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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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 52

RIN 3150–AE42

Combined Construction Permits and Operating Licenses; Conforming Amendments

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission ("NRC" or "Commission") is amending its regulations governing the issuance of combined construction permits and operating licenses for nuclear power plants. The final rule incorporates all the changes to these provisions that are necessary because of the enactment of licensing reform legislation. The amendments serve to conform the regulations to the provisions of title XXVIII of Public Law 102–486, the "Energy Policy Act of 1992," signed into law on October 24, 1992.

DATES: The rule becomes effective January 22, 1993. Submit comments by February 22, 1993.

ADDRESSES: Submit written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attn: Docketing and Service Branch.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:45 a.m. and 4:15 p.m. Federal workdays. (Telephone 301–504–1966.)

Copies of comments received may be examined at the NRC Public Document Room at 2120 L Street NW., Washington, DC 20555, in the lower level of the Gelman Building.

FOR FURTHER INFORMATION CONTACT: L. Michael Rafky, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: 301–504–1606.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Section-by-section analysis.
III. Environmental impact: Categorical exclusion.
IV. Paperwork Reduction Act Statement.
V. Regulatory analysis.
VI. Backfit analysis.

I. Background

Title XXVIII of Public Law 102–486, the "Energy Policy Act of 1992," signed into law on October 24, 1992, amends the Atomic Energy Act to facilitate the standardization of nuclear power plants and to provide explicit authority for the issuance of combined construction permits and operating licenses. The legislation largely codifies the Commission's regulations in 10 CFR part 52. However, the legislation also makes several changes to the licensing process set forth in those regulations.

The purpose of this rule is to make those changes necessary to conform the language of part 52 to the provisions of the newly enacted Public Law. Because these changes are limited to incorporating the language of that statute into the regulations, the NRC finds, pursuant to 5 U.S.C. 553(b)(B), that there is good cause not to seek public comment on this rule, as such comment is unnecessary. The rule will become effective 30 days after the date of publication in the **Federal Register.** Nevertheless, any interested member of the public who believes that the Commission has not accurately conformed part 52 to title XXVIII of Public Law 102–486, the Energy Policy Act of 1992, is invited to submit comments on this matter within 60 days of the date of publication of this rule.

The final rule incorporates all necessary changes resulting from enactment of licensing reform legislation. The significant changes—

(1) Provide that the Commission may authorize a plant to operate during the pendency of a post-construction hearing on a combined construction permit and operating license (combined license) if it makes certain specified safety findings. Previously, under part 52, a post-construction hearing had to be completed prior to operation;

(2) Provide the Commission with the discretion to order use of either formal or informal procedures for a post-construction hearing on a combined license. Previously, under part 52, only formal procedures were permitted;

(3) Provide the Commission with the discretion to permit post-construction license amendments to a combined license, notwithstanding the pendency of a hearing request, to become effective if the Commission makes a finding of "no significant hazards considerations." Previously, part 52 required that hearings be completed prior to commencement of operation;

(4) Eliminate the requirement that there be a pre-operational antitrust review by the Department of Justice of a combined license if there have been significant developments from an antitrust perspective arising since the issuance of the combined license; and

(5) Eliminate the requirement that a combined license include the earliest and latest construction completion dates.

The amendments to the rule incorporate these changes as well as other less significant changes to ensure that part 52 conforms as closely as possible to the statutory language.

In addition, 10 CFR 52.8 is being amended to correct a typographical error and to make revisions of a minor administrative nature.

II. Section-by-Section Analysis

The following analysis of those sections that are affected under this final rule provides additional explanatory information. All references are to title 10, chapter I, U.S. Code of Federal Regulations.

Section 52.8 Information Collection Requirements: OMB Approval

This section is revised to correct data provided in accordance with an Office of Management and Budget (OMB) regulation regarding the information collection requirements contained in this part. In paragraph (a), a typographical error in the OMB approval number is corrected. In paragraph (b), four sections are added to the list of sections containing approved information collection requirements. These revisions are of a minor administrative nature and are made to improve the accuracy of the information in this section and to comply with OMB regulations.

Section 52.79 Contents of Applications; Technical Information

The language of this section provides explicitly that the inspections, tests, analyses, and acceptance criteria must

include those applicable to emergency planning and that the objective of the inspections, tests, analyses, and acceptance criteria is to provide reasonable assurance that the facility was constructed and will operate in conformity with the combined license, the Atomic Energy Act, and the Commission's rules and regulations.

