregate for nonsudden occurrences, except that the Fund is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which [insert Grantor] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert Grantor] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert Grantor] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee or [insert Grantor] arising from , and in the course of, employment by [insert Grantor]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert Grantor].

This exclusion applies:

(A) Whether [insert Grantor] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert Grantor];

(2) Premises that are sold, given away or abandoned by [insert Grantor] if the property damage arises out of any part of those premises;

(3) Property loaned [insert Grantor];

(4) Personal property in the care, custody or control of [insert Grantor];

(5) That particular part of real property on which [insert Grantor] or any contractors or subcontractors working directly or indirectly on behalf of [insert Grantor] are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the fund shall be considered [insert "primary" or "excess"] coverage.

The Fund is established initially as consisting of the proceeds of the letter of credit deposited into the Fund. Such proceeds and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to

collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by EPA.

Section 4. *Payment for Bodily Injury or Property Damage.* The Trustee shall satisfy a third party liability claim by drawing on the letter of credit described in Schedule B and by making payments from the Fund only upon receipt of one of the following documents:

(a) Certification from the Grantor and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert Grantor] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Grantor's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of $[ ].

[Signature] _____

Grantor _____

[Signatures] _____

Claimant(s) _____

(b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.

Section 5. *Payments Comprising the Fund.* Payments made to the Trustee for the Fund shall consist of the proceeds from the letter of credit drawn upon by the Trustee in accordance with the requirements of 40 CFR 264.151(k) and Section 4 of this Agreement.

Section 6. *Trustee Management.* The Trustee shall invest and reinvest the principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a–2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or a State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. *Commingling and Investment.* The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a–1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. *Express Powers of Trustee.* Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depositary even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depositary with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. *Taxes and Expenses.* All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements to the Trustee shall be paid from the Fund.

Section 10. *Advice of Counsel.* The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. *Trustee Compensation.* The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. *Successor Trustee.* The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment; the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the EPA Regional Administrator and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. *Instructions to the Trustee.* All orders, requests, certifications of valid claims, and instructions to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendments to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the EPA Regional Administrator hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or EPA, except as provided for herein.

Section 14. *Amendment of Agreement.* This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the EPA Regional Administrator, or by the Trustee and the EPA Regional Administrator if the Grantor ceases to exist.

Section 15. *Irrevocability and Termination.* Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the EPA

Regional Administrator, or by the Trustee and the EPA Regional Administrator, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be paid to the Grantor.

The Regional Administrator will agree to termination of the Trust when the owner or operator substitutes alternative financial assurance as specified in this section.

Section 16. *Immunity and indemnification.* The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor and the EPA Regional Administrator issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonable incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. *Choice of Law.* This Agreement shall be administered, construed, and enforced according to the laws of the State of [enter name of State].

Section 18. *Interpretation.* As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation of the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 40 CFR 264.151(n) as such regulations were constituted on the date first above written.

[Signature of Grantor]

[Title]

Attest:

[Title]

[Seal]

[Signature of Trustee]

Attest:

[Title]

[Seal]

(2) The following is an example of the certification of acknowledgement which must accompany the trust agreement for a standby trust fund as specified in section 264.147(h) or 265.147(h) of this chapter. State requirements may differ on the proper content of this acknowledgement.

State of _____

County of _____

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

40 CFR part 265 is amended as follows:

PART 265—INTERIM STATUS STANDARDS FOR OWNERS OR OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

2. Section 265.143 is amended by revising the introductory text of paragraph (e)(10) to read as follows:

§ 265.143 Financial assurance for closure.

* * * * *

(e) * * *

(10) An owner or operator may meet the requirements of this section by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraphs (e)(1) through (8) of this section and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in § 264.151(h). A certified copy of the guarantee must accompany the items sent to the Regional Administrator as specified in paragraph (e)(3) of this section. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the guarantee must provide that:

* * * * *

3. Section 265.145 is amended by revising the introductory text of paragraph (e)(11) to read as follows:

§ 265.145 Financial assurance for post-closure care.

* * * * *

(e) * * *

(11) An owner or operator may meet the requirements of this section by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraphs (e)(1) through (9) of this section and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in § 264.151(h). A certified copy of the guarantee must accompany the items sent to the Regional Administrator as specified in paragraph (e)(3) of this section. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the guarantee must provide that:

* * * * *

4. Section 265.147 is amended by revising paragraphs (a)(7), (b)(7), and (f)(6), and by adding new paragraphs (h)(4) and (h)(5) to read as follows:

§ 265.147 Liability requirements.

(a) * * *

(7) An owner or operator shall notify the Regional Administrator in writing within 30 days whenever:

(i) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in paragraphs (a)(1) through (a)(6) of this section; or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under paragraphs (a)(1) through (a)(6) of this section; or

(iii) A final court order establishing a judgment for bodily injury or property

damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under paragraphs (a)(1) through (a)(6) of this section.

(b) * * *

(7) An owner or operator shall notify the Regional Administrator in writing within 30 days whenever:

(i) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in paragraphs (b)(1) through (b)(6) of this section; or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under paragraphs (b)(1) through (b)(6) of this section; or

(iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under paragraphs (b)(1) through (b)(6) of this section.

* * * * *

(f) * * *

(6) If the owner or operator no longer meets the requirements of paragraph (f)(1) of this section, he must obtain insurance, a letter of credit, a surety bond, a trust fund, or a guarantee for the entire amount of required liability coverage as specified in this section. Evidence of liability coverage must be submitted to the Regional Administrator within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the test requirements.

* * * * *

(h) * * *

(4) An owner or operator who uses a letter of credit to satisfy the requirements of this section may also establish a standby trust fund. Under the terms of such a letter of credit, all amounts paid pursuant to a draft by the trustee of the standby trust will be deposited by the issuing institution into the standby trust in accordance with instructions from the trustee. The trustee of the standby trust fund must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(5) The wording of the standby trust fund must be identical to the wording specified in § 264.151(n).

* * * * *

[FR Doc. 92-22248 Filed 9-15-92; 8:45 am]

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federal register

Wednesday
September 16, 1992

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 21 and 36

Alternative Noise Certification Procedure for Primary, Normal, Transport, and Restricted Category of Helicopters Not Exceeding 6,000 Pounds Maximum Takeoff Weight; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 36

[Docket No. 26910; Amendment Nos. 21-71, and 36-20]

RIN: 2120-AE50

Alternative Noise Certification Procedure for Primary, Normal, Transport, and Restricted Category of Helicopters not Exceeding 6,000 Pounds Maximum Takeoff Weight

AGENCY: Federal Aviation Administration (DOT).

ACTION: Final rule; Request for comments.

SUMMARY: This final rule adds a new appendix to the noise standards regulations. The new appendix provides for an alternative noise certification procedure for primary, normal, transport, and restricted category helicopters not exceeding 6,000 pounds maximum takeoff weight. The new appendix is an optional alternative to existing helicopter noise requirements and is not an additional regulatory requirement. Applicants for certification may demonstrate compliance with the noise standards of either Appendix H or the less costly but more stringent new Appendix J. The new certification procedure is intended to provide regulatory relief to manufacturers of light helicopters by substantially reducing the costs of demonstrating compliance with the noise regulations.

DATES: Effective September 11, 1992.

The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of September 16, 1992.

Comments must be submitted on this final rule on or before January 15, 1993.

ADDRESSES: Send comments on this final rule in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Docket No. 26910, 800 Independence Avenue SW., Washington, DC 20591, or deliver comments in triplicate to: FAA Rules Docket, room 915G, 800 Independence Avenue SW., Washington, DC. Comments may be inspected in room 915G between 8:30 a.m. and 5 p.m., weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth E. Jones, Research and Engineering Branch (AEE-110), Technology Division, Office of Environment and Energy, FAA, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3554, facsimile (202) 267-5594.

SUPPLEMENTARY INFORMATION: The purpose of this rulemaking is to add an alternative noise certification procedure to the existing requirements prescribed in the Federal Aviation Regulations (14 CFR part 36). This amendment is based on Notice No. 92-7 (57 FR 28142, June 24, 1992; Docket No. 26910) in which comments were invited. All comments received were fully considered in the issuance of this Final Rule.

Additional Comments Invited

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments and by commenting on the overall regulatory, environmental, energy, or economic aspects that might suggest a need to modify the rule. The additional comment period, subsequent to this publication of the final rule, is being initiated to accommodate requests for extension of the comment period for the Notice of Proposed Rulemaking (NPRM). Comments should identify the regulatory docket number (26910) and be submitted in triplicate to the address above. All comments received, as well as summaries of substantive public contact with Federal Aviation Administration (FAA) personnel on this rule will be filed in the docket, and will be considered by the Administrator. The docket is available for public inspection both before and after the closing date for comments. The FAA will acknowledge the receipt of a comment if the commenter includes a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 26910." When the comment is received by the FAA, the postcard will be dated, time stamped, and returned to the commenter.

Background

Helicopter Noise Standards Development: FAA

On July 9, 1979, the FAA first addressed helicopter noise certification requirements by publishing an NPRM, Notice No. 79-13 (44 FR 42410). After consideration of the economic impact of the proposed rule, the NPRM was withdrawn (46 FR 61486, December 17, 1981). Because of advances in helicopter noise abatement technology, the FAA again initiated rulemaking and issued NPRM No. 86-3 (51 FR 7878, March 6, 1986), which resulted in the present helicopter noise certification standards, part 36, appendix H (53 FR 3534, February 5, 1988). Appendix H was effective upon publication.

Data submitted recently to the ICAO by various helicopter manufacturers indicates that the cost of an appendix H noise test for a light helicopter can range from $121,000 to $239,000. These figures do not include the substantial non-recurring costs for equipment and training. In addition, because the current rule requires that an applicant for a supplemental type certificate (STC) either demonstrate that the modified helicopter is no noisier than the original helicopter or perform a noise test, the costs associated with helicopter STC's have had an adverse effect on the development of helicopter modifications.

In the 1980's, the United States (in appendix H) adopted a complex and comprehensive helicopter noise test procedure that was developed with the support of ICAO. During the development of the ICAO-recommended procedure for the original helicopter noise certification requirements, the relative cost and complexity of the proposed testing procedures were debated as a potential problem for manufacturers of small, low-cost helicopters. Because the majority of civil helicopters produced in the United States are exported, the unilateral adoption by the United States of an additional simplified noise certification procedure for light helicopters would have little practical benefits for the U.S. manufacturers without the adoption of a similar procedure by foreign countries that would make U.S.-manufactured helicopters acceptable to importing nations. Therefore, the United States and other members of ICAO addressed this issue by participating in the research and development of a simplified noise certification procedure with the support of ICAO. The final rule adopts a similar procedure to provide immediate regulatory relief to U.S. light helicopter manufacturers and modifiers in anticipation of the formal adoption of the standards proposed by ICAO.

Helicopter Standards Development: ICAO

The current ICAO helicopter noise standards (Chapter 8, Annex 16) parallel those of appendix H. When ICAO adopted its helicopter noise standards in 1985, it recognized that a simpler flight test procedure was needed for lighter helicopters. Accordingly, the ICAO committee responsible for formulating noise certification standards, the Committee on Aviation Environmental Protection (CAEP), formed a working group and charged it with the development of a new standard applicable to light helicopters. The

product of the working group's efforts, an alternative noise certification procedure for piston-powered helicopters, was amended at the request of the United States during the most recent CAEP meeting (December 1991) to include turbine-powered helicopters and to establish the maximum weight at 6,000 pounds. Compared to the current ICAO standard (Chapter 8), the new ICAO Chapter 11 standard will: (1) Change the noise metric from Effective Perceived Noise Level (EPNL) to Sound Exposure Level (SEL); (2) reduce the required microphone locations from three to one; (3) require only a level flyover test instead of level flyover, approach, and takeoff tests; and (4) reduce the complexity of the data corrections procedures. However, these changes make it impossible to set a limit that is equally stringent for all helicopters. For this reason, it was undesirable to attempt to develop a replacement standard for the existing ICAO Chapter 8 standard. Thus, the CAEP decided to develop an alternative standard (ICAO Chapter 11) that is simpler to perform, but that has an SEL limit that is more stringent (by two decibels) than the current ICAO Chapter 8 EPNL limit. After an extensive analysis of existing data, the CAEP set the Chapter 11 SEL limit such that it is unlikely that an applicant would pass the newly recommended ICAO Chapter 11 standard and yet fail a full ICAO Chapter 8 test if the Chapter 8 test were also performed.

The new ICAO Chapter 11 standard was approved by the CAEP during its December 1991 meeting in Montreal, Canada. The CAEP approval was the major hurdle facing the new ICAO standard. Before formal adoption, the CAEP recommendations must be submitted to the ICAO council, which in turn will send them to ICAO member States for comment. If member States unanimously concur, the Council will issue the recommended standard. If member States do not concur, the Council will refer the issue to the ICAO Air Navigation Commission (ANC) along with member States' comments. The ANC will review the CAEP recommendations and member States' comments, and make recommendations to the Council, which in turn will send the revisions back to the member States for approval. The ICAO staff estimates that the new ICAO Chapter 11 will be formally adopted in November 1993.

Synopsis of the Rule

Part 36 of the Federal Aviation Regulations (14 CFR) contains noise standards for aircraft type and airworthiness certification. Subpart H and the related appendix H prescribe noise levels and test procedures for civil helicopters certificated in the primary, normal, transport, or restricted category, including the rules governing the issuance of original, amended, or supplemental type certificates for helicopters for which application is made on or after March 6, 1986.

This final rule adds and reserves a new appendix I, and adds a new appendix J to part 36. It also amends subpart H of part 36 to incorporate the requirements of the new appendix J. The amendments to subpart H and the new requirements of appendix J do not represent additional regulatory requirements, but rather provide an alternative helicopter noise certification procedure for light helicopters that complements the existing helicopter noise test requirements of appendix H. The term "light helicopters" as used in this preamble refers to helicopters in the primary, normal, transport, or restricted category not exceeding 6,000 pounds maximum certificated takeoff weight. Compared to the existing appendix H requirements, the test procedures of appendix J are simpler and less costly, but more stringent relative to the existing noise limits under appendix H. An applicant has the option of certificating a light helicopter under appendix H or the new, less costly but more stringent appendix J. The noise limits prescribed under appendix J are, on the average, two decibels more stringent than the noise limits prescribed under appendix H. If an applicant fails the more stringent limits prescribed under appendix J, the applicant would be able to apply for certification under the existing requirements prescribed under appendix H. The need for this optional certification standard is based on the unanticipated and disproportionate costs to small helicopter manufacturers that are associated with the testing requirements of appendix H.

The following is a section-by-section discussion of the final rule.

Section 21.115 Applicable Requirements

This section sets forth the airworthiness, noise, and fuel venting and exhaust emissions requirements that must be met by each applicant for a supplemental type certificate. Section 21.115(a) is amended to reinstate a reference to the noise requirements of 14 CFR Part 36. This reference was inadvertently removed in recent rulemaking.

Appendix J to Part 36

Part 36 is amended by adding a new appendix J. Appendix J provides an alternative noise certification procedure for certain civil helicopters certificated in the primary, normal, transport, or restricted category.

Appendix J follows the general outline and all applicable definitions, technical specifications, reference conditions, reference flight procedures, and the specific language of the existing appendix H on a section-by-section basis. Appendix J provides a high degree of commonality between U.S. standards and those expected to be adopted by ICAO and other ICAO member countries. However, subsequent to development of the specifications for the ICAO Chapter 11 standard, three technical issues of significance were identified by the FAA, that have led to differences between appendix J and the ICAO Chapter 11 test standards that are presently proposed. After review of these issues, the FAA found the potential errors associated with them to be excessive and contrary to the agency's expectations regarding the accuracy and integrity of the aircraft noise certification process. The three issues are discussed below.

As proposed, chapter 11 does not provide for a correction of off-reference conditions (in particular, ambient temperature) regarding the mechanical generation of noise at its source during the flyover test procedure. Noise levels generated by a typical helicopter vary as a function of rotor tip speed and the speed of sound. Since the speed of sound varies as a function of ambient temperature, helicopter noise levels will also vary as a function of ambient temperature. Appendix J and chapter 11 require the measurement of noise levels at, or corrected to, the reference ambient temperature of 77 degrees Fahrenheit. At temperatures above the reference, the helicopter noise generated at the source is less than the noise generated at the reference temperature. At temperatures less than the reference, the noise generated is correspondingly greater than at reference conditions. The FAA's solution to the off-reference generation of noise caused by off-reference temperature is to require an adjustment to the reference airspeed so the helicopter is flown at the reference advancing blade tip Mach number. Such a calculated adjustment to the reference airspeed will be made just prior to the actual flight test, and will account for the ambient temperature at the time of the test. This is the procedure proposed by the International Coordinating

Council of the Aerospace Industries Association in their working paper WP/48 presented at the recent CAEP meeting in Montreal (December 1991). A copy of working paper WP/48 is included in the docket.

Chapter 11 also does not provide for a correction of off-reference atmospheric attenuation. The FAA's solution to the error caused by failure to correct for off-reference atmospheric attenuation is to reduce the size of the test window prescribed under section J36.101(c) to preclude testing in the portion of the temperature and relative humidity test window where high rates of atmospheric absorption are encountered. By restricting the test window, any error caused by off-reference atmospheric absorption is reduced, and the need for correction is negated.

The FAA's third concern is the Chapter 11 provision allowing the use of a strip chart recorder and an "estimation" equation to determine SEL from the duration and the maximum A-weighted level of the noise trace. During development of the NPRM, the FAA examined data from numerous helicopter noise tests which indicated that the error introduced by the strip chart method ranged from zero to 1.7 decibels when compared with helicopter noise measured and analyzed by the Appendix H procedure. The error did not favor the applicant in any of the data. Accordingly, the NPRM did not include the strip chart method as one of the allowable measurement methods specified under proposed section J36.109(d). As proposed, appendix J would have allowed the use of an integrating sound level meter to directly measure the SEL during the flyover, or the helicopter flyover noise signal could be tape recorded for subsequent analysis by an integrating sound level meter.

After further consideration of this issue subsequent to issuance of the NPRM, the FAA has decided to permit the use of a strip chart recorder and an "estimation" equation as an optional method of calculating SEL from maximum level and duration readings taken from the strip chart trace. This change is made in the interest of harmonizing appendix J and ICAO Chapter 11. The addition of the strip chart method as an optional measurement method has no impact on any other provision of appendix J. Since the amount of error, if any, is unpredictable from helicopter to helicopter, the consequence of the use of the strip chart method relative to the other measurement methods is also unpredictable. However, since the FAA's data indicate that any error from the strip chart method works against applicants, the FAA advises all applicants wishing to use such a procedure that errors are possible, and suggests that the applicants choose one of the other SEL-measurement methods specified under appendix J. The strip chart method involves the use of strip chart recorder and equations for calculating SEL from the time-history trace recorded on the strip chart. Accordingly, section J36.109(d)(1) includes the strip chart recorder as an optional measurement method. Further, a new section J36.109(b)(5) is added to the final rule to incorporate the equations necessary to calculate the SEL from the strip chart trace.

Appendix H has a provision that allows less stringent limits, i.e., Stage 2 plus 2 EPNdB, for acoustical changes for Stage 1 helicopters, and a provision that allows similar less stringent limits for the first civil version of a military helicopter. In the interest of harmonizing the U.S. and ICAO helicopter noise certification regulations, these provisions were not included in the proposed rule. The practical effect of not including these provisions is that certain older helicopters will not have the benefit of the more liberal noise limits allowed under appendix H.

With the adoption of appendix J, applicants have a choice of two noise certification procedures for certain helicopters. An analysis performed to demonstrate a "no acoustic change" must assume that either appendix H or appendix J is the noise certification basis of the parent helicopter. For the purpose of demonstrating "no acoustic change" under § 21.93(b), the demonstration must be consistent with the noise certification basis of the parent helicopter. Thus, if the parent helicopter is certificated under part 36, appendix H, the "no acoustic change" analysis must consider all three flight configurations (flyover, approach, takeoff). If the parent is certificated under part 36, appendix J, the "no acoustic change" analysis is limited to consideration of flyover noise levels. If the parent helicopter is a Stage 1 helicopter, the noise certification basis of the parent helicopter is under appendix H. Subject to the approval of the FAA, the noise certification basis of a Stage 2 helicopter having a maximum certificated takeoff weight of not more than 6,000 pounds may be changed from appendix H to appendix J through an FAA-approved reanalysis of the original appendix H noise test data for that helicopter, or by retesting that helicopter under the requirements of appendix J. Helicopters that are noise certificated under appendix J can be converted to appendix H noise certification only by performing the noise tests prescribed under appendix H.

Section 36.1, 36.6, 36.801, 36.805, and 36.1581 are also amended to add a reference the alternative noise certification procedure contained in the new appendix J.

Discussion of Comments

Interested persons were afforded the opportunity to participate in development of this rulemaking by submitting written comments to the public regulatory docket on or before July 6, 1992. All comments received have been reviewed and duly considered in promulgating this amendment; comments received after July 6, 1992, have been considered to the extent possible without delaying this rulemaking action. Seven comments were received; two from individuals, two from helicopter industry groups, and three from a foreign civil aviation authority.

Three requests for an extension of the comment period were received by the FAA. The FAA considered these requests and determined that any further delay in the issuance of this rule would result in an undue burden on U.S. manufacturers of light helicopters and would be contrary to the public interest. However, the FAA has determined that the interests of all affected persons will best be served by establishing a time during which comments on this final rule will be considered. At the conclusion of this comment period, the FAA will, if appropriate, take action to amend this rule.