Section 52.83 Applicability of Part 50 Provisions

This section has been revised to remove the applicability of certain provisions of part 50 which are no longer required under the legislation. These include § 50.55 (a), (b) and (d), which had required a construction permit for a nuclear power reactor to state the earliest and latest dates for the completion of the facility's construction, and other conditions thereof; and § 50.58, which had required applications for construction permits or operating licenses to be reviewed by the Advisory Committee on Reactor Safeguards (ACRS). A final change to § 52.83 is the substitution of a reference to "§ 52.99" for "§ 52.103." This was done because the findings to which § 52.83 refers are now contained in § 52.99.

Section 52.97 Issuance of Combined Licenses

This section has been amended with regard to making amendments to a combined license immediately effective under the so-called "Sholly Amendment." Under the Energy Policy Act, an amendment to a combined license can be made immediately effective if the Commission determines there are no significant hazards considerations. This section of the rule has been revised to incorporate the statutory provisions and previously issued Commission regulations implementing the "Sholly" amendment. The Commission, however, stresses that it will not look with favor upon license amendments to a combined license filed shortly before planned operation that could have the effect of undermining standardization or changing the scope of imminent or pending hearings on conformance issues.

Section 52.99 Inspection During Construction

Like the other amended sections of part 52, this section has been changed to track the language of the Energy Policy Act. In this case, the only change is to require explicitly that, prior to operation under a combined license, the Commission shall find that the prescribed acceptance criteria are met.

Section 52.101 Pre-Operational Antitrust Review

This section, which has been deleted as a result of the new legislation, had provided for a pre-operational antitrust review of a combined license by the Department of Justice if there had been significant antitrust-related developments arising after the issuance of that license.

Section 52.103 Operation Under a Combined License

In an effort to adhere as closely as possible to the new statutory requirements of the Energy Policy Act, the NRC has replaced most of its old § 52.103 with the text of section 2802 of that Act. Under the revised language, any request for a post-construction hearing must show, prima facie, both that one or more of the acceptance criteria are not or will not be met, and those specific operational consequences of nonconformance that would be contrary to providing reasonable assurance that the public health and safety will be adequately protected. The Commission may permit interim operation of a facility pending a hearing if it determines that this assurance exists. The Commission has the discretion to decide if any post-construction hearing will use formal or informal hearing procedures, and it must state publicly the reasons for choosing either set of procedures. The Commission must find, prior to operation of the facility, that the acceptance criteria have been met. The procedures with regard to § 2.206 petitions remain the same. Additionally, there is now a new paragraph (g), which is a modified version of old § 52.103(c). The Commission has done nothing in this section other than to incorporate the language of the Energy Policy Act into its rule.

Commissioner Curtiss' Separate Views on Final Rules Amending 10 CFR Part 52 To Incorporate Provisions of the Energy Policy Act

With one exception, I approve the above final rulemaking changes to incorporate the provisions of the Energy Policy Act. The one exception concerns the proposed amendment to 10 CFR 52.97(b) to incorporate the so-called "Sholly" authority. For the reasons set forth below, I cannot agree with the recommendation to amend 10 CFR 52.97(b) for the purpose of extending the provisions of the "Sholly" amendment contained in section 189a.(2) of the Atomic Energy Act to amendments to combined licenses (COLs) prior to authorization to operate. Indeed, I believe that the adoption of this provision will serve to detract from the overall objective that we have established in Part 52 to achieve and maintain a high degree of standardization.

When § 52.97(b) was originally enacted by the Commission, it was adopted for the sole purpose of ensuring that the level of standardization reflected in a COL, once issued, would not be diluted by subsequent changes that a COL holder might seek during construction. Recognizing that such changes should not be foreclosed altogether, the approach taken by the Commission in § 52.97(b) was to establish a stringent procedural hurdle for the COL holder who wishes to seek a change in its COL, once issued: Section 52.97(b) provides that any such changes would be treated as amendments to the COL (thereby requiring a hearing upon request), and that the hearing on any such amendments would have to be completed before operation of the facility.

This approach, the Commission reasoned at the time, would serve to provide yet another strong disincentive against a COL holder seeking changes to a COL, once issued.[1] Indeed, it was exactly this point that the Commission emphasized in its response to a question on this matter from one of our oversight Committees:

> The Commission did not extend Sholly *as a policy choice* because it wanted to discourage late changes to combined licenses or to the ITAAC therein. Such changes could have the effect of undermining standardization or changing the scope of imminent or pending hearings on conformance issues.

Hearing Before the Subcommittee on Nuclear Regulation of the Committee on Environment and Public Works, United States Senate, on the Nuclear Licensing Provision in S.1220, the National Energy Security Act of 1991, January 23, 1992 (Committee Print), p. 56 (emphasis added).

This same point was set forth quite persuasively by Chairman Selin in that same hearing:

> The Commission specifically did not put [the "Sholly" provision] into part 52. We are not interested in encouraging design changes, particularly in the standardization area * * *.
>
> We want to discourage changes—random changes—even if they don't, in themselves,

[1] It should be noted that a COL holder is permitted to make certain changes in its COL, if those changes satisfy the criteria of the § 50.59-type change procedure. These § 50.59-type changes are not considered amendments, and hence would not be subject to the requirements of § 52.97(b).

have a health and safety impact, because we believe the totality of the configuration has a health and safety impact * * * so we consciously did not put that in part 52.

Remarks of Chairman Selin, *id.* p. 22.

In my view, the fundamental policy of § 52.97(b) remains equally sound today. Hence, the only question that remains, in my judgment, is whether the recently-enacted Energy Policy Act of 1992 dictates a different result. In this regard, I would note that the Act gives the Commission the discretion to decide whether to modify part 52 in a manner that would permit COL amendments to be made immediately effective where such amendments involve no significant hazards considerations. Of particular note, section 2803 of the Energy Policy Act provides that—

> The Nuclear Regulatory Commission *shall modify* part 52 of title 10, Code of Federal Regulations, *to conform with sections 185b. and 189.(1)(B) of the Atomic Energy Act of 1954, as amended by sections 2801 and 2802 of this Act,* not later than 1 year after the date of the enactment of this Act (emphasis added).

This provision, which enumerates those sections of the Act for which we must adopt conforming regulations, is limited by its terms to sections 2801 and 2802 of the Act. It does not reference section 2804, the section of the Act containing the "Sholly" provision. As a consequence, I read the Act as giving the Commission the discretion to decide whether we wish to extend the "Sholly" authority to COL amendments.

In light of the discretion that we have, and based upon the reasons set forth above, I would not modify section 52.97(b), as proposed in this rulemaking.[2] In all other respects, I approve the changes to part 52 that are proposed herein.

Additional Views of Commissioners Rogers, Remick, and de Planque

If the Commission were to leave § 52.97(b) as it stood before enactment of the Energy Policy Act, requiring a prior hearing on every proposed postconstruction amendment to a combined license, our regulations would have been inconsistent with the Act. This is the view of the Commission's General Counsel, and we adopt it as our own. It is clear that Congress intended that the Sholly amendment be available for use with each combined license, because Congress did in fact amend section 189a.(2) of the Atomic Energy Act to make the Sholly provisions available for use with each combined license. Congress thereby gave us the discretion in each individual case to decide, according to the Sholly provisions, whether to make an amendment immediately effective, but Congress did not give us the discretion to write rules which directly contradict the newly amended Sholly provisions. Standardization is afforded considerable protection by part 52. We have no cause to try to protect it further by, in effect, trying to rewrite the newly amended Sholly provisions.

We would emphasize that the statutory provisions merely give us the discretion to make an amendment to a combined license immediately effective if it satisfies the criteria of section 189(a) of the Atomic Energy Act. The Commission would retain the discretion to require a prior hearing in a specific case.

[2] In the alternative, if it is the will of the majority of the Commission to modify § 52.97(b), I believe this is a matter that deserves—and indeed requires—public comment. I say this not only because of the significant policy considerations involved here, but more importantly because, as a legal matter, if Congress has conferred upon the Commission the discretion to decide what approach to take in the regulations that we adopt to implement the statute, the justification for publishing this change as a final rule (*i.e.* that we are simply adopting the language of the newly-passed Act) no longer obtains.

III. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental assessment nor an environmental impact statement has been prepared for the final regulation.

IV. Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0151.

V. Regulatory Analysis

The Nuclear Regulatory Commission has made statutorily mandated changes in 10 CFR part 52 in order to conform it to the language of the Energy Policy Act of 1992. These changes reflect Congressionally mandated changes to the NRC's licensing process for power reactors. Only future applicants for combined construction permits and operating licenses will be affected by the changes to the regulations.

VI. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and that a backfit analysis is not required for this final rule. The backfit analysis is not required because these amendments are required by law and do not require the modification of or additions to systems, structures, components, or design of a facility or the design approval or manufacturing license for a facility or the procedures or organization required to design, construct or operate a facility.

List of Subjects in 10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, and 5 U.S.C. 552 and 553, the NRC is amending 10 CFR Chapter I as follows:

PART 52—EARLY SITE PERMITS; STANDARD DESIGN CERTIFICATIONS; AND COMBINED LICENSES FOR NUCLEAR POWER PLANTS

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

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846).