One commenter suggests that use of the parenthetical phrase "(internal load)" is inappropriate and does not convey the proper intent as proposed in section J36.3(d) in prescribing the reference helicopter weight at which the noise tests are to be performed. The FAA agrees and offers the following discussion to clarify the matter. The maximum certificated takeoff weight to be used for noise certification purposes is the "maximum weight" defined under § 27.25(a) or § 29.25(a) of this chapter unless the applicant chooses a lesser noise certification weight and complies with any associated restrictions. If the applicant chooses to conduct the noise certification tests at a weight less than the maximum weight established under § 27.25(a) or § 29.25(a), then as prescribed under § 36.1581, that lesser weight must be furnished as an operating limitation in the operating limitations section of the Rotorcraft

Flight Manual, in FAA-approved manual material, or on an FAA-approved placard. Alternatively, in anticipation of future changes in type design involving a change in weight, an applicant may choose to conduct supplemental flight tests to establish a sensitivity curve of noise versus weight whereby a noise certification level can be calculated, through interpolation, for the change in type design and the associated maximum weight. It is not the intent of the FAA to require noise certification testing at the weight defined under § 27.25(c) or § 29.25(c), "total weight with jettisonable external load." The effort in the NPRM to qualify the noise certification weight by the parenthetical phrase "(internal load)" in section J36.3(d) was found to be confusing and is not adopted in the final rule.

A commenter requests FAA guidance on supplemental noise flight testing to develop noise versus drag data in anticipation of future changes in type design involving the addition (or removal) of aerodynamically-significant optional external devices. Appendix J does not require supplemental noise flight testing. Requests for supplemental testing will be considered by the FAA under the equivalent procedure provision of § 36.801. The same commenter also suggests that the helicopter should be tested in a clean configuration and that all future changes in type design involving the addition of external drag-inducing attachments should be exempted from the acoustic change provisions prescribed under § 21.93(b) of this chapter. The FAA will study this suggestion for a future rulemaking action; however, the suggestion is outside the scope of this rulemaking action.

Three commenters note the difference in height (above ground) between the relative humidity and temperature measurement locations as prescribed in the NPRM, and recommend that the measurements be made at the same height. The FAA agrees that such measurements, which are used to determine absolute humidity by the off-reference atmospheric attenuation correction method of Aerospace Recommended Practice 866A, should be made at the same location and the same height above the ground. The FAA agrees that the temperature, relative humidity, and wind speed and direction measurements should be made between the heights of 4 feet and 33 feet. This provision will ensure that an applicant can make one set of meteorological measurements that will satisfy the requirements of appendix J and of ICAO chapter 11. Section J36.101(c)(4) is adopted with the change noted above.

Several commenters suggest that the temperature and relative humidity test window proposed in section J36.101(c) be reduced in size to eliminate testing under highly absorptive regions of the test window. In a related suggestion, if the temperature and relative humidity test window is reduced in size, they suggest the adoption of a "zero correction window" over the remaining portion of the reduced temperature and relative humidity test window where correction for off-reference atmospheric attenuation would not be required. Such a "zero correction window" would be achieved by eliminating the requirement for correction of off-reference atmospheric attenuation proposed in section J36.113 and by eliminating the procedures for performing the correction of off-reference atmospheric attenuation proposed in section J36.205(c). The FAA agrees. The commenters differ slightly in the amount of reduction they recommend in the size of the test window. The final rule adopts the test window proposed in section J36.101(c) with the added requirement that testing may not take place where combinations of temperature and relative humidity would result in a rate of atmospheric attenuation greater than 10dB per 100 meters (30.5 dB per 1000 ft) in the one-third octave band centered at 8 kiloHertz. With the test window thus restricted, any error caused by off-reference atmospheric attenuation is reduced and the need for correction is negated. These changes further serve to harmonize Appendix J with Chapter 11 and are adopted in anticipation of a similar restriction in the test window being adopted by ICAO member States during individual implementation of the Chapter 11 standards. Proposed section J36.113, which prescribed the requirement for off-reference atmospheric attenuation correction, is not adopted. Proposed section J36.205(c), which prescribed the procedures for the correction of off-reference atmospheric attenuation, is not adopted. Proposed section J36.101(c)(2), which prescribes the temperature and relative humidity test window, is adopted with the change noted above.

One commenter submits data demonstrating the adverse impact of anomalous conditions in temperature and relative humidity vertical profiles on the accuracy of the noise test results. The commenter suggests that proposed section J36.101(c)(6) be changed to add the phrase "other anomalous meteorological conditions" to the weather restrictions prescribed under that section. The FAA agrees. The commenter is correct that the air temperature measured at the reference altitude, which is required elsewhere in the test procedure, will provide sufficient information for test personnel to detect the presence of an anomalous conditions along the noise propagation path. The FAA also agrees with the commenter that the proposed change is consistent with the requirements of ICAO chapter 11. Proposed section J36.101(c)(6), which is redesignated as section J36.101(c)(5) in the final rule, is adopted with the changes noted.

Two commenters suggest a clarification in the language describing the number and direction of the test flyovers in proposed section J36.105(b) to explicitly require flyovers in equal numbers in opposite directions so that the helicopter is tested with both headwind and tailwind components when winds aloft are present. The FAA agrees. The intent of the proposed provision is to nullify the effect of off-reference ground speed caused by winds aloft on the average noise level calculated from the individual noise levels of each flyover event. A test helicopter flying along the established reference flight path with a tailwind will experience an increase in the flyover velocity relative to the noise measurement position, thus reducing the acoustical duration of the flyover and lowering the measured SEL value. Conversely, if the helicopter is flown in the opposite direction with a headwind under the same meteorological conditions, lowering the groundspeed and increasing acoustical duration, the consequent increase in the measured SEL value caused by the headwind should numerically offset the opposite effects caused by the tailwind. By requiring equal numbers of flights in opposite directions, correcting individual flyovers for off-reference groundspeed is not necessary. Proposed section J36.105(b) is adopted with the suggested clarification. However, one of the commenters notes that applicants should be aware that, although Appendix J does not require the measurement of ground speed and the correction of off-reference ground speed for individual flyovers, failure to correct the individual flyovers for off-reference groundspeed can adversely affect the number of flyovers required to establish statistically a 90 percent confidence limit that does not exceed ±1.5 dB(A) as prescribed under section J36.203(b). An applicant may elect to measure groundspeed during the flyovers and correct for off-reference groundspeed in order to improve the confidence limit

under the provisions of section J36.205(e) which simply states that such measurements and corrections are not required. Such measurement and correction procedures would require FAA approval. In a similar manner, applicants may perform the necessary measurements and apply corrections for off-reference source noise and atmospheric attenuations as permitted in section J36.205(d) and section J36.205(f), respectively.

One commenter states that any differences between Appendix J and ICAO chapter 11 would be economically burdensome because industry will have to test to two different procedures. The FAA disagrees. One of the basic criteria used by the FAA in developing appendix J was that any additional or different appendix J requirements would impose little or no additional costs on the applicant when compared to chapter 11 requirements. Appendix J differs from chapter 11 in two procedures. Appendix J has a temperature and relative humidity test window that is smaller than the test window allowed in chapter 11, and appendix J requires testing at an adjusted reference airspeed to offset the effects of off-reference source noise; Chapter 11 does not require that applicants make a similar adjustment. Foreign certification authorities have expressed their general acceptance of the adjusted reference airspeed procedure required under appendix J as an equivalency to the procedure prescribed under chapter 11. The smaller temperature and relative humidity test window in appendix J, or a similar restriction, is expected to be adopted by other ICAO countries. In the worst-case scenario where an applicant is required to test at two airspeeds to satisfy different certificating authorities, the addition of six additional flyovers during a certification test is not considered a significant technical, logistical, or economic challenge. The FAA concludes that these additional requirements do not involve a significant economic burden.

One commenter states that although the adjustment process in section J36.105(c)(1) for source noise variation is based on the tip speed of the main rotor blades, the main rotor system may not be the primary source of noise for a given helicopter, leading to substantial inaccuracies in the measurement procedure. The FAA disagrees. The actual source of noise is irrelevant to the correction process. This is an issue common to an appendix H test as well. For a typical noise certification test, the relative noise levels produced by various sources of noise on a given helicopter will not be known accurately, nor is it necessary for the dominant source to be known. Since the RPM of the rotor system is a fixed value and ambient temperature is an uncontrolled variable, what is really measured by source noise sensitivity testing is helicopter noise versus airspeed as adjusted to a reference temperature, not main rotor, tail rotor, or engine noise versus tip speed. If, for example, a piston helicopter is entirely dominated by exhaust noise, the peak helicopter noise will be insensitive to changes in main rotor tip speed (and helicopter airspeed). Under appendix J, any change in the SEL caused by the change in duration from the difference between reference and adjusted reference airspeeds is corrected by the mandatory <delta J_3> correction. Thus, it is not necessary to account for the dominant source of noise for a given helicopter for purposes of correction of the effects of off-reference source noise.

In the worst-case situation where source noise is entirely independent of airspeed, RPM, or ambient temperature, the mandatory procedure for addressing off-reference source noise will have no net effect on the measured noise levels. In all other situations, the procedure will improve the accuracy of the test procedure. However, knowledge of the dominant source of noise would be important under appendix H and appendix J when an applicant for a change in type design alters the helicopter noise source(s) (i.e., blade diameter, RPM, etc.) and wishes to use the source noise sensitivity curves previously measured under Appendix H, or measured as an option under Appendix J, during the noise testing of the parent helicopter. In a related comment, one commenter states that the term "translational speed" as used in the calculation of advancing blade tip Mach number under section J36.105(c)(1)(i) is inappropriate and should be replaced with "true air speed". The FAA agrees that the terminology "true air speed" is more descriptive of the actual airspeed required in the calculation, and section J36.105(c)(1)(i) is adopted with the change as noted. The remainder of section J36.105(c)(1) is adopted as proposed.

One commenter requests a 3 dB reduction in the maximum allowable noise levels prescribed by section J36.305(a). The commenter states that the increase in maximum allowable noise levels proposed in ICAO chapter 11 over the maximum allowable noise levels contained in ICAO chapter 8, and consequently, appendix J over appendix H, accounts for small inaccuracies inherent in the simplification process, and that such inaccuracies are removed by the addition of adjustment procedures for the effects of off-reference ambient temperature on source noise and off-reference temperature and relative humidity on atmospheric attenuation. The FAA disagrees. These limits are not based on a perceived inaccuracy incurred as a result of not providing for a correction for the effects of off-reference relative humidity and/or temperature on source noise and atmospheric attenuation. The process used to establish the maximum allowable noise levels were based entirely on fundamental differences between the SEL and EPNL metrics, and the helicopter-to-helicopter variation in the relationship between: (1) SEL and EPNL; (2) the centerline noise level and the average of the noise levels from three microphone locations; and (3) flyover noise levels and the relative noise levels from the flyover, approach, and takeoff test procedures. Accordingly, section J36.305(a) is adopted as proposed.

One commenter states that the ±3 knot limit on airspeed variation is too restrictive operationally and suggests an alternative specification. The FAA disagrees. Appendix J prescribes a ±3 knot airspeed specification under section J36.105(c)(1)(ii) as opposed to the ±5 knot specification in appendix H under section H36.105(d). However, appendix H has a requirement for an adjustment for off-reference airspeed under section H36.205(e). Appendix J does not have a similar requirement. Therefore, appendix J requires a more restrictive limitation on variation in airspeed to minimize any error that might occur from the absence of a correction for off-reference airspeed. However, the FAA will consider an alternative specification as an equivalent procedure if the alternative specification provides a mechanism for ensuring that the average of the noise levels from the individual flyovers is representative of the noise level measured at reference airspeed conditions. Chapter 11 also has a ±3 knot airspeed requirement. Accordingly, section J36.105(c)(1)(ii) is adopted as proposed.

One commenter states that a sound level meter will: (1) Result in a longer "10 dB down" duration time than would appendix H, which will increase the SEL; and (2) sample a wider frequency spectrum than otherwise required under Appendix H using the 24 contiguous one-third octave bands. The FAA agrees that the skill of the sound level meter

operator in starting and stopping the integration at the precise 10 dB down points in the time history may have some small effect on the SEL value. The FAA reviewed data from recent helicopter noise research tests to assess the influence of the difference between the spectral width sampled by a sound level meter and that sampled using the appendix H data reduction procedure. The net SEL difference between the two procedures for twelve helicopter certification-type noise tests was found to be zero.

Two commenters request changes to or clarification of the requirement under section J36.111(b)(6) that helicopter speed, position, and engine performance data be recorded at an FAA-approved sampling rate. The FAA agrees. Section J36.111(b)(6) has been rewritten to better define the requirement. The phrase "FAA-approved sampling rate" is consistent with the requirements of ICAO chapter 11 and appendix H and recognizes that an appropriate sampling rate for a given parameter may depend on the equipment, operators, and procedures employed by the applicant. The requirement that the parameters must be "recorded" does not necessarily imply that electronic data recording systems must be used. For many of the parameters, an FAA-approved cockpit observer may scan the appropriate instrumentation throughout the measured portion of the flyover and record the data by hand. The observer may note the lateral position of the helicopter relative to ground markers to ensure that the helicopter stays within the prescribed limits for lateral deviation. Audio cassette recorders and video camcorders may be useful to augment a cockpit observer. The section is adopted with the change noted.

One commenter states that an inconsistency exists between appendix J and appendix H regarding the definition of the reference rotor RPM, and recommends that the word "maximum" (corresponding to the top of the green arc on the rotor tachometer) be added to the prescribed rotor operating condition prescribed under sections J36.3(c) and J36.105(c)(2). The FAA agrees. Sections J36.3(c) and J36.105(c)(2) are adopted with the change noted below.

One commenter states that the data adjustment limitation of 2 dB under proposed section J36.205(g) is too restrictive given the possibility that the correction for off-reference atmospheric absorption can alone approach this limit, and recommends that the restriction be eliminated. Although the requirement for correction of off-reference atmospheric absorption was not adopted in the final rule, the comment is still valid and the FAA agrees in part. The final rule retains the 2 dB limitation, but changes the applicability of the restriction to only those corrections made to account for the differences between test and reference flight procedures prescribed under section J36.105. The change also brings the restriction in Appendix J into harmony with the similar restriction in ICAO chapter II. Section J36.205(g) is adopted with the change noted above.

One commenter states that the requirement of section J36.109(e)(2)(i) to calibrate the noise measurement system at intervals not exceeding one hour is unnecessarily restrictive, and recommends a 1.5 to 2 hour maximum interval as more appropriate. The FAA disagrees. Experience has shown that the one-hour restriction is not a hindrance to the orderly conduct of the flight test. The time necessary to perform a required calibration is at most a few minutes for a tape recording system and even less for a sound level meter. The ICAO chapter 11 requires such calibrations before the start of testing and at intervals during the test. Unless substantial complications occur or the applicant extends the test to perform additional supplemental tests, the entire test series prescribed under this rule can be performed in less than one hour. Good engineering practice, in general, dictates frequent equipment calibration at available opportunities in order to monitor equipment performance. Accordingly, section J36.109(e)(2)(i) is adopted as proposed.

In proposed section J36.109(d), the FAA proposed to retain the discretion to require the applicant to tape record the noise signal from the flyover tests. This proposed provision is consistent with a similar requirement in ICAO chapter 11. The FAA intended to reserve the authority to require such recordings as an auditing procedure for a given test and for maintaining the integrity of the overall helicopter certification process by auditing the application of the rule and monitoring the rule's efficacy as a representative test for unusual and previously (acoustically) untested helicopter design configurations. One commenter requests that this provision be deleted, and that application criteria be provided if the provision is retained. After further consideration, the FAA has determined that the development of uniform and equitable application criteria across the broad spectrum of potential applicants is not practicable. Accordingly, the FAA agrees that the proposed provision should be deleted in the final rule. However, the FAA retains the authority to perform acoustic measurements and recordings in parallel with the applicant during a noise test conducted for the purpose of demonstrating compliance with this rule. The FAA also retains the authority to independently review all recorded data, including the tape recorded helicopter flyover noise if recorded by the applicant. The proposed section J36.109(d)(1) is adopted with the change noted above and, as previously discussed in this preamble, with the added provision that a strip chart recorder may be used as one of the methods to measure the helicopter flyover noise.

One commenter suggests adding a requirement that multi-engine helicopters be tested with all engines operating at approximately the same power. The FAA agrees that this is an important factor and will consider it for further rulemaking, since such a requirement was not proposed in the NPRM. Accordingly, section J36.105(c)(3) is adopted as proposed.

No comments were received on the NPRM concerning the form of the equation for calculating the allowable noise limit in section J36.301. The proposed equation follows the general form of the equations incorporated in the ICAO aircraft noise standards. However, the FAA has previously published equations for part 36 noise limits in Advisory Circular 36.1 that are different in form from their ICAO counterparts. The FAA inadvertently overlooked the published FAA equations during the development of the NPRM. After further consideration, the FAA has changed the form of the proposed equation in section J36.301 to coincide with the general equation form used in the other appendixes of this part as presented in FAA Advisory Circular 36.1. The slight difference in the form of the FAA equations and the form of the ICAO equations may be the subject of future discussions regarding the harmonization of the FAA rules and the ICAO standards. However, the FAA does not wish to pursue the harmonization issue on a piecemeal basis. The maximum difference between the equation proposed in the NPRM and the equation adopted in the final rule is 0.0005 dB, which occurs at 6,000 pounds.

Proposed section J36.105(d) includes the appendix H requirement that "at least one flyover test in the flyover test series must be conducted at a test weight at or above the maximum takeoff weight for which certification under this part is requested." No comments were received on this proposed requirement. However, after further consideration,

the FAA has not adopted this requirement in the final rule. This change is made in the interest of harmonizing the requirements of appendix J with the requirements of ICAO chapter 11. Deleting this requirement in the final rule does not adversely affect the conduct of the test and does not diminish the integrity of the rule. The affected section retains the requirement that the helicopter test weight for each flyover must be within plus 5 percent or minus 10 percent of the maximum takeoff weight. However, applicants should understand that the deviations allowed under section J36.105 from reference test conditions must be random. An applicant will not be permitted to deliberately abuse the allowable random deviations prescribed in section J36.105 to artificially lower the noise levels measured during the flyover test. The proposed section J36.105(d) is adopted with the change noted above.

Regulatory Evaluation Summary

This section summarizes the regulatory evaluation prepared by the FAA on the amendments to 14 CFR part 36—Noise Standards: Aircraft Type and Airworthiness Certification. This summary and the full regulatory evaluation quantify, to the extent practicable, estimated costs to manufacturers, modifiers, and Federal, State, and local governments, as well as anticipated benefits.

Executive Order 12291, February 17, 1981, directs federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The Executive Order requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an annual effect on the economy of $100 million or more, that is likely to result in a major increase in consumer costs, that has a significant adverse effect on competition, or that is highly controversial.

The FAA has determined that this final rule is not "major" as defined in the Executive Order; therefore, a full regulatory impact analysis that includes the identification and evaluation of cost-reducing alternatives to this rule has not been prepared. Instead, the agency has prepared a more concise document termed a regulatory evaluation that analyzes only this final rule without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains a Regulatory Flexibility Determination required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) and an International Trade Impact Assessment. If more detailed information is desired, the reader may examine the full regulatory evaluation contained in the docket.

Under this final rule, an applicant seeking certification of a light helicopter will be permitted to choose between two noise certification procedures: Appendix H of appendix J. The new noise certification procedure, appendix J, will (1) reduce the required microphone locations from three to one; (2) require only a level flyover test rather than level flyover, approach, and takeoff tests as in Appendix H; and (3) reduce the complexity of the data correction procedures. Compared to Appendix H, each of these three factors will lower compliance costs.

Benefit Analysis

The FAA has determined that this final rule will accommodate the advancement of the helicopter manufacturing industry by reducing compliance costs and improving relationships among manufacturers, modifiers, and operators of helicopters, while providing a potential for a reduced level of noise. The following is a discussion of the benefits, including reduced compliance costs, that will accrue as a result of this final rule.

The Appendix J noise certification procedure will create a commonality with international standards. The International Civil Aviation Organization (ICAO), Committee on Aviation Environmental Protection, met in December of 1991 in Montreal, Canada, and recommended noise certification standards for light helicopters that are very similar to the U.S. certification procedures contained in this final rule.

In July 1991, the FAA conducted a series of acoustic flight tests of 12 helicopter configurations in order to supplement an existing light helicopter noise data base of seven helicopter models. An analysis of the 19 helicopter tests resulted in the establishment of an SEL-based limit under Appendix J that is, on average, 2.0 dB more stringent than the limit each of the 19 helicopters would have to meet under Appendix H.

The more stringent noise certification requirements may foster better relationships between the airports, heliports, local communities, and helicopter operators by providing the potential for quieter helicopters. In some instances, local communities have opposed the establishment of nearby heliports. For example, a zoning request for a heliport to be located just outside of Washington, DC, was denied in the mid-to-late 1980's. Excessive noise was cited as one reason for not granting this request.

In recent years, the number of heliports, helistops, and helipads at airports has increased. In 1987, there were 3,325 heliports in the United States; by the end of 1990, that number had increased to 4,462. As the number of heliports has grown, so has the U.S. helicopter fleet. The FAA estimates that the new alternative procedure will encourage manufacturers to comply with the substantially less costly but more stringent Appendix J requirements, and therefore may result in the manufacturer of quieter light helicopters.