2. Section 52.8 is revised to read as follows:

§ 52.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). OMB has approved the information collection requirements contained in this part under control number 3150–0151.

(b) The approved information collection requirements contained in this part appear in §§ 52.15, 52.17, 52.29, 52.35, 52.45, 52.47, 52.57, 52.63, 52.75, 52.77, 52.79, 52.91 and 52.103.

3. In § 52.79 paragraph (c) is revised to read as follows:

§ 52.79 Contents of applications; technical information.

* * * * *

(c) The application for a combined license must include the proposed inspections, tests and analyses, including those applicable to emergency planning, which the licensee shall perform and the acceptance criteria therefor which are necessary and sufficient to provide reasonable assurance that, if the inspections, tests and analyses are performed and the acceptance criteria met, the facility has been constructed and will operate in conformity with the combined license, the provisions of the Atomic Energy Act, and the NRC's regulations. Where the application references a certified standard design, the inspections, tests, analyses and acceptance criteria contained in the certified design must apply to those portions of the facility design which are covered by the design certification.

* * * * *

4. Section 52.83 is revised to read as follows:

§ 52.83 Applicability of part 50 provisions.

Unless otherwise specifically provided for in this subpart, all provisions of 10 CFR part 50 and its appendices applicable to holders of construction permits for nuclear power reactors also apply to holders of combined licenses issued under this subpart. Similarly, all provisions of 10 CFR part 50 and its appendices applicable to holders of operating licenses also apply to holders of combined licenses issued under this subpart, once the Commission has made the findings required under § 52.99, provided that, as applied to a combined license, 10 CFR 50.51 must require that the initial duration of the license may not exceed 40 years from the date on which the Commission makes the findings required under § 52.99. However, any limitations contained in part 50 regarding applicability of the provisions to certain classes of facilities continue to apply. Provisions of 10 CFR part 50 that do not apply to holders of combined licenses issued under this subpart include §§ 50.55 (a), (b) and (d), and 50.58.

5. In § 52.97 paragraph (b) is revised to read as follows:

§ 52.97 Issuance of combined licenses.

* * * * *

(b)(1) The Commission shall identify within the combined license the inspections, tests, and analyses, including those applicable to emergency planning, that the licensee shall perform, and the acceptance criteria that, if met, are necessary and sufficient to provide reasonable assurance that the facility has been constructed and will be operated in conformity with the license, the provisions of the atomic Energy Act, and the Commission's rules and regulations.

(2)(i) Any modification to, addition to, or deletion from the terms of a combined construction and operating license, including any modification to, addition to, or deletion from the inspections, tests, analyses, or related acceptance criteria contained in the license is a proposed amendment to the license. There must be an opportunity for a hearing on these amendments.

(ii) The Commission may issue and make immediately effective any amendment to a combined construction and operating license upon a determination by the Commission that the amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person. The amendment may be issued and made immediately effective in advance of the holding and completion of any required hearing. The amendment will be processed in accordance with the procedures specified in 10 CFR 50.91.

6. Section 52.99 is revised to read as follows:

§ 52.99 Inspection during construction.

After issuance of a combined license, the Commission shall ensure that the required inspections, tests, and analyses are performed and, prior to operation of the facility, shall find that the prescribed acceptance criteria are met. Holders of combined licenses shall comply with the provisions of 10 CFR 50.70 and 50.71. At appropriate intervals during construction, the NRC staff shall publish in the Federal Register notices of the successful completion of inspections, tests, and analyses.

§ 52.101 [Removed]

7. Section 52.101 is removed.

8. Section 52.103 is revised to read as follows:

§ 52.103 Operation under a combined license.

(a) Not less than one hundred and eighty days before the date scheduled for initial loading of fuel into a plant by a licensee that has been issued a combined construction permit and operating license under subpart C of this part, the Commission shall publish in the **Federal Register** notice of intended operation. That notice shall provide that any person whose interest may be affected by operation of the plant, may within sixty days request the Commission to hold a hearing on whether the facility as constructed complies, or on completion will comply, with the acceptance criteria of the license.

(b) A request for hearing under paragraph (a) of this section shall show, *prima facie*, that—

(1) One or more of the acceptance criteria in the combined license have not been, or will not be met; and

(2) The specific operational consequences of nonconformance that would be contrary to providing reasonable assurance of adequate protection of the public health and safety.

(c) After receiving a request for a hearing, the Commission expeditiously shall either deny or grant the request. If the request is granted, the Commission shall determine, after considering petitioners' prima facie showing and any answers thereto, whether during a period of interim operation, there will be reasonable assurance of adequate protection of the public health and safety. If the Commission determines that there is such reasonable assurance, it shall allow operation during an interim period under the combined license.

(d) The Commission, in its discretion, shall determine appropriate hearing procedures, whether informal or formal adjudicatory, for any hearing under paragraph (a) of this section, and shall state its reasons therefor.

(e) The Commission shall, to the maximum possible extent, render a decision on issues raised by the hearing request within one hundred and eighty days of the publication of the notice provided by paragraph (a) of this section or the anticipated date for initial loading of fuel into the reactor, whichever is later.

(f) A petition to modify the terms and conditions of the combined license will be processed as a request for action in accord with 10 CFR 2.206. The petitioner shall file the petition with the Secretary of the Commission. Before the licensed activity allegedly affected by the petition (fuel loading, low power testing, etc.) commences, the Commission shall determine whether any immediate action is required. If the petition is granted, then an appropriate order will be issued. Fuel loading and operation under the combined license will not be affected by the granting of the petition unless the order is made immediately effective.

(g) Prior to operation of the facility, the Commission shall find that the acceptance criteria in the combined license are met. If the combined license

is for a modular design, each reactor module may require a separate finding as construction proceeds.

Dated at Rockville, Maryland this 16th day of December, 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 92-30970 Filed 12-22-92; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 215

[Regulation O; Docket No. R-0784]

Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks; Loans to Holding Companies and Affiliates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is revising Regulation O to implement recent amendments to section 22(h) of the Federal Reserve Act, contained in the Housing and Community Development Act of 1992. The revision will provide that loans to a holding company parent and its affiliates are not subject to Regulation O inasmuch as these transactions are governed by section 23A of the Federal Reserve Act.

EFFECTIVE DATE: December 17, 1992.

FOR FURTHER INFORMATION CONTACT: Gordon Miller, Attorney (202/452-2534), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Housing and Community Development Act of 1992 (HCDA), Pub. L. 102-550, 106 Stat. 3672 (1992), effective October 28, 1992, has amended section 22(h) of the Federal Reserve Act (Act), 12 U.S.C. § 375b, to exempt from the definition of "principal shareholder" any holding company of which the member bank is a subsidiary and any other subsidiary of that holding company. The Board is revising Regulation O (12 CFR part 215), effective December 17, 1992, to conform to the amendment.

Background

In response to a recommendation of the Board, Congress in HCDA amended section 22(h) to exclude from coverage under that section and Regulation O lending transactions by a member bank with its parent holding company and that company's subsidiaries, inasmuch as these transactions are governed comprehensively by section 23A of the Act.

The Board has revised the definition of "principal shareholder" in Regulation O to exclude from the definition of "principal shareholder" a "company of which a member bank is a subsidiary." This has the effect of excluding from the coverage of Regulation O loans to a company that owns, controls, or exercises a controlling influence over a member bank, as those relationships are defined in section 2(d) of the Bank Holding Company Act, as well as the related interests of such a parent bank holding company. *See* 12 CFR 215.2(n); 12 U.S.C. § 1841(d). Covered transactions between a member bank and its holding company and the other subsidiaries of the holding company continue to be governed by section 23A, which the Board believes comprehensively regulates such transactions.

Need for Final Rule Without Comment

The amendment of the statutory definition of "principal shareholder" was effective immediately upon enactment of HCDA, and required no action on the part of the Board to take effect. The amendment also removed the authority of the Board to maintain a definition of the term that did not contain the exception contained in section 22(h). The Board therefore believes that it is necessary to revise Regulation O in order to eliminate a prohibition on lending transactions that is not authorized by the Act, and to clarify that member banks may take immediate advantage of the recent amendment to section 22(h).

The Board, for good cause, finds that the notice and public comment procedure normally required is impractical and contrary to the public interest under 5 U.S.C. 553(b)(B). The Board further finds that, for the same reasons, there is good cause under 5 U.S.C. 553(d)(3) to make the interim amendment effective on December 17, 1992, without regard for the 30-day period provided for in 5 U.S.C. 553(d).

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. § 601 *et seq.*) requires an agency to publish an initial regulatory flexibility analysis with any notice of proposed rulemaking. Two of the requirements of an initial regulatory flexibility analysis, a description of the reasons why the action by the agency is being considered, and a statement of the objectives of, and legal basis for, the proposed rule (5 U.S.C. § 603(b)), are contained in the supplementary information above.

The Board's proposed rule imposes no additional reporting or recordkeeping requirements, nor are there relevant federal rules that duplicate, overlap, or conflict with the proposed rule. The proposed rule will apply to all member banks, regardless of size. The proposed rule should not have a negative economic impact on small institutions. Instead, the rule should relieve the regulatory burden on all member banks, and will increase their ability to make loans and other extensions of credit, while such transactions remain subject to the comprehensive regulatory provisions of section 23A of the Act.