In addition to providing for a reduced level of noise, the FAA estimates that the manufacturers of light helicopters will have lower one-time noise certification procedure costs. These savings include those primarily associated with the noise abatement technology. The present value cost savings to helicopter manufacturers will be about $5.43 million over the next 15 years.

A helicopter modifier may concentrate on a particular type of aircraft, and that entity may be in the business of continually developing, selling, and installing modification kits for a particular type of aircraft. The present value cost savings to helicopter modifiers will be $17.01 million over the next 15 years. The FAA has examined the impact that this final rule will have on helicopter operators, and concludes that there will be no impact on helicopter operators. In addition, the FAA estimates that the agency will have lower costs because less labor will be required to process and witness the new test procedure. On a per-certificate basis, the annual cost savings to the FAA will be about $12,300. The present value cost savings to the FAA is estimated to be $1.78 million over the next 15 years.

International Trade Impact Analysis

The final rule will have little or no impact on trade for either U.S. firms doing business in foreign countries, or foreign firms doing business in the United States. In the U.S. market, foreign manufacturers will have the option of producing helicopters that satisfy the new standards and, therefore, will not be at a competitive disadvantage with U.S. manufacturers.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 requires agencies to review rules that have "a significant economic impact on substantial number of small entities".

The FAA's criteria for "a substantial number" is a number that is not less than 11 and that is more than one-third of the small entities subject to this final rule.

According to FAA Order 2100.14A, "Regulatory Flexibility Criteria and Guidance," the definition of a small entity (aircraft and aircraft parts manufacturer) is one with 75 or fewer employees. There are no small U.S. helicopter manufacturers that are manufacturing helicopters for the U.S. market.

Although FAA Order 2100.14A does not specifically identify the aircraft modifiers affected by this rulemaking as an entity type in its lists of threshold criteria, an "aircraft repair facilities" entity is listed in the order. This entity would include repair stations certificated and rated under 14 CFR part 145 and shops employing persons who are holders of a mechanic or repairman certificate issued under 14 CFR part 65 that deal with helicopters. Mechanics employed by such entities may perform maintenance, preventative maintenance, and alteration work as prescribed by § 43.3 of 14 CFR part 43. The corresponding size threshold given in the order is 200 employees.

An aircraft modifier conducts engineering and supplemental type certificate application activities, and typically performs the alteration work. A modifier also may separately offer repair or maintenance services. The nature of the work performed by a modifier is generally analogous to that of an aircraft repair facility, and the corresponding threshold levels given in the order are assumed to apply here. For the purpose of this regulatory flexibility determination, an aircraft modifier is considered a small entity if it has 200 or fewer employees.

The Order does not define a threshold value for significant annualized cost for the aircraft repair facilities entity. The FAA estimates that the annualized 1991 cost threshold is $5,400.

Based upon information presented in the cost analysis, the one-time cost savings to a small modifier will be about $155,290 per supplemental type certificate. Annualized at 10 percent over 10 years, the costs savings will be $27,270. This is above the annualized cost threshold.

The total population of modifiers is about 200, and in recent years, about 75 of them have applied for supplemental type certificates which require a noise test under 14 CFR part 36. Typically, between 10 to 12 modifiers would initiate a change annually. Using the lower population estimate, about 16 percent (12/75=0.16) of the total population of rotorcraft modifiers would be affected annually.

The FAA concludes that a substantial number of small entities (more than one third) are not affected significantly by this final rule. Therefore, the final rule would not impose a significant economic impact on a substantial number of small entities, and thus, a regulatory flexibility analysis is not required.

Federalism Implications

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

Environmental Analysis

The procedures implemented by this rule have been determined to not significantly affect the quality of the human environment.

Pursuant to the Department of Transportation "Policies and Procedures for Considering Environmental Impacts" (FAA Order 1050.1D), a Finding of No Significant Impact has been prepared and placed in the docket.

Justification for Immediate Adoption

The FAA has determined that further delay in the adoption of this rule would cause undue burden to U.S. manufacturers of light helicopters. Many U.S. manufacturers of light helicopters have new type certification projects that are nearing completion. These certification actions will require noise testing. These manufacturers have participated in and supported the establishment of the ICAO standards similar to those adopted here. Without this rule, these U.S. manufacturers must comply with the more costly testing requirements of appendix H of this chapter. Accordingly, the FAA has determined that good cause exists to make this rule effective in less than 30 days.

Interested persons are invited to submit comments as they may desire regarding this amendment. Communications should identify the docket number and be submitted in triplicate to the address above. All communications received on or before the close of the comment period will be considered by the Administrator. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. After review of the comments, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulations. All comments will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties.

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

Because of the substantial public interest in this rule noted above, the FAA has determined that this rule is significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

Conclusion

For the reasons stated above, I certify that this final rule: (1) Is not a major rule under Executive Order 12291; (2) is a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not have a significant economic impact on a substantial number of small entities. In addition, this final rule has little or no impact on trade opportunities for U.S. firms doing business overseas, or on foreign firms doing business in the United States.

List of Subjects

14 CFR Part 21

Aircraft, Helicopters, Noise control.

14 CFR Part 36

Aircraft, Helicopters, Incorporation by reference, Noise control.

The Amendments

Accordingly, the Federal Aviation Administration amends 14 CFR parts 21 and 36 of the Federal Aviation Regulations as follows:

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

1. The authority citation for part 21 is revised to read as follows:

Authority: 49 U.S.C. App. 1344, 1348(c) 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 7572; E.O. 11514, 35 FR 4247, 3 CFR 1966–1970 Comp., p. 902; 49 U.S.C 106(g).

2. Section 21.115(a) is revised to read as follows:

§ 21.115 Applicable requirements.

(a) Each applicant for a supplemental type certificate must show that the altered product meets applicable airworthiness requirements as specified in paragraphs (a) and (b) of § 21.101 and, in the case of an acoustical change described in § 21.93(b), show compliance with the applicable noise requirements of part 36 of this chapter and, in the case of an emissions change described in § 21.93(c), show compliance with the applicable fuel venting and exhaust emissions requirements of part 34 of this chapter.

* * * * *

PART 36—NOISE STANDARDS: AIRCRAFT TYPE AND AIRWORTHINESS CERTIFICATION

3. The authority citation for part 36 is revised to read as follows:

Authority: 49 U.S.C. App. 1344, 1348, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430, 1431(b), 1651(b)(2), 2101, 2121 through 2125; 42 U.S.C. 4321, et seq.; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970 Comp., p. 902; 49 U.S.C. 106(g).

4. Section 36.1 is amended by revising paragraph (h) to read as follows:

§ 36.1 Applicability and definitions.

* * * * *

(h) For the purpose of showing compliance with this part, for helicopters in the primary, normal, transport, and restricted categories, the following terms have the specified meanings:

(1) *Stage 1 noise level* means a takeoff, flyover, or approach noise level greater than the Stage 2 noise limits prescribed in section H36.305 of Appendix H of this part, or a flyover noise level greater than the Stage 2 noise limits prescribed in section J36.305 of appendix J of this part.

(2) *Stage 1 helicopter* means a helicopter that has not been shown under this part to comply with the takeoff, flyover, and approach noise levels required for Stage 2 helicopters as prescribed in section H36.305 of Appendix H of this part, or a helicopter that has not been shown under this part to comply with the flyover noise level required for Stage 2 helicopters as prescribed in section J36.305 of Appendix J of this part.

(3) *Stage 2 noise level* means a takeoff, flyover, or approach noise level at or below the Stage 2 noise limits prescribed in section H36.305 of Appendix H of this part, or a flyover noise level at or below the Stage 2 limit prescribed in section J36.305 of Appendix J of this part.

(4) *Stage 2 helicopter* means a helicopter that has been shown under this part to comply with Stage 2 noise limits (including applicable tradeoffs) prescribed in section H36.305 of Appendix H of this part, or a helicopter that has been shown under this part to comply with the Stage 2 noise limit prescribed in section J36.305 of Appendix J of this part.

5. Section 36.6 is amended by adding a new paragraph (c)(1)(v) to read as follows:

§ 36.6 Incorporation by reference.

* * * * *

(c) * * *

(1) * * *

(v) IEC Publication No. 804, entitled "Integrating-averaging Sound Level Meters," first edition, dated 1985.

* * * * *

6. Section 36.11 is revised to read as follows:

§ 36.11 Acoustical change: Helicopters.

This section applies to all helicopters in the primary, normal, transport, and restricted categories for which an acoustical change approval is applied for under § 21.93(b) of this chapter on or after March 6, 1986. Compliance with the requirements of this section must be demonstrated under appendix H of this part, or, for helicopters having a maximum certificated takeoff weight of not more than 6,000 pounds, compliance with this section may be demonstrated under Appendix J of this part.

(a) *General requirements.* Except as otherwise provided, for helicopters covered by this section, the acoustical change approval requirements are as follows:

(1) In showing compliance with the requirements of appendix H of this part, noise levels must be measured, evaluated, and calculated in accordance with the applicable procedures and conditions prescribed in parts B and C of appendix H of this part. For helicopters having a maximum certificated takeoff weight of not more than 6,000 pounds that alternatively demonstrate compliance under appendix J of this part, the flyover noise level prescribed in appendix J of this part must be measured, evaluated, and calculated in accordance with the applicable procedures and conditions prescribed in parts B and C of appendix J of this part.

(2) Compliance with the noise limits prescribed in section H36.305 of appendix H of this part must be shown in accordance with the applicable provisions of part D of appendix H of this part. For those helicopters that demonstrate compliance with the requirements of appendix J of this part, compliance with the noise levels prescribed in section J36.305 of appendix J of this part must be shown in accordance with the applicable provisions of part D of appendix J of this part.

(b) *Stage 1 helicopters.* Except as provided in § 36.805(c), for each Stage 1 helicopter prior to a change in type design, the helicopter noise levels may not, after a change in type design, exceed the noise levels specified in section H36.305(a)(1) of appendix H of this part where the demonstration of compliance is under appendix H of this part. The tradeoff provisions under section H36.305(b) of appendix H of this part may not be used to increase any Stage 1 noise level beyond these limits. If an applicant chooses to demonstrate compliance under appendix J of this part, for each Stage 1 helicopter prior to a change in type design, the helicopter noise levels may not, after a change in type design, exceed the Stage 2 noise levels specified in section J36.305(a) of Appendix J of this part.

(c) *Stage 2 helicopters.* For each helicopter that is Stage 2 prior to a change in type design, the helicopter must be a Stage 2 helicopter after a change in type design.

7. Section 36.801 is revised to read as follows:

§ 36.801 Noise measurement.

For primary, normal, transport, or restricted category helicopters for which certification is sought under appendix H of this part, the noise generated by the helicopter must be measured at the noise measuring points and under the test conditions prescribed in part B of appendix H of this part, or under an FAA-approved equivalent procedure. For those primary, normal, transport, and restricted category helicopters having a maximum certificated takeoff weight of not more than 6,000 pounds for which compliance with appendix J of this part is demonstrated, the noise generated by the helicopter must be measured at the noise measuring point and under the test conditions prescribed in part B of appendix J of this part, or an FAA-approved equivalent procedure.

8. Section 36.803 is revised to read as follows:

§ 36.803 Noise evaluation and calculation.

The noise measurement data required under § 36.801 and obtained under appendix H of this part must be corrected to the reference conditions contained in part A of appendix H of this part, and evaluated under the procedures of part C of appendix H of

this part, or an FAA-approved equivalent procedure. The noise measurement data required under § 36.801 and obtained under appendix J of this part must be corrected to the reference conditions contained in part A of appendix J of this part, and evaluated under the procedures of part C of appendix J of this part, or an FAA-approved equivalent procedure.

9. Section 36.805 is revised to read as follows:

§ 36.805 Noise limits.

(a) Compliance with the noise levels prescribed under part D of appendix H of this part, or under part D of appendix J of this part, must be shown for helicopters for which application for issuance of a type certificate in the primary, normal, transport, or restricted category is made on or after March 6, 1986.

(b) For helicopters covered by this section, except as provided in paragraph (c) or (d)(2) of this section, it must be shown either:

(1) For those helicopters demonstrating compliance under Appendix H of this part, the noise levels of the helicopter are no greater than the applicable limits prescribed under section H36.305 of Appendix H of this part, or

(2) For helicopters demonstrating compliance under Appendix J of this part, the noise level of the helicopter is no greater than the limit prescribed under section J36.305 of appendix J of this part.

(c) For helicopters for which application for issuance of an original type certificate in the primary, normal, transport, or restricted category is made on or after March 6, 1986, and which the FAA finds to be the first civil version of a helicopter that was designed and constructed for, and accepted for operational use by, an Armed Force of the United States or the U.S. Coast Guard on or before March 6, 1986, it must be shown that the noise levels of the helicopter are no greater than the noise limits for a change in type design as specified in section H36.305(a)(1)(ii) of Appendix H of this part for compliance demonstrated under appendix H of this part, or as specified in section J36.305 of appendix J of this part for compliance demonstrated under appendix J of this part. Subsequent civil versions of any such helicopter must meet the Stage 2 requirements.

(d) Helicopters in the primary category:

(1) Except as provided in paragraph (d)(2) of this section, for a helicopter for which application for a type certificate in the primary category is made, and that was not previously certificated under Appendix H of this part, compliance with Appendix H of this part must be shown.

(2) For a helicopter that:

(i) Has a normal or transport type certificate issued under this chapter,

(ii) Has a standard airworthiness certificate issued under this chapter,

(iii) Has not undergone an acoustical change from its type design,

(iv) Has not previously been certificated under Appendix H of this part, and

(v) For which application for conversion to the primary category is made, no further showing of compliance with this part is required.

10. Section 36.1581 is amended by revising paragraph (f) to read as follows:

§ 36.1581 Manuals, markings, and placards.

* * * * *

(f) For primary, normal, transport, and restricted category helicopters, if the weight used in meeting the takeoff, flyover, or approach noise requirements of appendix H of this part, or the weight used in meeting the flyover noise requirement of appendix J of this part, is less than the certificated maximum takeoff weight established under either § 27.25(a) or § 29.25(a) of this chapter, that lesser weight must be furnished as an operating limitation in the operating limitations section of the Rotorcraft Flight Manual, in FAA-approved manual material, or on an FAA-approved placard.

* * * * *

11. A new Appendix I is added and reserved.

12. A new Appendix J is added to read as follows:

Appendix J—Alternative Noise Certification Procedure For Helicopters Under Subpart H Having A Maximum Certificated Takeoff Weight Of Not More Than 6,000 Pounds

Part A—Reference Conditions

J36.1 General.
J36.3 Reference Test Conditions.
J36.5 [Reserved]

Part B—Noise Measurement Procedure Under § 36.801

J36.101 Noise certification test and measurement conditions.
J36.103 [Reserved]
J36.105 Flyover test conditions.
J36.107 [Reserved]
J36.109 Measurement of helicopter noise received on the ground.
J36.111 Reporting requirements.
J36.113 [Reserved]

Part C—Noise Evaluation and Calculation Under § 36.803

J36.201 Noise evaluation in SEL.
J36.203 Calculation of noise levels.
J36.205 Detailed data correction procedures.

Part D—Noise Limits Procedure Under § 36.805

J36.301 Noise measurement, evaluation, and calculation.
J36.303 [Reserved]
J36.305 Noise limits.

Part A—Reference Conditions

Section J36.1 General

This appendix prescribes the alternative noise certification requirements identified under § 36.1 of this part and subpart H of this part for helicopters in the primary, normal, transport, and restricted categories having maximum certificated takeoff weight of not more than 6,000 pounds including:

(a) The conditions under which an alternative noise certification test under subpart H of this part must be conducted and the alternative measurement procedure that must be used under § 36.801 of this part to measure the helicopter noise during the test;

(b) The alternative procedures which must be used under § 36.803 of this part to correct the measured data to the reference conditions and to calculate the noise evaluation quantity designated as Sound Exposure Level (SEL); and

(c) The noise limits for which compliance must be shown under § 36.805 of this part.

Section J36.3 Reference Test Conditions

(a) *Meteorological conditions.* The following are the noise certification reference atmospheric conditions which shall be assumed to exist from the surface to the helicopter altitude:

(1) Sea level pressure of 2116 pounds per square foot (76 centimeters mercury);

(2) Ambient temperature of 77 degrees Fahrenheit (25 degrees Celsius);

(3) Relative humidity of 70 percent; and

(4) Zero wind.

(b) *Reference test site.* The reference test site is flat and without line-of-sight obstructions across the flight path that encompasses the 10 dB down points of the A-weighted time history.

(c) *Level flyover reference profile.* The reference flyover profile is a level flight 492 feet (150 meters) above ground level as measured at the noise measuring station. The reference flyover profile has a linear flight track and passes directly over the noise monitoring station. Airspeed is stabilized at $0.9V_H$; $0.9V_{NE}$; $0.45V_H + 65$ kts ($0.45V_H + 120$ km/h); or $0.45V_{NE} + 65$ kts ($0.45V_{NE} + 120$ km/h), whichever of the four speeds is least. Rotor speed is stabilized at the power on maximum normal operating RPM throughout the 10 dB down time period.

(1) For noise certification purposes, V_H is defined as the airspeed in level flight obtained using the minimum specification engine power corresponding to maximum continuous power available for sea level, 77 degree Fahrenheit (25 degrees Celsius) ambient conditions at the relevant maximum certificated weight. The value of V_H thus defined must be listed in the Rotorcraft Flight Manual.

(2) V_{NE} is the never-exceed airspeed.

(d) The weight of the helicopter shall be the maximum takeoff weight at which noise certification is requested.

Section J36.5 [Reserved]

Part B—Noise Measurement Procedure Under § 36.801

Section J36.101 Noise certification test and measurement conditions

(a) *General.* This section prescribes the conditions under which helicopter noise certification tests must be conducted and the measurement procedures that must be used to measure helicopter noise during each test.

(b) *Test site requirements.* (1) The noise measuring station must be surrounded by terrain having no excessive sound absorption characteristics, such as might be caused by thick, matted, or tall grass, shrubs, or wooded areas.

(2) During the period when the flyover noise measurement is within 10 dB of the maximum A-weighted sound level, no obstruction that significantly influences the sound field from the helicopter may exist within a conical space above the noise measuring position (the point on the ground vertically below the microphone), the cone is defined by an axis normal to the ground and by half-angle 80 degrees from this axis.

(c) *Weather restrictions.* The test must be conducted under the following atmospheric conditions:

(1) No rain or other precipitation;

(2) Ambient air temperature between 36 degrees and 95 degrees Fahrenheit (2 degrees and 35 degrees Celsius), inclusively, and relative humidity between 20 percent and 95 percent inclusively, except that testing may not take place where combinations of temperature and relative humidity result in a rate of atmospheric attenuation greater than 10 dB per 100 meters (30.5 dB per 1000 ft) in the one-third octave band centered at 8 kiloHertz.

(3) Wind velocity that does not exceed 10 knots (19 km/h) and a crosswind component that does not exceed 5 knots (9 km/h). The wind shall be determined using a continuous averaging process of no greater than 30 seconds;

(4) Measurements of ambient temperature, relative humidity, wind speed, and wind direction must be made between 4 feet (1.2 meters) and 33 feet (10 meters) at the noise monitoring station. Unless otherwise approved by the FAA, ambient temperature and relative humidity must be measured at the noise measuring station at the same height above the ground.

(5) No anomalous wind conditions (including turbulence) or other anomalous meteorological conditions that will significantly affect the noise level of the helicopter when the noise is recorded at the noise measuring station; and

(6) The location of the meteorological instruments must be approved by the FAA as representative of those atmospheric conditions existing near the surface over the geographical area where the helicopter noise measurements are made. In some cases, a fixed meteorological station (such as those found at airports or other facilities) may meet this requirement.

(d) *Helicopter testing procedures.* (1) The helicopter testing procedures and noise measurements must be conducted and processed in a manner which yields the noise evaluation measure designated Sound Exposure Level (SEL) as defined in section J36.109(b) of this appendix.

(2) The helicopter height relative to the noise measurement point sufficient to make corrections required under section J36.205 of this appendix must be determined by an FAA-approved method that is independent of normal flight instrumentation, such as radar tracking, theodolite triangulation, laser trajectography, or photographic scaling techniques.

(3) If an applicant demonstrates that the design characteristics of the helicopter would prevent flight from being conducted in accordance with the reference test conditions prescribed under section J36.3 of this appendix, then with FAA approval, the reference test conditions used under this appendix may vary from the standard reference test conditions, but only to the extent demanded by these design characteristics which make compliance with the reference test conditions impossible.

Section J36.103 [Reserved]

Section J36.105 Flyover test conditions

(a) This section prescribes the flight test conditions and allowable random deviations for flyover noise tests conducted under this appendix.

(b) A test series must consist of at least six flights with equal numbers of flights in opposite directions over the noise measuring station:

(1) In level flight and in cruise configuration;

(2) At a height of 492 feet ±50 feet (150 ±15 meters) above the ground level at the noise measuring station; and

(3) Within ±10 degrees from the zenith.

(c) Each flyover noise test must be conducted:

(1) At the reference airspeed specified in section J36.3(c) of this appendix, with such airspeed adjusted as necessary to produce the same advancing blade tip Mach number as associated with the reference conditions;

(i) Advancing blade tip Mach number (M_{AT}) is defined as the ratio of the arithmetic sum of blade tip rotational speed (V_R) and the helicopter true air speed (V_T) over the speed of sound (c) at 77 degrees Fahrenheit (1135.6 ft/sec or 346.13 m/sec) such that $M_{AT} = (V_R + V_T)/c$; and

(ii) The airspeed shall not vary from the adjusted reference airspeed by more than ±3 knots (±5 km/hr) or an equivalent FAA-approved variation from the reference advancing blade tip Mach number. The adjusted reference airspeed shall be maintained throughout the measured portion of the flyover.

(2) At rotor speed stabilized at the power on maximum normal operating rotor RPM (±1 percent); and

(3) With the power stabilized during the period when the measured helicopter noise level is within 10 dB of the maximum A-weighted sound level (L_{AMAX}).

(d) The helicopter test weight for each flyover test must be within plus 5 percent or minus 10 percent of the maximum takeoff weight for which certification under this part is requested.

(e) The requirements of paragraph (b)(2) of this section notwithstanding, flyovers at an FAA-approved lower height may be used and the results adjusted to the reference measurement point by an FAA-approved method if the ambient noise in the test area, measured in accordance with the requirements prescribed in section J36.109 of this appendix, is found to be within 15 dB(A) of the maximum A-weighted helicopter noise level (L_{AMAX}) measured at the noise measurement station in accordance with section J36.109 of this appendix.

Section J36.107 [Reserved]

Section J36.109 Measurement of helicopter noise received on the ground

(a) *General.* (1) The helicopter noise measured under this appendix for noise certification purposes must be obtained with FAA-approved acoustical equipment and measurement practices.

(2) Paragraph (b) of this section identifies and prescribes the specifications for the noise evaluation measurements required under this appendix. Paragraphs (c) and (d) of this section prescribe the required acoustical equipment specifications. Paragraphs (e) and (f) of this section prescribe the calibration and measurement procedures required under this appendix.

(b) *Noise unit definition.* (1) The value of sound exposure level (SEL, or as denoted by symbol, L_{AE}), is defined as the level, in decibels, of the time integral of squared 'A'-weighted sound pressure (P_A) over a given time period or event, with reference to the square of the standard reference sound pressure (P_0) of 20 micropascals and a reference duration of one second.

(2) This unit is defined by the expression:

$$L_{AE} = 10\,Log_{10}\frac{1}{T_0}\int_{t_1}^{t_2}\left(\frac{P_A(t)}{P_0}\right)^2 dt \quad dB$$

Where T_0 is the reference integration time of one second and (t_2-t_1) is the integration time interval.

(3) The integral equation of paragraph (b)(2) of this section can also be expressed as:

$$L_{AE} = 10\,Log_{10}\frac{1}{T_0}\int_{t_1}^{t_2} 10^{0.1L_A(t)}\,dt \quad dB$$

Where $L_A(t)$ is the time varying A-weighted sound level.

(4) The integration time (t_2-t_1) is practice shall not be less than the time interval during which $L_A(t)$ first rises to within 10 dB(A) of its maximum value (L_{AMAX}) and last falls below 10 dB(A) of its maximum value.

(5) The SEL may be approximated by the following expression:

$$L_{AE} = L_{AMAX} + <delta> A$$

where <delta> A is the duration allowance given by:

$$<delta> A = 10 \log_{10} (T)$$

where $T = (t_2-t_1)/2$ and L_{AMAX} is defined as the maximum level, in decibels, of the A-weighted sound pressure (slow response) with reference to the square of the standard reference sound pressure (P_0).

(c) *Measurement system.* The acoustical measurement system must consist of FAA-approved equipment equivalent to the following:

(1) A microphone system with frequency response that is compatible with the measurement and analysis system accuracy prescribed in paragraph (d) of this section;

(2) Tripods or similar microphone mountings that minimize interference with the sound energy being measured;

(3) Recording and reproducing equipment with characteristics, frequency response, and dynamic range that are compatible with the response and accuracy requirements of paragraph (d) of this section; and

(4) Acoustic calibrators using sine wave noise and, if a tape recording system is used, pink noise, of known levels. When pink noise (defined in section H36.109(e)(1) of Appendix H of this part) is used, the signal must be described in terms of its root-mean-square (rms) value.

(d) *Sensing, recording, and reproducing equipment.* (1) The noise levels measured from helicopter flyovers under this appendix may be determined directly by an integrating sound level meter, or the A-weighted sound level time history may be written onto a graphic level recorder set at "slow" response from which the SEL value may be determined. With the approval of the FAA, the noise signal may be tape recorded for subsequent analysis.

(i) The SEL values from each flyover test may be directly determined from an integrating sound level meter complying with the Standards of the International Electrotechnical Commission (IEC) Publication No. 804, "Integrating-averaging Sound Level Meters," as incorporated by reference under § 36.6 of this part, for a Type 1 instrument set at "slow" response.

(ii) The acoustic signal from the helicopter, along with the calibration signals specified under paragraph (e) of this section and the background noise signal required under paragraph (f) of this section may be recorded on a magnetic tape recorder for subsequent analysis by an integrating sound level meter identified in paragraph (d)(1)(i) of this section. The record/playback system (including the audio tape) of the tape recorder must conform to the requirements prescribed in section H36.109(c)(3) of Appendix H of this part. The tape recorder shall comply with specifications of IEC Publication No. 561, "Electro-acoustical Measuring Equipment for Aircraft Noise Certification," as incorporated by reference under § 36.6 of this part.

(iii) The characteristics of the complete system shall comply with the recommendations given in IEC Publication No. 651, "Sound Level Meters," as incorporated by reference under § 36.6 of this part, with regard to the specifications concerning microphone, amplifier, and indicating instrument characteristics.

(iv) The response of the complete system to a sensibly plane progressive wave of constant amplitude shall lie within the tolerance limits specified in Table IV and Table V for Type 1 instruments in IEC Publication No. 651, "Sound Level Meters," as incorporated by reference under § 36.6 of this part, for weighting curve "A" over the frequency range of 45 Hz to 11500 Hz.

(v) A windscreen must be used with the microphone during each measurement of the helicopter flyover noise. Correction for any insertion loss produced by the windscreen, as a function of the frequency of the acoustic calibration required under paragraph (e) of this section, must be applied to the measured data and any correction applied must be reported.

(e) *Calibrations.* (1) If the helicopter acoustic signal is tape recorded for subsequent analysis, the measuring system and components of the recording system mut be calibrated as prescribed under section H36.109(e) of Appendix H of this part.

(2) If the helicopter acoustic signal is directly measured by an integrating sound level meter:

(i) The overall sensitivity of the measuring system shall be checked before and after the series of flyover tests and at intervals (not exceeding one-hour duration) during the flyover tests using an acoustic calibrator using sine wave noise generating a known sound pressure level at a known frequency.

(ii) The performance of equipment in the system will be considered satisfactory if, during each day's testing, the variation in the calibration value does not exceed 0.5 dB. The SEL data collected during the flyover tests shall be adjusted to account for any variation in the calibration value.

(iii) A performance calibration analysis of each piece of calibration equipment, including acoustic calibrators, reference microphones, and voltage insertion devices, must have been made during the six calendar months proceeding the beginning of the helicopter flyover series. Each calibration shall be traceable to the National Institute of Standards and Technology.

(f) *Noise measurement procedures.* (1) The microphone shall be of the pressure-sensitive capacitive type designed for nearly uniform grazing incidence response. The microphone shall be mounted with the center of the sensing element 4 feet (1.2 meters) above the local ground surface and shall be oriented for grazing incidence such that the sensing element, the diaphragm, is substantially in the plane defined by the nominal flight path of the helicopter and the noise measurement station.

(2) If a tape recorder is used, the frequency response of the electrical system must be determined at a level within 10 dB of the full-scale reading used during the test, utilizing pink or pseudorandom noise.

(3) The ambient noise, including both acoustical background and electrical noise of the measurement systems shall be determined in the test area and the system gain set at levels which will be used for helicopter noise measurements. If helicopter sound levels do not exceed the background sound levels by at least 15 dB(A), flyovers at an FAA-approved lower height may be used and the results adjusted to the reference measurement point by an FAA-approved method.

(4) If an integrating sound level meter is used to measure the helicopter noise, the instrument operator shall monitor the continuous A-weighted (slow response) noise levels throughout each flyover to ensure that the SEL integration process includes, at minimum, all of the noise signal between the maximum A-weighted sound level (L_{AMAX}) and the 10 dB down points in the flyover time history. The instrument operator shall note the actual db(A) levels at the start and stop of the SEL integration interval and document these levels along with the value of L_{AMAX} and the integration interval (in seconds) for inclusion in the noise data submitted as part of the reporting requirements under section J36.111(b) of this appendix.

Section J36.111 Reporting Requirements

(a) *General.* Data representing physical measurements, and corrections to measured data, including corrections to measurements for equipment response deviations, must be recorded in permanent form and appended to the record. Each correction is subject to FAA approval.

(b) *Data reporting.* After the completion of the test the following data must be included in the test report furnished to the FAA:

(1) Measured and corrected sound levels obtained with equipment conforming to the standards prescribed in section J36.109 of this appendix;

(2) The type of equipment used for measurement and analysis of all acoustic, aircraft performance and flight path, and meteorological data;

(3) The atmospheric environmental data required to demonstrate compliance with this appendix, measured throughout the test period;

(4) Conditions of local topography, ground cover, or events which may interfere with the sound recording;

(5) The following helicopter information:

(i) Type, model, and serial numbers, if any, of helicopter, engine(s) and rotor(s);

(ii) Gross dimensions of helicopter, location of engines, rotors, type of antitorque system, number of blades for each rotor, and reference operating conditions for each engine and rotor;

(iii) Any modifications of non-standard equipment likely to affect the noise characteristics of the helicopter;

(iv) Maximum takeoff weight for which certification under this appendix is requested;

(v) Aircraft configuration, including landing gear positions;

(vi) V_H or V_{NE} (whichever is less) and the adjusted reference airspeed;

(vii) Aircraft gross weight for each test run;

(viii) Indicated and true airspeed for each test run;

(ix) Ground speed, if measured, for each run;

(x) Helicopter engine performance as determined from aircraft instruments and manufacturer's data; and

(xi) Aircraft flight path above ground level, referenced to the elevation of the noise measurement station, in feet, determined by an FAA-approved method which is independent of normal flight instrumentation, such as radar tracking, theodolite triangulation, laser trajectography, or photoscaling techniques; and

(6) Helicopter position and performance data required to make the adjustments prescribed under section J36.205 of this appendix and to demonstrate compliance with the performance and position restrictions prescribed under section J36.105 of this appendix must be recorded at an FAA-approved sampling rate.

Section J36.113 [Reserved]

Part C—Noise Evaluation and Calculations Under § 36.803

Section J36.201 Noise Evaluation in SEL

The noise evaluation measure shall be the sound exposure level (SEL) in units of dB(A) as prescribed under section J36.109(b) of this appendix. The SEL value for each flyover may be directly determined by use of an integrating sound level meter. Specifications for the integrating sound level meter and requirements governing the use of such instrumentation are prescribed under section J36.109 of this appendix.

Section J36.203 Calculation of Noise Levels

(a) To demonstrate compliance with the noise level limits specified under section J36.305 of this appendix, the SEL noise levels from each valid flyover, corrected as necessary to reference conditions under section J36.205 of this appendix, must be arithmetically averaged to obtain a single SEL dB(A) mean value for the flyover series. No individual flyover run may be omitted from the averaging process, unless otherwise specified or approved by the FAA.

(b) The minimum sample size acceptable for the helicopter flyover certification measurements is six. The number of samples must be large enough to establish statistically a 90 percent confidence limit that does not exceed ± 1.5 dB(A).

(c) All data used and calculations performed under this section, including the calculated 90 percent confidence limits, must be documented and provided under the reporting requirements of section J36.111 of this appendix.

Section J36.205 Detailed Data Correction Procedures

(a) When certification test conditions measured under part B of this appendix differ from the reference test conditions prescribed under section J36.3 of this appendix, appropriate adjustments shall be made to the measured noise data in accordance with the methods set out in paragraphs (b) and (c) of this section. At minimum, appropriate adjustments shall be made for off-reference altitude and for the difference between reference airspeed and adjusted reference airspeed.

(b) The adjustment for off-reference altitude may be approximated from:

$$<\text{delta}>J_1 = 12.5 \log_{10}(H_T/492) \text{ dB};$$

where $<\text{delta}>J_1$ is the quantity in decibels that must be algebraically added to the measured SEL noise level to correct for an off-reference flight path, H_T is the height, in feet, of the test helicopter when directly over the noise measurement point, and the constant (12.5) accounts for the effects on spherical spreading and duration from the off-reference altitude.

(c) The adjustment for the difference between reference airspeed and adjusted reference airspeed is calculated from:

$$<\text{delta}>J_3 = 10 \log_{10}(V_{RA}/V_R) \text{ dB};$$

Where $<\text{delta}>J_3$ is the quantity in decibels that must be algebraically added to the measured SEL noise level to correct for the influence of the adjustment of the reference airspeed on the duration of the measured flyover event as perceived at the noise measurement station, V_R is the reference airspeed as prescribed under section J36.3.(c) of this appendix, and V_{RA} is the adjusted reference airspeed as prescribed under section J36.105(c) of this appendix.

(d) No correction for source noise during the flyover other than the variation of source noise accounted for by the adjustment of the reference airspeed prescribed for under section J36.105(c) of this appendix need be applied.

(e) No correction for the difference between the reference ground speed and the actual ground speed need be applied.

(f) No correction for off-reference atmospheric attenuation need be applied.

(g) The SEL adjustments must be less than 2.0 dB(A) for differences between test and reference flight procedures prescribed under section J36.105 of this appendix unless a larger adjustment value is approved by the FAA.

(h) All data used and calculations performed under this section must be documented and provided under the reporting requirements specified under section J36.111 of this appendix.

Part D—Noise Limits Procedure Under § 36.805

Section J36.301 Noise Measurement, Evaluation, and Calculation

Compliance with this part of this appendix must be shown with noise levels measured, evaluated, and calculated as prescribed under parts B and C of this appendix.

Section J36.303 [Reserved]

Section J36.305 Noise Limits

For compliance with this appendix, the calculated noise levels of the helicopter, at the measuring point described in section J36.101 of this appendix, must be shown to not exceed the following (with appropriate interpolation between weights):

(a) For primary, normal, transport, and restricted category helicopters having a maximum certificated takeoff weight of not more than 6,000 pounds and noise tested under this appendix, the Stage 2 noise limit is 82 decibels SEL for helicopters with maximum certificated takeoff weight at which the noise certification is requested, of up to 1,764 pounds and increasing at a rate of 3.01 decibels per doubling of weight thereafter. The limit may be calculated by the equation:

$$L_{AE(limit)} = 82 + 3.01[\log_{10}(\text{MTOW}/1764)/\log_{10}(2)] \text{ dB};$$

where MTOW is the maximum takeoff weight, in pounds, for which certification under this appendix is requested.

(b) The procedures required in this amendment shall be done in accordance with the International Electrotechnical Commission IEC Publication No. 804, entitled "Integrating-averaging Sound Level Meters," First Edition, dated 1985. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Bureau Central de la Commission Electrotechnique Internationale, 1, rue de Varembe, Geneva, Switzerland or the American National Standard Institute, 1430 Broadway, New York City, New York 10018, and can be inspected at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

Issued in Washington, DC, on September 11, 1992.

Thomas C. Richards,

Administrator.

[FR Doc. 92-22382 Filed 9-11-92; 8:45 a.m.]

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federal register

Wednesday
September 16, 1992

Part VI

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved amendment to Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority has approved the Amendment to the Preamble and section 1 of the Tribal-State Compact for Control of Blackjack on the Red Lake Band of Chippewa Reservation in Minnesota, which was approved on September 25, 1991.

DATES: This action is effective September 16, 1992.

ADDRESSES: Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, MS/MIB 4603, 1849 "C" Street, NW., Washington DC 20240.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Chief, Division of Tribal Government Services Bureau of Indian Affairs, Washington, DC 20240, (202) 208–7446.

SUPPLEMENTARY INFORMATION: This is to give notice of a change to the Tribal-State Compact between the Red Lake Band of Chippewa Indians and the State of Minnesota, which was published as a notice in the **Federal Register** in 56 FR 50222 on October 3, 1991. The compact has been amended by the Amendment to the Preamble and Section 1 of the Tribal-State Compact for Control of Blackjack on the Red Lake Band of Chippewa Reservation in Minnesota, enacted on July 9, 1992.

Dated: September 9, 1992.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 92–22380 Filed 9–15–92; 8:45 am]

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federal register

Wednesday
September 16, 1992

Part VII

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

DEPARTMENT OF THE INTERIOR

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved amendment to Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary-Indian Affairs, Department of the Interior, through his delegated authority has approved the Amendment to the Preamble and section 1 of the Tribal-State Compact for Control of Class III Video Games of Chance on the Red Lake Band Chippewa Reservation in Minnesota, which was approved on August 2, 1991.

DATES: This action is effective September 16, 1992.

ADDRESSES: Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, MS/MIB 4603, 1849 "C" Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Chief, Division of Tribal Government Services, Bureau of Indian Affairs, Washington, DC 20240, (202) 208–7446.

SUPPLEMENTARY INFORMATION: This is to give notice of a change to the Tribal-State Compact between the Red Lake Band of Chippewa Indians and the State of Minnesota, which was published as a notice in the **Federal Register** in 56 FR 37956 on August 9, 1991. The compact has been amended by the Amendment to the Preamble and section 1 of the Tribal-State Compact for Control of Class III Video Games of Chance on the Red Lake Band of Chippewa Reservation in Minnesota, enacted July 9, 1992.

Dated: September 9, 1992.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 92–2238 Filed 9–15–92; 8:45 am]

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federal register

Wednesday
September 16, 1992

Part VIII

Department of Transportation

Office of the Secretary

14 CFR Part 207, et al.
Aviation Charter Rules; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 207, 208, 212, 294, 298, 380, 389

[Docket 48341; 92-14]

RIN 2105-AB91

Aviation Charter Rules

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Transportation is proposing a major overhaul of its charter air transportation regulations. This regulatory reform effort is designed to remove unnecessary burdens on airlines and charter operators (*i.e.*, companies that do not operate aircraft, but purchase and resell charter air transportation to the public) in order to foster competition and facilitate low-cost air transportation for the public. The proposal would eliminate the filing of prospectuses for Public Charters (those passenger charter flights which may be sold to the general public) and government regulation of so-called "major changes" and of specific terms of charter operator-participant contracts, while assuring that consumers have access to all contract terms and receive actual notice of important terms affecting price and refunds. It would also simplify financial security measures applicable to charter operators while retaining necessary protections for consumer payments to charter operators, and would remove bonding or escrow requirements applicable to direct air carriers. The proposal would further liberalize sales of charters by removing the prohibition against charter sales within seven days of departure by direct air carriers or charter operators affiliated with direct air carriers and by removing restrictions that inhibit consumers from making credit card payments to charter operators for Public Charters. In addition, the proposal would simplify and eliminate unnecessary requirements applicable to non-public charters (*i.e.*, single entity, affinity, and mixed charters), and would add provisions for the operation of gambling junkets. Finally, the proposal would consolidate parts 207 and 208 into a revised part 212, as well as remove various obsolete references and requirements.

DATES: Comments must be submitted on or before October 16, 1992. If adopted in a final rule, these amendments would take effect 30 days after publication of the final rule in the **Federal Register**.

ADDRESSES: Comments should refer to Docket 48341 and be submitted to: Dockets Section (C-55), room 4107, Office of the Secretary, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. The Dockets Section is open from 9 a.m. to 5 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Charles W. McGuire, Chief, Regulatory Analysis Division (P-57), Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 (202) 366-1037.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this rulemaking proceeding by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions. Communications should identify the regulatory docket number and be submitted in duplicate to the address listed above. Commenters wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments on Docket 48341." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date will be considered by the Assistant Secretary for Policy and International Affairs before taking action on any further rulemaking. Also, this proposal may be changed in light of comments received. All comments submitted will be available for examination in Docket 48341. A report summarizing each substantive public contact with DOT personnel concerned with this rulemaking will be filed in the docket.

Background

This rulemaking is in response to the President's memorandum of January 28, 1992, "Reducing the Burden of Government Regulation," which requested each agency to set aside a 90-day period to evaluate existing programs and regulations and to identify and accelerate action on initiatives that would eliminate any unnecessary regulatory burdens or otherwise promote economic growth. This proposal is the result of a comprehensive review of the Department's charter regulations, the deletion or modification of which should result in a reduced burden to the charter industry, with commensurate public benefits. Our aim through this proposed rule is to retain only such provisions as are needed to provide basic public protection and the regulatory tools necessary to carry out the nation's aviation policy.

The Public Charter industry is composed of nearly 300 charter operators and approximately 100 active U.S. and foreign air carriers. We estimate that over 4.5 million customers were carried on Public Charters during 1991 to destinations throughout the U.S. and the world. While the number of enplanements on domestic and international charters has been remarkably stable over the past 15 years, except for a large decrease between 1980 and 1983, the makeup of the three major components of the industry—charter operators, air carriers and the financial institutions that provide depository and surety services—has changed significantly: the industry has become more mature and stable.

Revision of the aviation charter rules had been the subject of proposed rulemaking for nearly a decade. An NPRM issued in 1982 by our predecessor agency, the Civil Aeronautics Board, proposed to liberalize substantially and simplify charter rules for both direct air carriers and charter operators (EDP-439/SPDR-86, 47 FR 7443, February 19, 1982). That proposal recommended eliminating all prospectus filing requirements on charter operators, as well as the restrictions on dealings between charter operators and direct air carriers. It also sought a new simplified registration and bonding requirement, and elimination of financial protection requirements on direct air carriers flying charters. The objective was to reduce the rules concerning charters to the minimum necessary for public protection. The proposal was not received favorably and, in 1983, a revised NPRM was issued (EDR-456/SPDR-88, 48 FR 15639, April 12, 1983). The revised NPRM retained the financial protections of the existing rules applicable to direct air carriers, as well as the surety and depository requirements and contract rules applicable to charter operators. The revised version of the rule received no more favorable support than the 1982 proposal and, in July 1991, the rulemaking was withdrawn (RIN2105-AA41, 56 FR 31092, July 9, 1991).