List of Subjects in 12 CFR Part 215

Credit, Federal Reserve System, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, and pursuant to the Board's authority under section 22(h) of the Federal Reserve Act (12 U.S.C. § 375b) and section 955 of the Housing and Community Development Act of 1992 (Pub. L. No. 102-550, 106 Stat. 3895 (1992)), the Board is amending 12 CFR part 215, part A, as follows:

PART 215—LOANS TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS OF MEMBER BANKS

1. The authority citation for part 215 is revised to read as follows:

Authority: Sections 11(i), 22(g) and 22(h), Federal Reserve Act (12 U.S.C. 248(i), 375a, 375b(7)), 12 U.S.C. 1817(k)(3) and 1972(2)(F)(vi), and section 955 of the Housing and Community Development Act of 1992 (Pub. L. 102-550, 106 Stat. 3895 (1992)).

Subpart A—Loans by Member Banks to Their Executive Officers, Directors, and Principal Shareholders

2. Section 215.2 is amended by revising paragraph (l) to read as follows:

§ 215.2 Definitions.

* * * * *

(l)(1) *Principal shareholder* means a person (other than an insured bank) that directly or indirectly, or acting through or in concert with one or more persons, owns, controls, or has the power to vote more than 10 percent of any class of voting securities of a member bank or company. Shares owned or controlled by a member of an individual's immediate family are considered to be held by the individual.

(2) A principal shareholder of a member bank includes:

(i) a principal shareholder of a company of which the member bank is a subsidiary, and

(ii) a principal shareholder of any other subsidiary of that company.

(3) A principal shareholder of a member bank does not include a company of which a member bank is a subsidiary.

Board of Governors of the Federal Reserve System, December 17, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92–31124 Filed 12–22–92; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–NM–205–AD; Amendment 39–8443; AD 92–27–09]

Airworthiness Directives; British Aerospace Model BAe/HS/DH/BH 125 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe/HS/DH/BH 125 series airplanes, that requires replacement of certain components associated with the main landing gear (MLG) in accordance with maximum life limits. This amendment is prompted by an engineering analysis, which revealed that the expected life limit of the MLG sidestay upper arms before cracking or failure is likely to occur is 12,000 landings. The actions specified by this AD are intended to prevent reduced structural capability of the MLG.

DATES: Effective on January 27, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 27, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. 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. William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe/HS/DH/BH 125 series airplanes was published in the **Federal Register** on June 2, 1992 (57 FR 23168). That action proposed to require replacement of certain components associated with the main landing gear (MLG) in accordance with maximum life limits.

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

One commenter supports the proposed rule.

One commenter requests that Model BAe 125–800A series airplanes be excluded from the applicability of the AD, since the life limit for the sidestay upper arm assembly of the MLG will be added to the mandatory life Limitations Section of the British Aerospace aircraft maintenance schedule for those airplanes. The FAA does not concur. Airworthiness directives are the means by which accomplishment of procedures and adherence to specific compliance times are made mandatory. In the absence of an AD, operators are not required to insert later revisions of the Limitations Section of the Instructions for Continued Airworthiness (IFCA) into the maintenance manual or to operate airplanes thereafter in accordance with those revisions. Therefore, the FAA must issue an AD to ensure that these actions are accomplished in a timely manner.

A "Note" has been added to paragraph (a) of the final rule to clarify the definition of a "serviceable" MLG sidestay upper arm assembly.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule 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 420 airplanes of U.S. registry will be affected by this AD, that it will take approximately 24 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $10,130 per airplane (2 sidestays per airplane at $5,065 per sidestay). Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,809,000, or $11,450 per airplane. 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 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 adding the following new airworthiness directive:

92–27–09. British Aerospace: Amendment 39–8443. Docket 91–NM–205–AD.

Applicability: Model BAe/HS/DH/BH 125 series airplanes, excluding Model BAe 125–1000A series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure continued structural integrity of the main landing gear (MLG) sidestay upper arm assembly, accomplish the following:

(a) Prior to the accumulation of 12,000 landings on any MLG sidestay upper arm assembly, or within 9 months after the effective date of this AD, whichever occurs later, replace the assembly with a serviceable assembly, in accordance with British Aerospace Service Bulletin S.B. 32–216, Revision 1, dated March 21, 1988.

Note: A "serviceable" MLG sidestay upper arm assembly is defined as one that is in compliance with the requirements of this AD, and one on which an overhaul has been accomplished as specified in the applicable aircraft maintenance schedule.