The Department acknowledges the many similarities between the changes we are proposing here and the 1982 NPRM. In preparing this proposal, we have reread and carefully considered the comments placed in the dockets in

response to both EDR–439 and EDR–456. The elemental changes in this document are responsive to many of those comments. We also acknowledge the comments submitted at the Department's invitation to Docket 47978 as a result of the President's regulatory review initiative. These inputs provided the Department with a valuable current industry viewpoint of the Public Charter rule which we find very helpful and expressive of needs in the 1990s. The Department is clearly driven, however, by the twin goals (1) reducing the burden of charter regulations while (2) maintaining appropriate protections for consumers.

With the move to deregulation that culminated in the changes brought about by the Airline Deregulation Act of 1978, Public Law 95–504, some of the original reasons for the charter rules disappeared. When the scheduled air transportation system was regulated by the Federal Government as a carefully allocated network of routes with a limited number of major airlines whose prices were also closely regulated, charters, with their substantially lower fares, were seen as a potential threat to scheduled service because they could "divert" significant numbers of passengers from scheduled flights and thereby alter the traffic assumptions and economics upon which the scheduled system was based. When the law changed to allow market forces to determine which carriers would fly where, their levels of service, and the prices they would charge, this rationale for restrictive rules disappeared.

The Department's current charter rules still impose limitations on direct air carriers flying charters that are relatively stringent compared with those relating to the operation of scheduled air service. The rules applicable to most direct air carrier charters (14 CFR parts 207, 208, and 212) still have detailed requirements concerning, for example, contracts with charters, records and record retention, time of payment, financial protection for deposited payments, and dealings with "single entity" and so-called "affinity groups." Similarly detailed requirements apply to Public Charter operators who sell charters to the general public (14 CFR part 380) including many specific provisions relating to the contracts between the charterer and the prospective passengers (*i.e.*, charter participants), procedures governing "major changes" in itinerary, detailed bonding and escrow rules, and filing and prior Department approval requirements. We are now tentatively of the opinion that it is in the public interest to remove or revise many of the regulations applicable to charters, foremost of which are changes to the Public Charter rules and to the financial security requirements for direct air carriers.[1]

Public Charters

The substantial body of current Public Charter requirements can be divided into three areas: (1) Rules pertaining to the filing of prospectuses and amendments; (2) rules concerning price changes, cancellations, itinerary change, and the contents of operator-participant contracts designed to protect participants' expectations; and (3) rules pertaining to passenger payments and the protection of those funds. We are proposing revisions in each of these areas.

Filing Requirements

Under the present Public Charter rules, a charter operator may not advertise or sell any charter flights to the public unless it has filed with the Department a prospectus under § 380.28. The prospectus contains details about the proposed charter program, including (1) the proposed flight schedule; (2) a statement signed by the charter operator and the direct air carrier that they have entered into a contract covering the flights and that it complies with applicable Department regulations; (3) a statement signed by the charter operator and its securer certifying that the required security agreement is in place; and (4) if applicable, a statement signed by the charter operator, direct air carrier, and escrow bank that they have entered into the required depository agreement. The Department has 10 days after it receives a prospectus to accept or reject it. During this 10-day waiting period, charters may not be advertised or sold. Any changes to the information set forth in the prospectus must be submitted to the Department in the form of amendments, which are subject to the same 10-day waiting period for acceptance by the Department and advertising and sales by the charter operator.

The present rules also require "mini prospectuses" to be filed by a direct air carrier operating a foreign-originating Public Charter on behalf of a foreign charter operator. These prospectuses must include basic information about the proposed charter flights, but do not require evidence of financial security arrangements (§ 380.42).

Under the proposed rules, the prospectus-filing requirements would be eliminated in their entirety. They would be replaced with an annual registration requirement for charter operators (new § § 380.4 and 380.5). A U.S. charter operator would file with the Department's Regulatory Analysis Division a simple form giving its name, address, telephone and facsimile (fax) numbers, names and nationalities of its principal stockholders (*i.e.*, those holding 10 percent or more of the voting stock), and certification that it has in place, and will maintain in place during the sale and operation of all charters, a security agreement that complies with the requirements of part 380 and a contract(s) with a direct air carrier(s) to furnish the necessary air transportation for the flights. The form would also require the name, address, telephone and fax numbers of the securer, the amount of the initial security agreement, along with any identifying number(s) assigned to that agreement, and a certification by the securer that the agreement meets the requirements of part 380. Charter operators would be required to notify the Department of any change in the required information within 10 days of the change.[2] Securers would be required to confirm any change in the security agreement, including its amount. The registration form would be filed in duplicate and a stamped copy would be returned to the charter operator indicating the due date of the next registration, which would be one-year after the previous filing.

Once a proper filing was made, a U.S. charter operator could begin sales immediately, provided it has a contract with a direct air carrier covering the charter transportation to be sold. Failure to have such contract before beginning sales would violate this rule (new § 380.3(d)) and would constitute an unfair and deceptive practice or unfair method of competition in violation of section 411 of the Federal Aviation Act (49 U.S.C. 1381). Although U.S. and foreign charter operators would be required to reregister every year, charter programs would not have to be set up to correspond with the registration period. The purpose of the annual registration is

[1] At this time, we are not proposing to make changes to the rules contained in 14 CFR Part 372 which apply to the operation of Overseas Military Personnel Charters. Those charters are limited to a narrow group of eligible participants, and reflect arrangements with foreign host countries that have been worked out over the years. However, we specifically request comments on whether separate rules for this type of charter are still required, or whether such flights could be incorporated under the Public Charter rules.

[2] § 389.25, Schedule of Processing Fees, would also be amended to establish a U.S. and foreign charter operator registration fee of $39 in place of the Public Charter prospectus fee of the same amount.

to ensure that the information that the Department has on each operator is accurate and complete and that only those companies actually engaging in Public Charter operations are registered.

The treatment of foreign charter operators would be slightly different. To enable the Department to make sure that adequate reciprocity was afforded by their homelands, foreign charter operators would have to be registered before beginning operations, as they must be now. In addition to the information required of U.S. charter operators, a foreign charter operator's registration application would include the operator's country of citizenship, its agent for service in the U.S., and an indication as to whether the operator was seeking authority to engage in interstate, overseas, or foreign air transportation (or any combination). As is now the case, any person wishing to object to a foreign charter operator registration would have 28 days after the Department receives the filing to do so. No charter operations could be conducted until after the period for filing objections and the Department's approval of the foreign charter operator's registration (new § 380.5).

Compliance with the registration requirements would entitle charter operators to exemptions from section 401 (certificates for U.S. carriers) and section 402 (permits for foreign carriers), as applicable, and other provisions of the Federal Aviation Act (new § 380.8). The Department could withdraw the exemptions from an individual charter operator if we found that there was a failure of effective reciprocity or a substantial ownership change warranting such action (for foreign entities only), that the charter operator had failed to adhere to the requirements of our rules, or that such action was otherwise warranted in the public interest. The Department could also reject the registration of a charter operator if the public interest so required, for example, where the registrant was a recent convicted felon or otherwise had an inadequate compliance disposition (new § 380.4(d)). In such an event, further advertising and sales by the charter operator would constitute violations of part 380 and sections 401 and 411 of the Act.

In 1991, Public Charter operators file over 750 prospectuses with the Department requesting approval of their flight prospectuses and financial security arrangements; during the first months of 1992, 375 prospectuses have been filed. In addition to these, hundreds of amendments to those prospectuses and over 1,800 requests for waivers, most of which were to allow sales to begin prior to the end of the 10-day waiting period, have been filed. Over $100,000 in fees were collected by the Department for these filings. Providing for an annual registration with no subsequent waiting time for advertising and sales to begin will result in substantial savings to the charter industry in time, paperwork requirements, and filing fees.[3]

Protection of Public Charter Participant Expectations

The current charter rules also contain provisions designed to protect the expectations of members of the public flying on Public Charters (§§ 380.30–380.33a). This group of requirements was adopted at a time when charters were growing rapidly in popularity and were beginning to handle a significant portion of the vacation travel market. Numerous complaints against charter operators about changes in advertised itineraries and of failures to deliver accommodations promised to passengers had been received by the Civil Aeronautics Board. In response, specific rules were issued on the content of contracts between charter operators and passengers, and provisions were imposed identifying "major changes" (hotels, flight dates, origin and destination cities, price) that were so significant that, if made, they would entitle passengers to cancel and claim a refund. Included were precise requirements regarding the time for notifying passengers of such changes and providing refunds, if necessary.

The Civil Aeronautics Board recognized when these requirements were adopted that they would impose additional costs on charter operations which would ultimately be borne by the traveling public. At that time, these costs were found to be justified by the fact that they included substantive protections for consumers against willful acts by charter operators that would seriously alter the service the customer expected and had paid for. Public Charters were already heavily regulated, with detailed requirements for prospectus filing, written contracts with all passengers, and bonding and escrow arrangements for handling passengers' money. While the rules appear, in general, to have succeeded in clarifying participants' rights in this area, and may be responsible in part for lowering the incidence of public complaints, the Department now desires to reassess whether this group of requirements is still justified, particularly when regulation of the airline industry has otherwise long been drastically reduced. We further believe that airline customers have become far more accustomed to restrictions on scheduled service discount fares and are better able to make an informed choice as to their travel arrangements than when these protective charter rules were adopted over ten years ago.

The Department is, therefore, proposing to eliminate the specific "Major Change" provisions contained in § 380.33 which require that participants be offered the right to a full refund if specified changes are made in the departure or return date, origin or destination city, hotel, or price. In the case of charters to the Super Bowl that include the promise of tickets, failure to provide the tickets is also considered a major change (§ 380.18a).

Keeping in existence the rules intended to protect participants' expectations may be more costly than justified by the benefits, particularly since they may unnecessarily restrict the ability of charters to compete with scheduled services which are not subject to similar rules. Whenever possible, the Department seeks to remove regulatory impediments to competition where it appears that the market and the normal processes of private dispute resolution will, in the main, arrive at satisfactory results for the concerned public. Charters no longer command a substantial price advantage over scheduled service. In the case of problems with passengers' expectations as to the contents and details of their charter trips, we now see no reason why the operators' own commercial incentive for reasonably satisfying their customers, along with the possibility of legal action where significant problems remain unresolved, should not be sufficient to ensure fair treatment of the public as a general matter. The Department will continue to be available for aid in dispute resolution, or for the issuance of new rules where any difficulties appear widespread and necessitate such action. In addition, § 380.27 has always prohibited charter operators from engaging in unfair or deceptive practices and the Department will continue to enforce this section (new § 380.11). Moreover, § 399.87 already states that it is an unfair and deceptive practice to advertise or accept payments for trips to the Super Bowl, on either scheduled or charter service, that

[3] The proposed registration procedure will also allow us to eliminate the separate rules applicable to Special Event charters (§ 380.18), which permit the filing of prospectuses on less than 10-days notice when the charter is for a significant event, such as a championship sporting event, that could not be arranged sufficiently far in advance to comply with the 10-day filing requirement.

include the promise of tickets unless the operator has those tickets to sell.

We also believe that individual airlines that depend on charter flights for much-needed revenue will step in to assure consumer satisfaction. Leaving airlines and charter operators free of regulation in their day-to-day charter activities would minimize administrative and opportunity costs and allow charters to be more readily available, flexible, uncomplicated, and competitive. We are not, however, prepared to relieve direct air carriers of the responsibility to return passengers whom they transported on an outbound leg of a trip for which the passenger purchased round-trip transportation and who may become stranded as a result of a charter operator's business failure.[4] That responsibility will continue and will be expressly stated in new § 212.3(c).

We are also proposing to eliminate detailed regulation of the contents of operator-participant contracts (§ 380.31), as well as the current prohibition on accepting charter participant payments without first obtaining a signed operator-participant contract. However, charter operators would still be required to provide prospective participants with notice of, and access to, conditions imposed by the operator (new § 380.7) in a manner similar to the requirement for scheduled service (14 CFR part 253). Moreover, participants would have an opportunity after reviewing the contract to cancel the reservation and receive a full refund. To the extent that an operator wished to rely on conditions, the operator would have to give each participant, at the time of the sale, a brief notice similar to the one in § 253.5. This notice would state:

(1) The operator's name and address, and the name of the direct air carrier performing the flight;

(2) That this is a charter flight and it is subject to a contract, a copy of which is available free upon request, and the procedures for obtaining a copy;

(3) The details of any terms by which the operator reserves the right to change outbound or return cities or dates, to cancel or divert the charter at any time, or to raise prices at any time for participants who have already booked;

(4) The terms describing the participant's cancellation and refund rights if any of the events described in paragraph (3) above occurs;

(5) The terms describing the participant's right to a refund if he or she voluntarily changes plans;

(6) The terms describing the operator's baggage liability to passengers, if any, and the baggage liability to passengers of the direct air carrier operating the charter; and

(7) The name and address of the surety company, and the provisions for submitting claims.

This notice could be part of the charter operator's brochures or other solicitation materials. Just as with scheduled service, if a participant does not receive such notice, he or she will not be bound by any term restricting refunds, imposing monetary penalties, or allowing the operator to change the itinerary or raise prices.[5] Moreover, the full contract must be mailed promptly to anyone who requests it, including prospective participants who have not yet booked. The proposed rule would also provide that, if a person purchases a charter and requests the full contract within five days of the purchase, his or her payment shall be fully refundable if he or she cancels within five days after receiving the full contract, or by the day of the flight, whichever is earlier. We tentatively conclude that such notice provisions strike a reasonable balance between the existing burdensome requirement that charter operators must adhere to specific terms and conditions set by the Department and must refrain from accepting participant payments without first receiving a signed contract, and the rights of consumers to be fully informed as to the conditions under which they are purchasing charter air transportation.

Protection of Charter Participants' Fund

The current charter rules also contain requirements for the protection of charter participants' funds by both direct air carriers and Public operators. Public Charter operators must obtain either (1) a surety bond or trust agreement in an amount equal to the charter price for the air transportation if air-only or, if land arrangements are involved, in an amount equal to one, two, or three times the price of the air transportation depending on the duration of the charter, or (2) a surety bond or trust agreement in the amount of $10,000 per flight up to a maximum of $200,000 for 20 or more flights plus a depository (escrow) account at a bank into which all passenger funds must be placed and may not be removed except under specified conditions (§§ 380.34, 380.34a, 380.35).

Direct air carriers conducting charter flights are required to establish either (1) a surety bond in an unlimited amount, or (2) an escrow account into which all charterer payments are to be deposited until after the flight is operated (§§ 207.17, 208.40, 212.12). The direct air carrier requirements apply to all U.S.-originating passenger charter flights, including Public and "non-public-type" charters, as well as Overseas Military Personnel Charters originating outside of the United States. Moreover, direct air carriers using escrow accounts that engage in direct sales of Public Charters (*i.e.*, without using an independent Public Charter operator) are required to meet the bonding requirements of Part 380 applicable to Public Charter operators.

When the financial security requirements applicable to direct air carriers were adopted, airlines specializing in charters tended to be smaller and less capitalized than those providing scheduled, service; however, since airline deregulation, the historical differences between charter and scheduled airlines in the United States have gradually diminished. Air carriers proposing to operate charters are now subject to the same initial and continuing "fitness" requirements as carriers conducting scheduled service. Indeed, there are certificated charter carriers that presently serve more airports in the United States and may be more financially stable than certain certificated schedule carriers. In addition, many carriers that operate charters also provide scheduled service. While both charter and scheduled carriers currently bear the regulatory burdens of having to obtain a bond or escrow when operating charter flights, we question the need for imposing such requirements on charter operations when they are not applicable to scheduled flights which carried over 95 percent of all passengers transported in 1991. We, therefore, tentatively conclude that the present financial security requirements applicable to direct air carriers conducting charters are unnecessary and we propose to eliminate those requirements found in parts 207, 208, and 212.[6]

We are not, however, prepared to eliminate all requirements aimed at protecting consumer funds when handled by charter operators. Charter

[4] *See Arrow Air, Inc. v. Dole*, 784 F.2d 1118 (D.C. Cir. 1986).

[5] On telephone sales, this notice must be mailed to the participant within two business days after the call.

[6] Direct air carriers conducting direct sale Public Charters would also be relieved of the financial security requirements applicable to Public operators. Moreover, U.S. and Canadian air taxi operators that conduct Public Charters are also subject to the financial security requirements applicable to direct air carriers. Under the proposed rule, those requirements, contained in § § 298.34 and 294.32, would also be eliminated.

operators are not required to undergo fitness determinations as are direct air carriers. Those fitness determinations include a review of the direct air carrier's financial condition, management, and compliance disposition, and they assure at least a threshold level of funding to support the airline's operations. Charter operators, on the other hand, may collect several hundred thousand dollars for a single planeload of charter passengers, with very little expenditure of capital other than advertising costs, and with no financial backing. Over the years, there have been cases in which both large and small charter operators have ceased operations in the middle of charter programs and have been unable to provide their passengers either with the transportation already paid for or with refunds.

Accordingly, certain protections for charter participants' funds, through bonding and escrow requirements, have been necessary. In those cases involving failure of a charter program, the financial security measures required by the Department's rules have provided affected passengers with a source of funds for payment of claims in addition to whatever assets the charter operator had remaining.

On the other hand, we are concerned that the present financial security requirements, particularly the depository account requirements which restrict the charter operator's use of its revenues, may be unduly burdensome on or costly to charter operators. We are tentatively of the view that a simpler financial security system might relieve unnecessary burdens while continuing to provide a measure of protection for charter participants' funds. The Department is therefore proposing to substitute one or more of the financial protection options discussed below for the present surety/escrow options available under § 380.34 of the Public Charter rules.

Not all parties who commented on prior proposed Public Charter rule changes, or in response to the Department's recent invitation in Docket 47978, felt that the current financial protection system was unnecessary or so burdensome on charter operators that it should be amended. Accordingly, in addition to requesting comment on any of the options noted below, we request comment on whether we should retain the current surety/escrow system as it pertains to charter operators.[7] We specifically ask that commenters address not only the issue of whether financial protection continues to be necessary, but the specific costs associated with the present financial security requirements and those proposed as possible replacements.

We are therefore considering as financial security options the current surety/escrow system and the following alternatives (none of which retains an escrow requirement):

(1) A security agreement [8] in an amount of at least $30,000 times the number of flights up to a maximum of $600,000;

(2) A security agreement sufficient to cover the cost of air transportation sold but not yet provided to consumers. Under this "rolling bond" alternative, the amount of the security could increase or decrease over time as the number of charter participants who have paid but have not completed their travel changes;

(3) A requirement that U.S. or foreign direct air carriers participating in Public Charter programs bear financial responsibility for passenger funds paid for charter air transportation (*i.e.*, by either refunding monies paid or providing the transportation for which it was paid) in the event of insolvency or other failure to perform by the charter operator;

(4) A security agreement in an amount not less than the charter price for the air transportation (whether or not the charter flights being sold include land accommodations); or

(5) A security agreement in an amount not less than the cost of the charter trip paid by the participant, including air transportation and land accommodations, if applicable.

We are also tentatively of the opinion that, under any option relying upon a charter operator security agreement,[9] the direct air carrier must make a reasonable effort to verify that the charter operator has met the Department's financial security requirements, as well as the other requirements of part 380. Should the direct air carrier fail to make such a reasonable effort, it would bear the responsibility to provide the charter transportation or refund the air transportation portion of the passenger payments in the event of the charter operator's failure to perform. Such a rule would reduce government oversight of the charter industry and minimize the potential for harm to consumers from charter operators entering into contracts for charter transportation without having in place the requisite financial security arrangements. This proposed rule is similar to § 380.40 of our present Public Charter rules, which states that the direct air carrier shall make a "reasonable effort" to verify compliance with all provisions of the Public Charter rules.

While all but the last of the above proposals might cover only a portion of the total outstanding payments for a charter flight or series of charter flights, they nonetheless offer some important protections. Such security arrangements act as a minimal financial screening device and introduce another party, the securer or the direct air carrier, that would have a clear incentive to be satisfied with the charter operator's competence, honesty, and solvency. Given the unique financial risk inherent in the sale of air travel by charter operators that have not been required to meet our fitness requirements, we tentatively conclude that the public benefits of any of the proposed requirements outweigh the cost of compliance.

The third option opens a significantly different approach to the specific question of financial protection. This option would be modeled on the several orders affecting contract bulk fare air transportation.[10] Comments of interested parties to the last two charter NPRMs and assertions made by industry representatives in various forums since the last government examination of the issue underscore the imbalance that exists between persons who market charter programs and the rest of the tour operator industry. Their plea is simple: put us on the same footing with the purveyors of the scheduled service forms of tours. They seek the same level of flexibility as the bulk fare operator, *i.e.*, no filing or registration provisions,

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[7] Although we are proposing a number of financial security alternatives, for the sake of simplicity, the draft rule incorporates only language applicable to the first option—the $30,000/$600,000 security agreement. If any of the other options is chosen, appropriate amendments will be included in the final rule.

[8] The term security agreement would be defined as it is today to include a surety bond, a surety trust agreement, or letter-of-credit that provides protection equal to or greater than that provided by a bond (*See* new § 380.2). For purposes of determining the amount of the agreement, the agreement would need to cover all one-way or round-trip flights which the Public Charter operator will actively advertise, sell, or operate at any one time, including any flights which may be completed but are within the 60-day period for the filing of claims.

[9] This would include options 1, 2, 4, and 5 above, as well as any security agreement that might be applicable were we to retain our current surety/escrow system of financial security.

[10] *See* Orders 80-2-112, 80-11-24, 81-7-109, 82-3-132, 86-9-61, and 88-9-2.

no terms for financial protection of consumer monies, and no requirements for contracts with consumers.

The principle applied under this approach would be to treat the charter operator as a primary participant in the process, but not the bearer of the entire entrepreneurial responsibility. The operator would contract with direct air carriers through "marketing programs" in which the operator would assume the inventory risk as it already does with respect to contract bulk fare air transportation. Similarly, the direct air carrier would retain the ultimate responsibility for financial and other consumer protection duties as it now does in contract bulk fare operations on scheduled service. Thus, the direct air carrier would have the incentive to ensure that the operator was taking adequate steps to protect consumer monies, because in the end the airline would be responsible to provide the air service or return the air transportation portion of the payment, as is the case with bulk fare arrangements as well as other scheduled airline service.

We also recognize that the proposed options that require security only in the amount of the price of the air transportation paid by the passengers may be subject to abuse. In this regard, in arranging its security agreement a charter operator may attempt to "allocate" only a small portion of the total cost of an air/land package to the air transportation to be provided. Although failure to full fund a security agreement could violate the certification that we propose to accompany a charter operator's registration, and thereby subject the violator to criminal penalties for false statements in addition to civil penalties for violations of our rules, there may be additional ways to discourage any such abuse.

One solution would be for the Department to require charter operators to state separately their prices for air and land and make available for purchase the air-only portion of a charter flight. An alternative would be to impose a specific rule requiring charter operators to retain records sufficient to demonstrate the separate cost to consumers of the air transportation portion of an air/land charter package. We are tentatively of the view that the former requirement would be too intrusive into the marketplace, because certain charter flights may only make sense economically when sold as an air/land package. Furthermore, it may be that the latter requirement regarding recordkeeping may do little to dissuade those truly intent on abusing our rules. We, therefore, invite comment on the manner in which we might deal with this potential problem.

Depending on the financial security option adopted by the Department, the required security agreement would have to be maintained as long as the charter operator continues to sell and operate charters. The securer would be responsible for notifying the Department if the agreement was canceled or modified to reduce coverage, and would be held liable in the full amount if such notification was not made (new § 380.6(e)). Moreover, as is the case under the present rule regarding security agreements, participants would have 60 days after the date they should have completed their travel to submit a claim against the agreement, or against any direct air carrier should we adopt the option requiring direct air carriers to bear responsibility for charter participants' funds. The securer's obligation, to guarantee payment of a refund on the basis of failure of the charter operator to provide transportation or a timely refund, would be explicitly stated in the rule, and the failure of the securer to pay would be a violation of the rule.[11] Any required security agreement would be considered "impaired" (and thus would require replenishment of coverage) if either a judgment was obtained against the principal or the securer admitted a claim.

Use of Credit Cards

We have also tentatively concluded that the provisions in the current rules that inhibit the use of credit cards in payment for Public Charter transportation are no longer desirable. Although credit cards are a widely accepted form of payment for most purchases, including most air transportation, the Public Charter regulations as currently written inhibit the use of credit cards to purchase charter transportation. This is because the present consumer protection rules require that payments to charter operators by or on behalf of participants be by check or money order payable to the escrow bank (§ 380.34(b)(2)(i)) and prohibit charter operators from accepting payments without the paying customer's first having signed an operator-participant contract (§ 380.31(a)). The proposed amendment permitting credit card sales would give consumers and charter operators an added degree of flexibility, while enhancing the consumer protection provisions of the regulation.

The present situation regarding use of credit cards to purchase charter transportation is inconsistent with the reality of today's marketplace. Since part 380 was first promulgated in 1978, use of credit cards by consumers for their travel arrangements has increased dramatically. For example, credit card bookings through travel agencies in September 1991 accounted for a record 72.91 percent of all sales. (*TRAVEL WEEKLY*, October 28, 1991, at 1, 4, reporting figures of the Airlines Reporting Corp.; in 1983, this figure was 46%.)

Payment by credit card also offers several advantages over payment by check or money order. Under the Consumer Credit Protection Act, consumers gain additional protections when they use a credit card to pay for goods and services. As a general matter, if a consumer does not receive or has a problem with goods or services purchased using a credit card, the consumer may not be required to pay any remaining amount due on the goods and services and may in fact get a refund on his or her credit card bill for amounts already paid. Moreover, several credit card issuers have established affiliations with airline frequent flyer programs, under which credit card users may obtain frequent flyer mileage with each use of a particular credit card.

The Department's own limited experience with credit card usage for Public Charter transportation supports the view that consumers prefer to use credit cards to pay for charter flights and that consumers and charter operators alike can benefit from a change in the Public Charter rules to facilitate such use.

In summary, the Department is of the opinion that allowing direct credit card sales of charter fights by charter operators is in the public interest because it will increase the options of both consumers and operators of Public Charters while at the same time providing an additional measure of protection for charter participants.

We recognize that if we adopt a charter rule containing one of the new financial security options described above and we also determine to eliminate the requirement of a signed operator-participant contract at the time of sale, any impediment to the use of

[11] Under the current rule, there have been instances where the amount of the security agreement has been insufficient to pay participants the refunds to which they are entitled. We invite comments on when a securer should begin paying timely claims and in what amount. For example, if a charter operator shuts down after receiving payments toward trips extending eight months into the future, should the securer pay claims as it receives them or wait and prorate them at some future date.

credit cards as a form of payment for charters will be eliminated. Should we determine to retain our present financial security arrangements, which include the use of depository accounts, we propose to amend § 380.34(b)(2)(i), as it may be numbered, specifically to allow charter participants to pay by credit card, as well as by check or money order, and to require that credit card payments be forwarded from the credit card issuer bank directly into the charter operator's escrow merchant account.

Direct Air Carrier Rules

In addition to the rules in part 380 applicable to Public Charters, parts 207, 208, and 212 contain additional rules applicable to the operation of charter flights by U.S. scheduled, charter, and foreign air carriers, respectively. Aside from the financial security requirements for direct air carriers, which we are proposing to eliminate,[12] these rules can be divided into three areas: (1) Rules dealing with the relations between the direct air carrier and the charterer; (2) rules applicable to other charter types, which are discussed below; and (3) rules relating to operational limitations.

Relations Between Direct Air Carriers and Charterers

The current charter rules contain detailed requirements on the contents of contracts between the direct air carrier and the person or company chartering the flight (the charterer).[13] These requirements include payment schedules, cancellation provisions, and the conditions under which certain passengers may be carried (§§ 207.4a, 207.13, 207.22, 207.25, 208.31b, 208.32, 208.201, 208.202b, 212.7, 212.8, 212.22 and 212.25). The Department finds little basis for rules intended, at least in part, to regulate dealings between business enterprises in a system that depends on market forces to determine the services and prices offered. In this context, there is no public interest reason for the government to oversee whether persons managing the enterprises involved in chartering aircraft are capable of choosing carefully the businesses with which they deal and arranging their contracts with appropriate protections. The very existence of a body of government rules in this area that must be learned and observed by those who would use the charter form of transportation, even if the rules considered individually are not onerous, limits flexibility in what is basically a private contractual matter and imposes added costs with little if any corresponding public benefit. While we will continue to require that a charter contract be in place before charter flights may be operated (new § 212.3(c)) or, in the case of Public Charters, advertised or sold (new § 380.3(b)), we no longer intend to specify the contents of these contracts.

Other Charter Types

Rules for single entity and affinity group charters predate the adoption of the Public Charter rules and most of the other rules that have allowed sale of charter seats to members of the general public. Under the single entity rules (§§ 207.50–207.53, 208.300–303, 212.50–212.53), passengers pay no monies, directly or indirectly, for the cost of the charter flight; that cost is borne by the "single entity" chartering the aircraft. A charter by a professional sports team, where the cost of the flight is borne completely by the sports team and not by the players and coaches who are passengers on the flight, is a single entity flight.[14] Since single entity passengers bear no risk of financial loss, rules designed to protect passenger payments or expectations on flights sold to the public (such as from changes in dates, price, or points served) were never deemed necessary, and single entity charterers were thus relieved of the prospectus filing, financial security, and operator-participant contract provisions imposed in the Public Charter rules.

Under the pro rata/affinity rules (§§ 207.20–207.47, 208.22–208.217, 212.20–212.47), an organization whose purpose is something other than to provide transportation services to its members, such as a school, church, or fraternal group, is permitted to charter aircraft and offer seats to bona fide members of the organization and their immediate families. Business establishments and offices may similarly arrange for charters on behalf of their employees. Costs of such charter flights are divided equally, *i.e.*, prorated, among the charter participants. Because participants would have an on-going relationship—an affinity—with the chartering organization, consumer protection rules were never deemed necessary for such flights. However, detailed rules on the qualifications and activities of affinity groups were imposed to ensure that the members of the groups were genuinely associated and not just members of the public assembled by charter operators seeking to evade the Public Charter rules.

The "mixed charter" is a hybrid of the single entity and affinity charters, that is, the charter participants must meet the qualifications for an affinity group, but rather than the cost of the charter being pro rated among those participants, part of the cost is borne by the chartering organization (§§ 207.60, 208.400, 212.60). A charter sponsored by a company on behalf of its employees, where part of the cost is paid by the company and the rest by the employees themselves, is an example of a mixed charter.

It seems clear that there continues to be a demand for single entity, affinity, and mixed charters, and that rules that specifically relieve those charter types from the requirements applicable to Public Charters, even as we propose to modify them here, are still appropriate. We further believe that the rules applicable to these non-public charter types—which have not been updated in several decades—can be simplified or, in many cases, eliminated. Specifically, we have tentatively decided to remove the requirements that single entity, affinity, and mixed charter groups complete the detailed "Statement of Supporting Information" form (Appendix B to parts 207, 208, and 212) which requires, among other things, a description of the organization, the purpose of the flights, whether commissions have been paid in connection with the charter, and, for mixed and affinity flights, such items as how the charter price was calculated, whether other charters have been operated on behalf of that organization, how passengers were solicited for the flight, and how long participants have been members of the chartering organization. Requirements that passenger lists be provided to the direct air carrier identifying the relationship of each passenger to the chartering organization, the date the passenger joined the organization, and whether they are travelling one-way or round-trip (§§ 207.45, 208.215, and 212.45) would be replaced with a requirement that the chartering organization provide a certification to the direct air carrier that all passengers on the charter are eligible for such transportation under the affinity rules (new § 212.5(f)). We also propose to simplify the requirements pertaining to how affinity and mixed charter passengers may be solicited (§§ 207.40, 208.210, and 212.40) and to liberalize the definition of

[12] *See* discussion on *Protection of Charter Participants' Funds.*

[13] In the case of Public Charters, the Public Charter operator is the charterer.

[14] Another type of single entity charter is a charter to another direct air carrier. This is commonly known as a "wet lease," *i.e.*, the lease of an aircraft (or part of its capacity) with crew. Where only part of the capacity is so leased, the charter arrangement may be called a "blocked space" arrangement.

"immediate family" (§§ 207.42, 208.212, 212.42) to allow spouses, parents, and children of the member to participate whether or not they are living in the member's household (new § 212.5(c)). Rules pertaining to the operation of such charters are contained in new § 212.5. Finally, we intend to change the reference to pro rata charters in our current rules to include the word "affinity" since that is the name by which this charter type is commonly referred.

We are undecided, however, as to whether rules pertaining to yet another charter type—those conducted by educational institutions on behalf of participants in a formal academic course of study abroad—continue to be required. Under § 380.17, schools conducting such charters must file a one-time statement with the Department certifying that they meet the eligibility requirements of part 380. Such institutions are relieved of the prospectus-filing and financial security requirements applicable to Public Charter operators, but are subject to the remainder of the Public Charter rules, including the operator-participant contract requirements. Since we do not receive prospectuses for these flights, we have no means of determining whether such charters are still being operated and, thus, whether there is a need to retain rules for this type of charter. Our tentative view is to retain educational institution charters as a type of Public Charter (new §§ 380.2 and 380.3(g)), subject only to the registration and proposed notice-of-contract requirements applicable to Public Charter flights; however, we specifically request comments on whether this charter type is still required.

Another form of charter that has become popular is the so-called "gambling junket," *i.e.*, a charter operated by or on behalf of a hotel or casino to transport passengers to those establishments in order to gamble. In 1977, the Civil Aeronautics Board granted a blanket waiver of the single-entity rules to direct air carriers to allow the operation of gambling junkets where certain conditions were present, as long as passengers did not incur any expense in taking the trip.[15] We are of the tentative view that the terms of this blanket waiver should be codified in the proposed rules as a new charter type (new § 212.6). Gambling junkets which do not meet the proposed conditions would continue to be conducted under the Public Charter rules.

Operational Provisions

Many of the provisions of parts 207, 208, and 212 are identical and thus duplicative. We are proposing to modify the substantive provisions of those Parts and to consolidate parts 207 and 208 into a revised part 212. Parts 207 and 208 would continue to exist, but would contain only an applicability statement and a general reference to the requirements of part 212, as is the case with part 214.[16] This approach is intended to avoid the confusion that outright removal of parts 207 and 208 might cause, particularly since a number of Department and Civil Aeronautics Board orders are in effect that refer or require adherence to the requirements of either or both of those Parts.

As revised, part 212 would define the types of charters that could be operated by U.S. and foreign air carriers and would allow the operation of those charter types except as restricted by statute, the carriers's operating authority, any bilateral undertaking, or Department rules or action (new §§ 212.1 and 212.4). For example, carriers holding certificates to operate cargo service only would be restricted to cargo charters (new § 212.3(f)(5)). Moreover, prior Department approval in the form of a statement of authorization would be required before a U.S. or foreign air carrier could operate certain types of charters (new §§ 212.8 and 212.9). U.S. air carriers holding certificates to engage in either scheduled or charter operations would be permitted to conduct both domestic and foreign charters as long as the operation of those charters did not constitute a "substantial change in operations" for that carrier as defined in part 204 of the Department's rules (new § 212.3(f)(2)).[17]

As drafted, the proposed rule would not retain the minimum contract size of twenty (20) seats for less-than-planeload charters (new § 212.3(b)). Our tentative view is that this restriction has not been burdensome in the past, but that such a limitation is no longer required under our new simplified regime. However, we are concerned that removal of a contract size may open the doors to abuse of the rules (*e.g.*, a planeload of one-person charters) and we are particularly interested in comments on this issue.

Under the proposal, direct air carriers would continue to be responsible for ensuring that any charters they conduct met the requirements of the charter rules—that is, Public Charter operators would have to meet the filing and financial security requirements of part 380, and single entity or affinity charters would have to meet the definitional requirements for those charter types (new §§ 212.3(d) and 212.5(f))—and would be free to establish whatever contractual requirements they deem necessary in order to ensure compliance with the rules. Direct air carriers would also be responsible, as they have been in the past, for providing return transportation to any charter passenger who has purchased round-trip transportation and whom they transported on an outbound flight, unless that passenger's return flight is covered by a contract with another direct air carrier (new § 212.3(e)).

The revised part 212 would continue to authorize sales of charters directly to the public by direct air carriers or affiliated charters (§§ 207.70–72, 208.500–502, and 212.70–72), but would remove, for the most part, the present restrictions on when those seats may be sold (new § 212.7). At present, a direct air carrier may not sell a seat to a charter participant within seven days of the scheduled departure of a charter flight. A similar prohibition applies to charter operators that are under common control with a direct air carrier where the transportation is to be provided by the affiliated carrier (§ 380.25a). This rule was originally designed, in major part, to maintain a distinction between charter and scheduled services. As a general matter, we see no reason to maintain this artificial difference, and we therefore propose to eliminate the restriction on direct sales within seven days. However, the proposed rule would allow the Department to limit or prohibit the operation of direct sale Public Charters by a foreign air carrier if we find that such action is necessary in the public interest.

The Department also proposes to delete the special provisions for amenities and substitute transportation during charter flight delays by charter air carriers in §§ 208.32a–208.33. We see no justification for requiring this on

[15] Specifically, the CAB stated that casinos or hotels could require prospective passengers to pay nominal reservation fees that were fully refundable before the flight, to establish a minimum line-of-credit at the casino, to bring (but not necessarily spend) a specified minimum amount of money, or to meet other requirements that did not place the passenger in financial jeopardy; optional land packages could also be offered. (Order 77–6–64. *See* Orders 91–7–36 and 91–9–43.)

[16] Part 214, which applies to foreign air carriers authorized to conduct charters only, provides that any charters conducted by these carriers must meet the requirements of Part 212.

[17] For example, a U.S. direct air carrier holding a domestic scheduled certificate and conducting operations with "small aircraft," *i.e.*, with under 60 seats, could not conduct charter operations either domestically or internationally using large aircraft without meeting the substantial change requirements of 14 CFR Part 204.

charters when we don't require it on scheduled flights. Both direct air carriers and charter operators have a commercial interest in providing suitable amenities for passengers who are caught in flight delays, or in arranging for alternate transportation if these delays are extensive. We are of the opinion that the marketplace will deal adequately with this need, as it has with respect to scheduled air transportation, and that the rules are no longer required. Moreover, carriers that engage in unfair or deceptive practices in this area will remain subject to enforcement action under § 411 of the Act.

Other Changes

Because of the scope and number of changes we are proposing to the charter rules, we propose to reissue parts 207, 208, 212, and 380 in their entirety. This will also enable us to reorganize the parts in a more logical fashion, replace references to the Civil Aeronautics Board and its offices with appropriate references to the Department, and eliminate definitions and rules which are obsolete or have become unnecessary under the proposed simplified and more liberal regulatory scheme.[18] These include such items as the filing of notices by U.S. scheduled air carriers proposing to operate "special services" (§ 207.8), limits on providing substitute transportation of passengers in an emergency (§§ 207.14, 208.36, 212.9), minimum service requirements for charter carriers (§ 208.25), the operation of military backhaul charters (§§ 208.100–150), procedures for restricting the operation of Public Charters (§ 380.5), and rules on charter types that no longer exist (§ 380.19). To the extent that any person believes that any of these provisions, or others that are being eliminated, should be retained or revised in the new rule, we request that these provisions be identified specifically in the comments with the reasons why they should be maintained.

If the proposed revisions to parts 207, 208, 212, and 380 are adopted, conforming amendments (cross-references, etc.) will be made as appropriate to other parts of 14 CFR chapter II.

[18] With respect to these regulations, this rulemaking supersedes RIN 2105–AB84, Docket 47939, 57 FR 3366, January 29, 1992.

Executive Order 12291, Federalism Assessment, Regulatory Flexibility Act Analysis and Paperwork Reduction Act of 1980

This proposed action has been reviewed under Executive Order 12291, and it has been determined that, while it is not a major rule and will not result in an annual effect on the economy of $100 million or more, it is expected to provide an annual savings of at least $5 million to the aviation charter industry which can be passed along to the traveling public. There will be no increase in production costs or prices to consumers, individual industries, Federal, State or local governments, agencies or geographic regions. Furthermore, the proposed rule would not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, a preliminary regulatory impact analysis is not required. The proposed rule is considered significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, because it concerns a matter of substantial public interest and was submitted as a High Priority Administrative Action in the Department's Report to The President: Review of Regulations, dated April 22, 1992. The projected economic and regulatory impact of these amendments may be found in the Regulatory Evaluation contained in the public docket. A copy of that evaluation may be obtained by contacting Charles W. McGuire, Chief, Regulatory Analysis Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 (202) 366–1037.

The Department has considered the implications of this proposed action under the requirements of Executive Order 12612, *Federalism*, and has determined that the preparation of a Federalism Assessment is not warranted. The regulations herein would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibility among the various levels of government.

For purposes of the Regulatory Flexibility Act, the Department recognizes that approximately 300 business entities, known commercially as charter operators, as well as 100 direct air carriers would receive administrative and economic benefits in these proposed amendments to the rule. Benefits would accrue with the decreased reporting requirements, elimination of the requirement for direct air carrier bonding or escrow accounts and removal of restrictions on the advertising and sale of charter programs.

The reporting and regulatory requirement associated with this rule has been submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. chapter 35 under *OMB No.:* 2106–0033; *Administration:* Department of Transportation, Office of the Secretary; *Title:* Aviation Charter Rules; *Proposed Use of Information:* To relieve charter operators and direct air carriers from parts of title IV of the Federal Aviation Act, and to retain a limited authority over the conduct of charter flights; *Frequency:* Annual; *Burden estimate:* 620 hours; *Respondents:* Charter operators; *Forms:* one—(see Appendix); *Average Burden Hours Per Respondent:* 1 hour and 40 minutes. For further information contact: The Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–1887. Comments on the proposed information collection requirements should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503, Attention: Desk Officer for OST. Comments addressed to OMB should also be sent to the OST Docket (No. 48341) for this proposed rule.

List of Subjects

14 CFR Parts 207, 208, 212, 380

Air carriers, Air transportation, Charter flights, Reporting and recordkeeping requirements, Surety bonds.

14 CFR Parts 294, 298

Air carriers, Air taxis, Air transportation, Canada, Charter flights, Surety bonds.

14 CFR Part 389

Administrative costs, Airline regulation, Fees for services.

For the reasons set out in the Supplementary Information, title 14, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

1. Part 207 is revised to read as follows:

PART 207—CHARTER TRIPS BY U.S. SCHEDULED AIR CARRIERS

Sec.
207.1 Applicability.
207.2 Terms of service.