(b) Following the accomplishment of paragraph (a) of this AD, replace any MLG sidestay upper arm assembly prior to the accumulation of 12,000 landings on that assembly.

(c) For purposes of this AD, overhauled sidestay upper arm assemblies for which the total number of landings is not recorded must be assumed to have accumulated 8,000 landings at the time of installation.

(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.

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 replacement shall be done in accordance with British Aerospace Service Bulletin S.B. 32–216, Revision 1, dated March 21, 1988, which includes the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 3–4	1	Mar. 21, 1988.
2	Original	Feb. 29, 1988.

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 British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. 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 January 27, 1993.

Issued in Renton, Washington, on December 11, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–31069 Filed 12–22–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 92–ASO–6]

Alteration to VOR Federal Airways, Reporting Points, and Jet Routes; TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action reflects the name change of the Knoxville, TN, very high frequency omnidirectional range (VOR) to the Volunteer, TN, VOR within the legal descriptions of airways, jet routes, and reporting points located in Tennessee. The Knoxville VOR is not located on the Knoxville Municipal Airport, and the FAA has determined that the current name could confuse pilots as to their desired destination. The Knoxville VOR is actually located near the Knoxville Downtown Island Airport, which is a satellite airport. The descriptions of V–115, V–16, V–136 and V–267 have been removed from this docket because they were included in Airspace Docket Nos. 92–ASO–7, 92–ASO–3, and 92–ASO–21, respectively, which become effective at the same time as this docket.

EFFECTIVE DATE: 0901 U.T.C., February 4, 1993.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On September 2, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to change the name of the Knoxville, TN, VOR to the Volunteer, TN, VOR in all airways, jet routes, and reporting points that have Knoxville in their text (57 FR 40154). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes and the removal of the proposed amendments to V–16, V–115, V–136 and V–267, this amendment is the same as that proposed in the notice. Domestic VOR Federal Airways, domestic low and high altitude reporting points and jet routes are published, respectively, in §§ 71.123, 71.203, 71.207 and 71.607 of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airways, low and high altitude reporting points and jet routes listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations reflects the name change of the Knoxville, TN, VOR to the Volunteer, TN, VOR. The Knoxville VOR is not located on the Knoxville Municipal Airport and the FAA has determined that the current name could confuse pilots as to their desired destination.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Domestic high altitude reporting points, Domestic low altitude reporting points, Domestic VOR Federal airways, Incorporation by reference, Jet routes.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.123 Domestic VOR Federal Airways.

* * * * *

V–97 [Revised]

From Miami, FL, via La Belle, FL; St. Petersburg, FL; Tallahassee, FL; Pecan, GA; Atlanta, GA; INT Atlanta 001° and Volunteer, TN, 197° radials; Volunteer; London, KY; Lexington, KY; Cincinnati, OH; Shelbyville, IN, INT Shelbyville 313° and Boiler, IN, 136° radials; Boiler; Chicago Heights, IL; to INT Chicago Heights 358° and Chicago O'Hare, IL, 127° radials. From INT Northbrook, IL, 290° and Janesville, WI, 112° radials; Janesville; Lone Rock, WI; Nodine, MN; to Gopher, MN. The airspace below 2,000 feet MSL outside the United States is excluded.

* * * * *

V–185 [Revised]

From Savannah, GA; Colliers, SC; Greenwood, SC; Sugarloaf Mountain, NC; Snowbird, TN; INT Snowbird 301° and Volunteer, TN, 069° radials; to Volunteer. The airspace within R–6004 is excluded.

* * * * *

V–466 [Revised]

From Volunteer, TN, via INT Volunteer 050° and Glade Spring, VA, 246° radials; Glade Spring; to Pulaski, VA.

* * * * *

V–517 [Revised]

From Volunteer, TN, INT Volunteer 019° and London, KY, 141° radials; London; INT London 004° and Falmouth, KY, 164° radials; Falmouth; Cincinnati, OH; INT Cincinnati 336° and Richmond, IN, 190° radials; Richmond; to Dayton, OH.

* * * * *

V–519 [Revised]

From Volunteer, TN, via INT Volunteer 050° and Glade Spring, VA, 246° radials; Glade Spring; Bluefield, WV; to Beckley, WV.

* * * * *

Section 71.203 Domestic Low Altitude Reporting Points.

* * * * *

Knoxville, TN [Remove]

Volunteer, TN [New]

* * * * *

Section 71.207 Domestic High Altitude Reporting Points.

* * * * *

Knoxville, TN [Remove]

Volunteer, TN [New]

* * * * *

Section 71.607 Jet Routes.