Authority: 49 U.S.C. 1301, 1302, 1324, 1326, 1371, 1372, 1373, 1374, 1377, 1381, 1386, 1387, 1388, 1482.

§ 207.1 Applicability.

This part establishes the terms, conditions, and limitations applicable to charter air transportation conducted by air carriers holding certificates under section 401(d)(1) of the Act authorizing the operation of scheduled air transportation services.

§ 207.2 Terms of service.

Charter air transportation under this part shall be performed in accordance with the provisions of part 212 of this chapter.

2. Part 208 is revised to read as follows:

PART 208—CHARTER TRIPS BY U.S. CHARTER AIR CARRIERS

Sec.
208.1 Applicability.
208.2 Terms of service.

Authority: 49 U.S.C. 1301, 1302, 1324, 1326, 1371, 1372, 1373, 1374, 1377, 1381, 1386, 1387, 1388, 1482.

§ 208.1 Applicability.

This part establishes the terms, conditions, and limitations applicable to charter air transportation conducted by air carriers holding certificates under section 401(d)(3) of the Act authorizing the operation of charter air transportation services.

§ 208.2 Terms of service.

Charter air transportation under this part shall be performed in accordance with the provisions of part 212 of this chapter.

3. Part 212 is revised to read as follows:

PART 212—CHARTER RULES FOR U.S. AND FOREIGN DIRECT AIR CARRIERS

Sec.
212.1 Scope.
212.2 Definitions.
212.3 General Provisions.
212.4 Authorized charter types.
212.5 Operation of affinity (pro rata) charters.
212.6 Operation of gambling junket charters.
212.7 Direct sales.
212.8 Prior authorization requirements.
212.9 Applications for statement of authorization.
212.10 Issuance of statement of authorization.
212.11 Waiver.

Authority: 49 U.S.C. 1301, 1302, 1324, 1326, 1371, 1372, 1373, 1374, 1377, 1381, 1386, 1387, 1388, 1482.

§ 212.1 Scope.

This part applies to all charter flights, and all other flights carrying charter passengers or cargo, in air transportation by U.S. certificated air carriers or in foreign air transportation by foreign air carriers. It does not apply to any flights performed by a certificated air carrier under part 298 of this chapter. Nothing in this part gives authority to operate a type or level of service not authorized by certificate, foreign air carrier permit, or exemption.

§ 212.2 Definitions.

For the purposes of this part:

Act means the Federal Aviation Act of 1958, as amended,

Affinity (pro rata) charter means a charter arranged by an organization on behalf of its membership, and which meets the requirements of § 212.5.

Certificated air carrier means a U.S. direct air carrier holding a certificate issued under section 401 of the Act.

Charter flight means a flight operated under the terms of a charter contract between a direct air carrier and its charterer or lessee. It does not include scheduled air transportation, scheduled foreign air transportation, or nonscheduled cargo foreign air transportation, sold on an individually ticketed or individually waybilled basis.

Direct air carrier means a certificated or foreign air carrier that directly engages in the operation of aircraft under a certificate, permit, or exemption issued by the Department.

Fifth freedom charter means a charter flight carrying traffic that originates and terminates in countries other than the carrier's home country, regardless of whether the flight operates via the home country.

Foreign air carrier means a direct air carrier that holds a foreign air carrier permit issued under section 402 of the Act or an exemption issued under section 416(b) of the Act authorizing direct foreign air transportation.

Fourth freedom charter means a charter flight carrying traffic that terminates in the carrier's home country having originated in another country.

Gambling junket charter means a charter arranged by a casino or hotel, or its agents, the purpose of which is to transport passengers to casinos where gambling facilities are available, and which meets the requirements of § 212.6.

Long-term wet lease means a wet lease which either:

(1) Lasts more than 60 days, or

(2) Is part of a series of such leases that amounts to a continuing arrangement lasting more than 60 days.

Mixed charter means a charter, the cost of which is borne partly by the charter participants and partly by the charterer, where all the passengers meet the eligibility requirements for "affinity (pro rata)" charters of § 212.5.

Part charter means a flight carrying both charter and scheduled passenger traffic.

Single entity charter means a charter the cost of which is borne by the charterer and not by individual passengers, directly or indirectly.

Third freedom charter means a charter flight carrying traffic that originates in the carrier's home country and terminates in another country.

Wet lease means a lease between direct air carriers by which the lessor provides all or part of the capacity of an aircraft, and its crew, including operations where the lessor is conducting services under a blocked space or code-sharing arrangement.

§ 212.3 General provisions.

(a) Certificated and foreign air carriers may conduct charter flights as described in this Part, and may carry charter passengers on scheduled flights, or charter cargo on scheduled or nonscheduled flights (or on the main deck or in the belly of passenger charter flights), subject to the requirements of this chapter and any orders of, or specific conditions imposed by, the Department.

(b) Charter flights may be operated on a round-trip or one-way basis, with no minimum group, shipment, or contract size.

(c) Contracts to perform charter flights must be in writing and signed by an authorized representative of the certificated or foreign air carrier and the charterer prior to the operation of the flights involved.

(d) A certificated or foreign air carrier must make a reasonable effort to verify that any charterer with which it contracts, and any charter it conducts, meets the applicable requirements of this chapter.

(e) A certificated or foreign air carrier operating a U.S.-originating passenger charter accepts the responsibility to return to his or her point of origin any passenger who purchased round trip transportation on that charter and who was transported by that carrier on his or her outbound flight; except that this provision will not apply in cases where the return transportation is to be provided by another certificated or foreign air carrier.

(f) A certificated or foreign air carrier may not perform any charter flight for which a statement of authorization is required under § 212.8 until one has been granted by the Department. In addition, if a foreign air carrier is required to obtain a statement of authorization under paragraph (e) of § 212.8, neither it, nor any charter operator, or any other person shall advertise or sell any passenger charter services except those that have been specifically authorized by the Department;

(g) A certificated air carrier may not operate charters where such operations would result in a substantial change in the scope of its operations within the meaning of part 204 of this chapter;

(h) A certificated air carrier may not limit its baggage liability for interstate and overseas charter flights except as set forth in part 254 of this chapter;

(i) A certificated air carrier may not, except as set forth in part 121 of the Federal Aviation Regulations (14 CFR part 121), limit the availability, upon reasonable request, of air transportation and related services to a person who may require help from another person in expeditiously moving to an emergency exit for evacuation of an aircraft;

(j) A certificated air carrier holding a certificate to conduct only cargo operations may not conduct passenger charters;

(k) A certificated air carrier may not perform any charter in interstate commerce within the State of Alaska; and

(l) A foreign air carrier may operate charters in foreign air transportation only to the extent authorized by its foreign air carrier permit under § 402 of the Act or exemption authority under § 416(b) of the Act, and only to the extent to which such operations are consistent with the provisions of any applicable bilateral aviation undertaking.

§ 212.4 Authorized charter types.

Certificated and foreign air carriers may conduct the following charter types, subject to the provisions of this part:

(a) Affinity (pro-rata) charters;

(b) Single entity charters, including:

(1) Wet leases involving the carriage of passengers and/or cargo, *provided,* that the wet lessee holds appropriate economic authority from the Department to conduct the proposed operations; and

(2) Charters pursuant to contracts with the Department of Defense, *Provided,* that foreign air carriers may conduct charters for the Department of Defense only to the extent that such operations are consistent with the provisions of Section 1117 of the Act;

(c) Mixed charters;

(d) Gambling junket charters;

(e) Public charters in accordance with part 380 of this chapter (including operations by educational institutions as defined in that part);

(f) Overseas military personnel charters in accordance with part 372 of this charter; and

(g) Cargo charters.

§ 212.5 Operation of affinity (pro-rata) charters.

An affinity (pro-rata) charter operated by a certificated or foreign air carrier must meet the following criteria:

(a) The aircraft must be chartered by an organization, no part of whose business is the formation of groups for transportation or solicitation or sale of transportation services, for the purpose of providing air transportation to its members and their immediate families;

(b) The charter must be organized by the organization itself, or by a person or company who acts not as a principal, but as an agent for the chartering organization or the certificated or foreign air carrier;

(c) No solicitation, sales, or participation may take place beyond the bona fide members of an eligible chartering organization, and their immediate families (spouse, children, and parents);

(d) *bona fide members* are members of an organization who: have not joined the organization merely to travel on a charter flight; and who have been members of the chartering organization for a minimum of six months prior to the date of commencement of the affected flight; *Provided,* that the "six month" rule does not apply to:

(1) Employees of a single commercial establishment, industrial plant, or government agency, or

(2) Students and employees of a single school;

(e) The charter price due the direct air carrier shall be prorated equally among all the charter passengers, except that children under 12 may be offered discounted or free transportation; and

(f) The certificated or foreign air carrier shall make reasonable efforts to assure that passengers transported meet the eligibility requirements of this section. The certificated or foreign air carrier shall also obtain (no later than the date of departure), and maintain for two years, a certification by a representative of the chartering organization that all passengers are eligible for transportation under this section.

§ 212.6 Operation of gambling junket charters.

A gambling junket charter operated by a certificated or foreign air carrier must meet the following criteria:

(a) The aircraft must be chartered by:

(1) A casino or hotel duly licensed by the government of any state, territory or possession of the United States, or by a foreign government, or

(2) An agent of such a casino or hotel on behalf of that casino or hotel;

(b) The casino or hotel, or its agents, may not require a passenger to incur any expense in taking the trip, *Provided,* that this provision shall not preclude the casino or hotel, or its agents, from requiring prospective passengers to pay nominal reservation fees that are fully refundable by the casino or hotel before the flight, establish a minimum line-of-credit at the casino, bring (but not necessarily spend) a specified minimum amount of money, or meet other requirements that do not place them in financial jeopardy; nor does it preclude the casino or hotel, or its agents, from offering optional land packages.

§ 212.7 Direct sales.

(a) Certificated and foreign air carriers may sell or offer for sale, and operate, as principal, Public Charter flights under part 380 of this chapter directly to the public.

(b) Each certificated or foreign air carrier operating a charter trip under this section shall comply with all the requirements of part 380 of this chapter, except that a certificated air carrier need not comply with the registration requirement of §§ 380.4 or 380.5, and neither a certificated air carrier nor a foreign air carrier need comply with the requirement of § 380.6 concerning financial security arrangements.

(c) The Department reserves the right to limit or prohibit the operation of direct sale Public Charters by a foreign air carrier upon a finding that such action is necessary in the public interest.

§ 212.8 Prior authorization requirements.

(a) Certificated air carriers shall obtain a statement of authorization for each long-term wet lease to a foreign air carrier.

(b) Foreign air carriers shall obtain a statement of authorization for each:

(1) Fifth freedom charter flight to or from the United States,

(2) Long-term wet lease,

(3) Charter flight for which the Department specifically requires prior authorization under paragraph (e) or (f) of this section, or

(4) Part charter.

(c) The Department may issue blanket statements of authorization to foreign air carriers to conduct fifth freedom charters. The standards for issuing such blanket authorizations shall be those stated in § 212.10. The Department may revoke any authority granted under this paragraph at any time without hearing.

(d) The Department may at any time, with or without hearing, but with at least 30 days' notice, require a foreign air carrier to obtain a statement of authorization before operating any charter flight. In deciding whether to impose such a requirement, the Department will consider (but not be limited to considering) whether the country of the carrier's nationality:

(1) Requires prior approval for third or fourth freedom charter flights by U.S. air carriers,

(2) Has, over the objection of the U.S. Government, denied rights of a U.S. air carrier guaranteed by a bilateral agreement, or

(3) Has otherwise impaired, limited, or denied the operating rights of U.S. air carriers, or engaged in unfair, discriminatory, or restrictive practices with respect to air transportation services to, from, through, or over its territory.

(e) The Department, in the interest of national security, may require a foreign air carrier to provide prior notification or to obtain a statement of authorization before operating any charter flight over U.S. territory.

§ 212.9 Application for statement of authorization.

(a) Application for a statement of authorization shall be submitted on an OST Form (obtainable from the Regulatory Analysis Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590) except that for part charters or long-term wet leases the application may be in letter form. An application for a long-term wet lease shall describe the purpose and terms of the wet lease agreement. An original and two copies of an application shall be submitted to the Department of Transportation, Office of International Aviation, U.S. Air Carrier Licensing Division, P–44 (for an application by a certificated air carrier), or Foreign Air Carrier Licensing Division, P–45 (for an application by a foreign air carrier), 400 Seventh Street, SW., Washington, DC 20590. Upon a showing of good cause, the application may be transmitted by facsimile (fax) or telegram, or may be made by telephone, *provided*, that in the case of a fax or telephone application, the applicant must confirm its request (by filing an original and two copies of its application as described above) within three business days.

(b) A copy of each application for a long-term wet lease shall also be served on the Director of Flight Standards Service (AFS–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, and on each certificated air carrier that is authorized to serve the general area in which the proposed transportation is to be performed.

(c)(1) Applications for statements of authorization filed by foreign air carriers shall include documentation to establish the extent to which the country of the applicant's nationality deals with U.S. air carriers on the basis of reciprocity for similar flights, if such flights are not subject to a bilateral agreement and

(i) The Department has not established that the country accords reciprocity,

(ii) The Department has found reciprocity defective in the most recent prior approval application involving the country, or

(iii) Changes in reciprocity have occurred since the most recent Department finding for the country in question.

(2) Applications filed by certificated or foreign air carriers to conduct long-term wet leases shall include, for the country of the lessee's nationality, the documentation specified in paragraph (c)(1) of this section.

(d)(1) Applications shall be filed at least 5 business days before commencement of the proposed flight or flights, except as specified in paragraphs (d)(2), (d)(3), and (d)(4) of this section. Late applications may be considered upon a showing of good cause for the lateness.

(2) Applications for a part charter or for a long-term wet lease shall be filed at least 45 calendar days before the date of the first proposed flight.

(3) Applications specifically required under § 212.8(e) shall be filed at least 30 calendar days before the proposed flight or flights (10 calendar days for cargo charters), unless otherwise specified by the Department.

(4) Applications required by a Department order under § 212.8(f) shall be filed at least 14 calendar days before the proposed flight or flights, unless otherwise specified by the Department.

(5) Where an application is required by more than one provision of this part and/or order of the Department, only one application need be filed, but it must conform to the earliest applicable filing deadline.

(6) The Department may require service of applications as it deems necessary.

(e)(1) Any party in interest may file a memorandum supporting or opposing an application. Three copies of each memorandum shall be filed within 7 business days after service of the application or before the date of the proposed flight or flights, whichever is earlier. Memoranda will be considered to the extent practicable; the Department may act on an application without waiting for supporting or opposing memoranda to be filed.

(2) Each memorandum shall set forth the reasons why the application should be granted or denied, accompanied by whatever data, including affidavits, the Department is requested to consider.

(3) A copy of each memorandum shall be served on the certificated or foreign air carrier applying for approval.

(f)(1) Unless otherwise ordered by the Department, each application and memorandum filed in response will be available for public inspection at the Office of International Aviation immediately upon filing. Notice of the filing of all applications shall be published in the Department's Weekly List of Applications Filed.

(2) Any person objecting to public disclosure of any information in an application or memorandum must state the grounds for the objection in writing. If the Department finds that disclosure of all or part of the information would adversely affect the objecting person, and that the public interest does not require disclosure, it will order that the injurious information be withheld.

§ 212.10 Issuance of statement of authorization.

(a) The Department will issue a statement of authorization if it finds that the proposed charter flight, part charter, or wet lease meets the requirements of this part and that it is in the public interest. Statements of authorization may be conditioned or limited.

(b) In determining the public interest the Department will consider (but not be limited to) the following factors:

(1) The extent to which the authority sought is covered by and consistent with bilateral agreements to which the United States is a party.

(2) The extent to which an applicant foreign air carrier's home country (and, in the case of a long-term wet lease, the lessee's home country) deals with U.S. air carriers on the basis of substantial reciprocity.

(3) Whether the applicant or its agent has previously violated the provisions of this part.

(4) Where the application concerns a long-term wet lease:

(i) Whether the lessor (applicant) or its agent or the lessee (charterer) or its agent has previously violated the provisions of the Department's charter regulations.

(ii) Whether, because of the nature of the arrangement and the benefits involved, the authority sought should be the subject of a bilateral agreement.

(iii) To what extent the lessor owns and/or controls the lessee, or is owned and/or controlled by the lessee.

(c) The Department will submit any denial of an authorization specifically required of a foreign air carrier under § 212.8(e) to the President of the United States at least 10 days before the proposed departure. The denial will be subject to stay or disapproval by the President within 10 days after it is submitted. A shorter period for Presidential review may be specified by the Department where the application for authorization is not timely or properly filed. Denial of a late-filed application need not be submitted to the President. For the purposes of this paragraph, an application filed by a foreign air carrier under § 212.8(e) to conduct a cargo charter will be considered as timely filed only if it is filed at least 30 calendar days before the proposed flight, notwithstanding the 10-day filing requirement for cargo charters in § 212.9(d)(3).

(d) The Department will publish notice of its actions on applications for statements of authorization in the Status of Charter Application attachments to the Weekly List of Applications Filed. Interested persons may upon request obtain copies of letters or endorsed forms advising applicants of action taken on their applications.

§ 212.11 Waiver.

The Department may grant a waiver of any of the provisions of this part upon finding that such waiver is in the public interest. A certificated or foreign air carrier may request a waiver by filing a written application with the Department, citing the specific provision to be waived and providing justification for such waiver.

PART 294—[AMENDED]

§ 294.32 [Removed]

4. Section 294.32 is removed and reserved.

PART 298—[AMENDED]

§ 298.38 [Removed]

5. Section 298.38 is removed and reserved.

6. Part 380 is revised to read as follows:

PART 380—PUBLIC CHARTERS

Sec.

380.1 Applicability.
380.2 Definitions.
380.3 General provisions.
380.4 Registration procedures for U.S. Public Charter operators.
380.5 Registration procedures for foreign Public Charter operators.
380.6 Financial security for charter participants' funds.
380.7 Notice of conditions imposed by the Public Charter operator.
380.8 Exemptions.
380.9 Waivers.
380.10 Direct air carrier to ensure compliance with part.
380.11 Methods of competition.
380.12 Enforcement.

Authority: 49 U.S.C. 1301, 1324, 1371, 1372, 1377, 1386, 1502.

§ 380.1 Applicability.

This part applies to Public Charter air transportation of passengers in interstate, overseas, or foreign air transportation, whether furnished by certificated air carriers, foreign air carriers, or Public Charter operators. This part also relieves U.S. and foreign Public Charter operators from various provisions of Title IV of the Federal Aviation Act of 1958, as amended, for the purpose of enabling them to provide Public Charters utilizing aircraft chartered from such direct air carriers. It also declines jurisdiction over foreign Public Charter operators operating foreign-originating Public Charters.

§ 380.2 Definitions.

For the purposes of this part:

Act means the Federal Aviation Act of 1958, as amended.

Certificated air carrier means a U.S. direct air carrier holding a certificate issued under section 401 of the Act.

Charter flight means a flight operated under the terms of a charter contract between a direct air carrier and its customer. It does not include scheduled air transportation, scheduled foreign air transportation, or nonscheduled cargo foreign air transportation, sold on an individually ticketed or individually waybilled basis.

Direct air carrier means a certificated or foreign air carrier, or an air taxi operator or commuter air carrier registered under part 298 of this chapter, that directly engages in the operation of aircraft under a certificate, permit or exemption issued by the Department.

Educational institution means a school that is operated as such on a year-round basis and is empowered to grant academic degrees or secondary school diplomas by any government in the United States or by a foreign government.

Foreign air carrier means a direct air carrier that holds a foreign air carrier permit issued under section 402 of the Act or an exemption issued under section 416(b) of the Act authorizing direct foreign air transportation.

Foreign Public Charter operator means an indirect air carrier which is not a citizen of the United States as defined section 101(16) of the Act, that is authorized to engage in the formation of groups for transportation on Public Charters in accordance with this part.

Indirect air carrier means any person who undertakes to engage indirectly in air transportation operations and who uses for such transportation the services of a direct air carrier.

Public Charter means a one-way or round-trip charter flight to be performed by one or more direct air carriers that is arranged and sponsored by a charter operator and that is advertised and available for purchase by the public.

Public Charter operator means a U.S. or foreign Public Charter operator.

Security agreement means:

(1) A surety bond issued by a company; (i) which is listed in Best's Insurance Reports (Fire and Casualty) with a general policyholders' rating of "A" or better; (ii) whose surety bonds are accepted by the Interstate Commerce Commission under 49 CFR 1084.6; or (iii) which is listed in the U.S. Department of Treasury's notice listing companies holding Certificates of Authority as acceptable sureties on Federal bonds and as acceptable reinsuring companies, published in the **Federal Register** in the first week in July; or

(2) A surety trust agreement or a letter-of-credit, issued by a Federal Deposit Insurance Corporation-insured financial institution, which provides substantially equivalent protection.

U.S. Public Charter operator means an indirect air carrier which is a citizen of the United States as defined in section 101(16) of the Act, that is authorized to engage in the formation of groups for transportation on Public Charters in accordance with this part.

§ 380.3 General provisions.

(a) Public charters may be operated on a one-way or round-trip basis, with no minimum group or contract size. Public charters may be sold on an air-only basis, or with mandatory or optional land arrangements.

(b) A U.S. Public Charter operator shall not sell, offer to sell, or operate Public Charter air transportation unless it has met the requirements of this part, and has on file with the Department a

current registration as provided in § 380.4.

(c) A foreign Public Charter operator shall not sell, offer to sell, or operate Public Charter air transportation unless it has met the requirements of this part, has on file with the Department a current registration as provided in § 380.5, and has received notice from the Department that its registration has been approved.

(d) Prior to the marketing or sale of any Public Charter air transportation by a Public Charter operator, there must be in place a written contract to perform the flights, signed by an authorized representative of the direct air carrier and the Public Charter operator, evidencing a binding commitment on the part of the direct air carrier to furnish the air transportation required for the charters.

(e) A U.S. Public Charter operator operating a Public Charter which originates in a foreign country shall not be subject to the requirements of § 380.4, § 380.6, or § 380.7.

(f) The Department declines to exercise jurisdiction over a foreign Public Charter operator which operates a Public Charter originating in a foreign country, but reserves the right to exercise its jurisdiction over any foreign Public Charter operator at any time it finds that such action is in the public interest.

(g)(1) An educational institution operating a Public Charter need not comply with the financial security requirements of § 380.6 of this part if each student participant in the charter is enrolled in a formal academic course of study outside the United States, sponsored by or in conjunction with that institution, that is of at least four weeks' duration.

(2) The spouse, children, and parents of a student participant may accompany the participant on a charter operated under this subsection.

§ 380.4 Registration procedures for U.S. Public Charter operators.

(a) Prior to conducting any operations under this part, including advertising, reservations, and sales, a U.S. Public Charter operator shall file in duplicate a completed OST Form with the Regulatory Analysis Division (P–57), Office of Aviation Analysis, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, providing the following information:

(1) The Public Charter operator's name, address, and telephone and facsimile (fax) numbers;

(2) The names and nationalities of those stockholders holding 10 percent or more of the voting stock;

(3) A certification that it has in place, and will maintain in effect during the advertising, sale, and operation of any transportation to be performed under this part, (a) charter contract(s) with (a) direct air carrier(s) to furnish the air transportation required for the charters, and a security agreement complying with this part; and

(4) A certification from the securer that it has issued a security agreement covering the transportation to be performed under this part (the certification shall include the name, address, telephone number, and authorized signature of the securer, the monetary amount of the security agreement, and any identifying numbers assigned to that agreement).

(b) The Department will enter on each properly filed OST Form the effective date of the registration and the due date of the next registration (which will be one year from the date of the last registration), and will return to the U.S. Public Charter operator a copy of the OST Form which will serve to confirm that the operator has registered with the Department in compliance with this part. The Department reserves the right to reject an application to register as a U.S. Public Charter operator if it finds that the public interest (*e.g.*, the compliance disposition of that applicant) warrants such action.

(c) Once a U.S. Public Charter operator has filed a registration as required by this section, it may advertise, sell, offer to sell, and operate Public Charter air transportation in accordance with this part.

(d) Within ten days of any changes in the information contained in its current registration, a U.S. Public Charter operator shall notify the Department of those changes by filing in duplicate an amended OST Form. Any changes to the security agreement, including changes in the amount of the agreement, must be verified by the securer in the manner described in § 380.4(a)(4).

(e) Prior to the due date for reregistration shown on a U.S. Public Charter operator's current registration, the operator shall reregister with the Department by filing in duplicate a completed OST Form as described in § 380.4(a). Pending Department action on a reregistration, the existing registration of the operator shall remain valid.

(f) Failure to reregister as required by this section shall result in the expiration of the exemption provided to a U.S. Public Charter operator under § 380.8.

§ 380.5 Registration procedures for foreign Public Charter operators.

(a) Prior to conducting any operations under this part, including advertising, reservations, and sales, a foreign Public Charter operator shall file in duplicate a completed OST Form (obtainable from the Regulatory Analysis Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590) with the Regulatory Analysis Division (P–57), Office of Aviation Analysis, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, providing the information required of U.S. Public Charter operators in § 380.4(a), and the following:

(1) The foreign Public Charter operator's country of citizenship;

(2) An indication as to whether the foreign Public Charter operator seeks authority to engage in foreign, interstate, or overseas air transportation (or any combination); and

(3) The name, address, and telephone number of its agent for service in the United States.

(b) A notice of the filing of all registration applications by foreign Public Charter operators shall be published in the Department's Weekly List of Applications Filed.

(c)(1) Any interested party may file a memorandum supporting or opposing a registration application by a foreign Public Charter operator.

(2) Each memorandum shall set forth the reasons why the registration application should be granted or denied, accompanied by whatever data, including affidavits, the Department is requested to consider.

(3) An original and one copy of each memorandum shall be filed no later than 28 days after the filing of the registration application with the Department, with a copy served on the applicant foreign Public Charter operator.

(d) Upon review of the registration application and any responsive pleadings, the Department will approve the registration of a foreign Public Charter operator if it finds that the homeland of the applicant affords effective reciprocity to U.S. Public Charter operators, and if such approval is otherwise in the public interest. The Department will enter on each approved OST Form the effective date of the registration and the due date of the next registration (which will be one year from the date of the last registration) and will return to the foreign Public Charter operator a copy of the approved OST Form.

(e) Once the Department has approved the registration of a foreign

Public Charter operator, that operator may advertise, sell, offer to sell, and operate Public Charter air transportation, to the extent of such approval and in accordance with this part.

(f) Within ten days of any changes in the information contained in its current registration, a foreign Public Charter operator shall notify the Department of those changes by filing in duplicate an amended OST Form. Any changes to the security agreement, including changes in the amount of the agreement, must be verified by the securer in the manner described in § 380.4(a)(4).

(g) Prior to the due date for re-registration shown on a foreign Public Charter operator's current registration, the operator shall reregister with the Department by filing in duplicate a completed OST Form as described in § 380.4(a). Failure to reregister as required by this section shall result in the expiration of the exemption provided to a foreign Public Charter operator under § 380.8.

(h) If a reregistration or amendment contains changes to information required by § 380.4(a)(2), § 380.5(a)(1), or § 380.5(a)(2), the foreign Public Charter operator shall serve a copy of its completed OST Form on any party which filed an answer to its initial registration application, and the 28-day period for filing memoranda in support of or opposing approval of the amended registration or reregistration shall apply.

(i) The Department shall apply the standards set forth in § 380.5(d) in determining whether to approve a request for reregistration or amendment of the registration of a foreign Public Charter operator. Pending Department action on the reregistration or amendment, the existing registration of the foreign Public Charter operator shall remain valid.

(j) By accepting an approved registration, amendment or reregistration under this section, a foreign Public Charter operator waives any right it may have to assert any defense of sovereign immunity from suit in any proceeding against it, in any court or other tribunal of the United States, that is based upon a claim arising out of operations by the foreign Public Charter operator under this part.

§ 380.6 Financial security for charter participants' funds.

(a) A Public Charter operator shall provide security for Public Charter participants' advance charter payments in accordance with this section. The securer shall pay each Public Charter participant an amount of money equal to the charter price that participant has paid for air transportation and any mandatory land arrangements, that:

(1) Is determined by the person providing the security or adjudged by a court of competent jurisdiction to be due from the Public Charter operator to that person because of failure to refund the money or provide the transportation for which the money was paid, and

(2) The Public Charter operator does not or cannot pay.

(b) The security that satisfies this part shall be a security agreement, as defined in § 380.2 of this part, in the amount of at least $30,000 times the number of flights, up to a maximum of $600,000. For the purpose of determining the necessary amount of the security agreement, "the number of flights" means the number of one-way or round-trip flights which the Public Charter operator will actively advertise, sell, or operate at any one time, including any flights which may be completed but are within the 60-day period for the filing of claims.

(c) Whenever any judgment creates a claim against the securer in accordance with the terms of the security agreement, or the securer admits a claim, the Public Charter operator shall make no further sales of Public Charter air transportation until either the judgment or claim is paid or the Department receives a new certification of security agreement coverage in the full amount required by this part.

(d) The security agreement shall allow each charter participant at least 60 days after the termination of a Public Charter flight to make a claim against the Public Charter operator. Termination means the date of arrival (or in the case of a canceled charter, the intended date of arrival) of the return flight. If there is no return flight in a participant's itinerary, termination means the date of departure of the last flight in the participant's itinerary.

(e) The security agreement shall specify that it shall remain in force, and may not be replaced, canceled, withdrawn, or in any way modified to reduce its coverage, or expire by its terms, until ten days after written notice by the securer, or the securer's agent, is received by the Regulatory Analysis Division (P-57), Office of Aviation Analysis, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

§ 380.7 Notice of conditions imposed by the Public Charter operator.

(a) Each Public Charter operator shall provide to each participant, at the time of sale of any Public Charter air transportation, either a copy of the complete contract of carriage covering the transportation, or a notice providing the following information:

(1) The operator's name and address, and the name of the direct air carrier performing the flight;

(2) That this is a charter flight and is subject to a contract, a copy of which is available free upon request, and the procedures for obtaining a copy;

(3) The details of any terms by which the operator reserves the right to change outbound or return cities or dates, to cancel or divert the charter at any time, or to raise prices at any time for participants who have already booked;

(4) The terms describing the participant's cancellation and refund rights if any of the events described in paragraph (a)(3) of this section occurs;

(5) The terms describing the participant's right to a refund if he or she voluntarily changes plans;

(6) The terms describing the operator's baggage liability to passengers, if any, and the baggage liability to passengers of the direct air carrier operating the charter; and

(7) The name and address of the securer, and the provisions for submitting claims.

(b) On telephone sales, the information required by § 380.7(a) must be mailed to the participant within two business days after the call.

(c) Any participant who does not receive the notice described in this section is not bound by any terms in the contract that restrict refunds, impose monetary penalties, or permit the operator to change the itinerary or raise prices.

(d) The Public Charter operator shall promptly provide, by mail or otherwise, a copy of the full contract of carriage to any person requesting it, including a prospective participant who has not yet purchased a charter.

(e) Any participant who requests a copy of the contract within five days of purchase may cancel and receive a full refund at any time within five days after receiving the contract, or the day of the flight, whichever is earlier.

§ 380.8 Exemptions.

(a) Public Charter operators are hereby relieved from the following provisions of the Federal Aviation Act, if and so long as they comply with the provisions of this part, and to the extent necessary to enable them to provide Public Charter air transportation as indirect air carriers:

(1) Section 401 (certificates for U.S. carriers).

(2) Section 402 (permits for foreign carriers).

(3) Section 403.

(4) Section 404(a), except the requirements to provide adequate service in connection with Public Charters operated hereunder.

(5) Section 405(b).

(6) Section 407 (b) and (c).

(7) If foreign Public Charter operators receive interstate or overseas air transportation rights, any other provision of the Act that would otherwise prohibit them from organizing or arranging Public Charters in interstate or overseas air transportation.

(b) The Department reserves the right to amend, modify, or revoke, without hearing, the exemption authority conferred by this part to:

(1) Any Public Charter operator, if the Department finds that the operator has violated this Part or if the public interest otherwise so requires;

(2) Any foreign Public Charter operator, if the Department finds that:

(i) The foreign Public Charter operator has undergone a substantial change of ownership warranting such action, or

(ii) The country of citizenship of the foreign Public Charter operator has failed to provide effective reciprocity to U.S. Public Charter operators; and

(iii) The Department finds such action to be warranted in the public interest.

§ 380.9 Waivers.

A waiver of any of the provisions of this part may be granted by the Department upon its own initiative or upon submission of a written request by a direct air carrier or Public Charter operator, provided that such a waiver is in the public interest and it appears to the Department that special or unusual circumstances warrant a departure from the provisions of this part.

§ 380.10 Direct air carrier to ensure compliance with part.

For all Public Charters other than foreign-originating charters organized by foreign Public Charter operators, a direct air carrier must make a reasonable effort to verify that the charter complies with all provisions of this part, including the financial security requirements of § 380.6. A direct air carrier that fails to comply with this section shall, if the Public Charter operator fails to do so, either provide the air transportation or refund the air transportation portion of any payments by participants.

§ 380.11 Methods of competition.

No Public Charter operator or direct air carrier shall engage in unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof.

§ 380.12 Enforcement.

In the case of any violation of the Act, or of this part, or of any rule, regulation, or order issued under the Act, the violator may be subject to one or more of the following:

(a) A proceeding pursuant to Sections 1002 and 1007 of the Act before the Department or a U.S. District Court, as the case may be, to compel compliance therewith;

(b) Civil penalties pursuant to Section 901(a) of the Act;

(c) Criminal penalties pursuant to Section 902 of the Act; or

(d) Other lawful sanctions.

PART 389—[AMENDED]

§ 389.25 [Amended]

7. In § 389.25 next to Code 40, remove the word "Prospectus" after "Public Charter" and replace it with the word "Registration."

Issued in Washington, DC, on September 11, 1992.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

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LIST OF PUBLIC LAWS

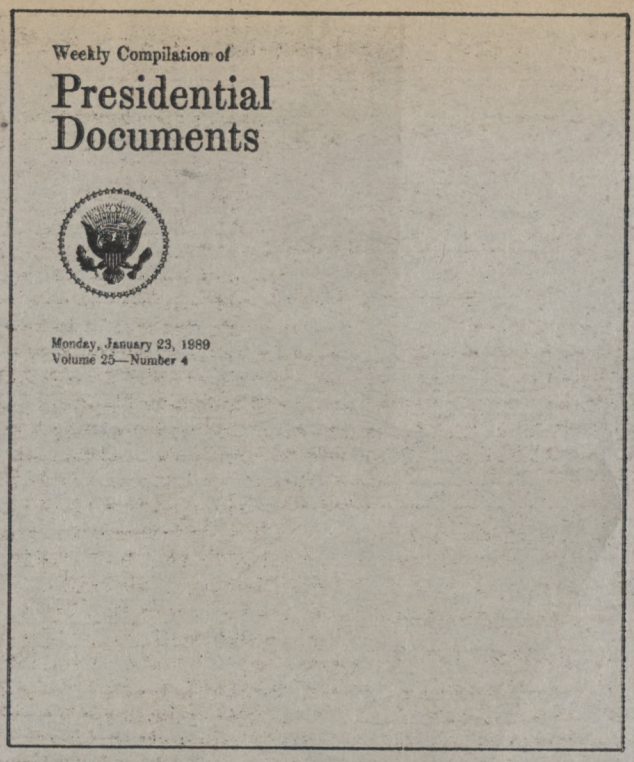
Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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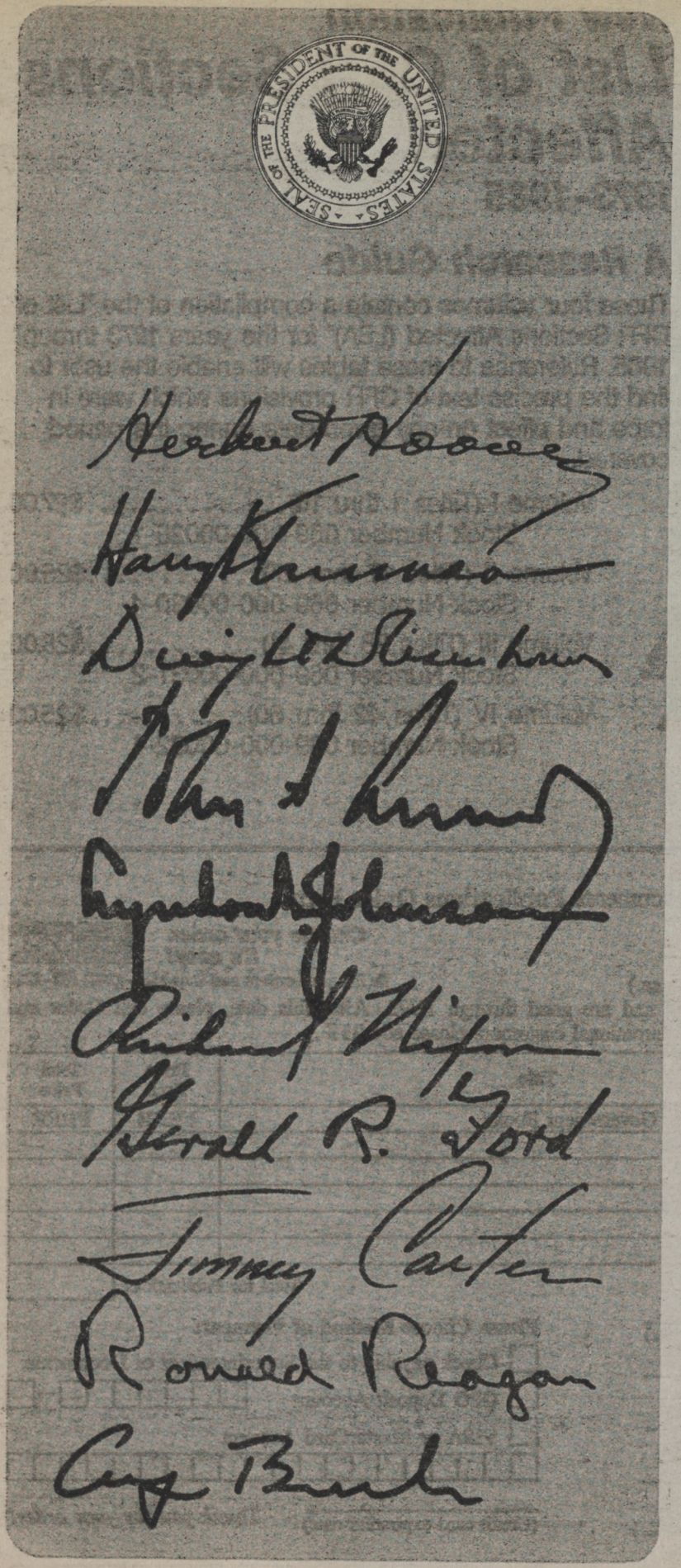
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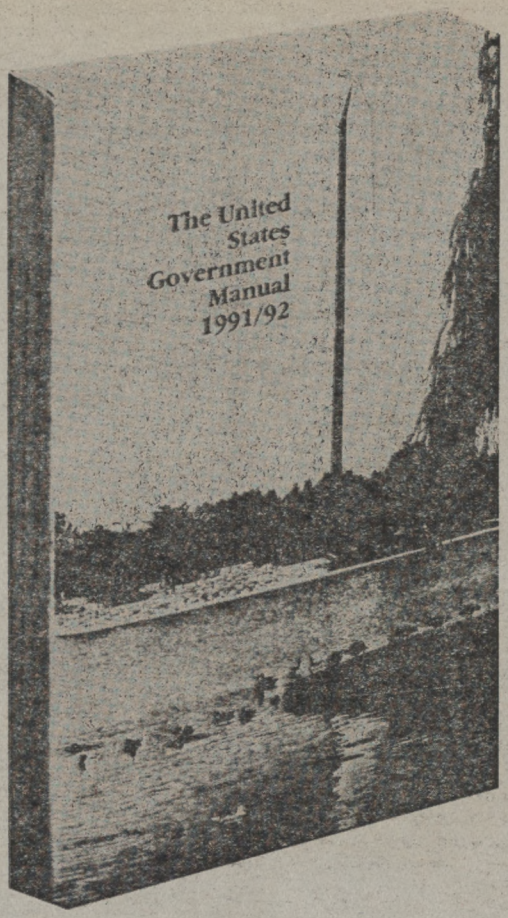
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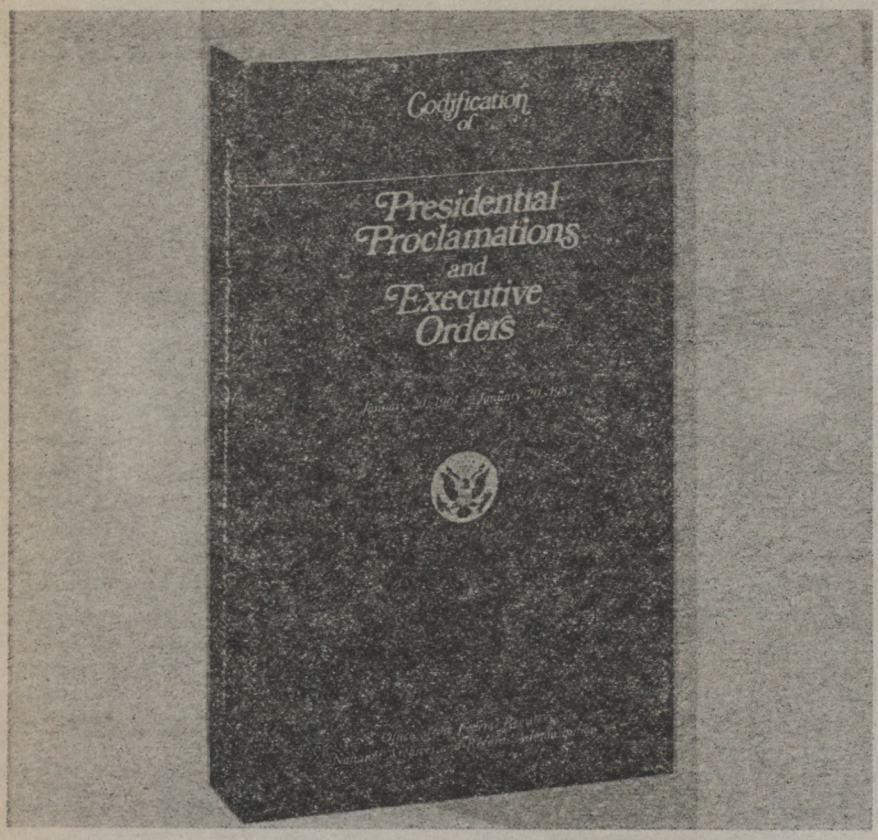
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