* * * * *

J–22 [Revised]

From Nuevo Laredo, Mexico, via Laredo, TX; Corpus Christi, TX; Palacios, TX; Lake Charles, LA; McComb, MS; Meridian, MS; Vulcan, AL; Volunteer, TN; Pulaski, VA; to Montebello, VA. The airspace within Mexico is excluded.

* * * * *

J–43 [Revised]

From Miami, FL, via LaBelle, FL; St Petersburg, FL; Tallahassee, FL; Atlanta, GA; Volunteer, TN; Falmouth, KY; Rosewood, OH; Carleton, MI; to Sault Ste Marie, MI.

* * * * *

J–46 [Revised]

From Tulsa, OK, via Walnut Ridge, AR; Nashville, TN; to Volunteer, TN.

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J–91 [Revised]

From INT Orlando, FL 274° and Cross City, FL, 133° radials; Cross City; INT Cross City 338° and Atlanta, GA, 169° radials; Atlanta; Volunteer, TN; Henderson, WV; to Bellaire, OH.

* * * * *

J–99 [Revised]

From Colliers, SC, via Volunteer, TN; to Louisville, KY.

* * * * *

Issued in Washington, DC, on December 16, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92–31005 Filed 12–22–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 92–ASO–7]

Alteration to VOR Federal Airways, Reporting Points, and Jet Routes; TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action reflects the name change of the Chattanooga, TN, very high frequency omnidirectional range (VOR) to Choo Choo, GA. The Chattanooga VOR is not located on the Chattanooga Airport and the FAA has determined that the name "Chattanooga" could confuse pilots as to their desired destination. The Chattanooga VOR is located approximately 2 miles southeast of the airport in the State of Georgia. FAA guidelines recommend that navigational aids (NAVAID's) not located on the airport surface not have the same name as the primary airport. This action changes the descriptions in all airways, jet routes, and reporting points that have Chattanooga in their text. The descriptions of V–5, V–362 and V–515 have been removed from this docket because they were included in Airspace Docket No. 92–ASO–3 which becomes effective at the same time as this docket. This amendment also reflects the action proposed in Airspace Docket No. 92–ASO–6, but made final in this docket, which changes the name of the Knoxville, TN, VOR to the Volunteer, TN, VOR.

EFFECTIVE DATE: 0901 UTC, February 4, 1993.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On October 6, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to change the descriptions of all airways, jet routes, and reporting points that have Chattanooga in their text (57 FR 45997). This amendment also reflects the action proposed in Airspace Docket No. 92–ASO–6, but made final in this docket, which changes the name of the Knoxville VOR to the Volunteer VOR. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes indicating that the Choo Choo VOR is located in Georgia instead of Tennessee, the removal of V–5, V–362 and V–515, the inclusion of the name change of the Knoxville VOR to the Volunteer VOR in V–115, and including the NELLO low altitude reporting point, this amendment is the same as that proposed in the notice. Domestic VOR Federal Airways, domestic low altitude reporting points and jet routes are published, respectively, in sections 71.123, 71.203 and 71.607 of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airways, low altitude reporting points and jet routes

listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations reflects the name change of the Chattanooga, TN, VOR to the Choo Choo, GA, VOR. This action also reflects the name change of the Knoxville, TN, VOR to the Volunteer, TN, VOR. The Chattanooga VOR is not located on the Chattanooga Airport and the FAA has determined that the name "Chattanooga" could confuse pilots as to their desired destination. This action, where necessary, reflects the name change of the Chattanooga VOR to the Choo Choo VOR.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Domestic low altitude reporting points, Domestic VOR Federal airways, Incorporation by reference, Jet routes.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.123 Domestic VOR Federal Airways

* * * * *

V–54 [Revised]

From Waco, TX; Scurry, TX; Quitman, TX; Texarkana, AR; INT Texarkana 052° and Little Rock, AR, 235° radials; Little Rock; Holly Springs, MS; Muscle Shoals, AL; Rocket, AL; Choo Choo, GA; Harris, GA; Spartanburg, SC; Charlotte, NC; Sandhills, NC; INT Sandhills 146° and Fayetteville, NC, 267° radials; Fayetteville; to Kinston, NC.

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V–67 [Revised]

From Choo Choo, GA; Shelbyville, TN; Graham, TN; Cunningham, KY; Marion, IL; Centralia, IL; INT Centralia 010° and Vandalia, IL, 162° radials; Vandalia; Capital, IL; Burlington, IA; Iowa City, IA; Cedar Rapids, IA; Waterloo, IA; Rochester, MN.

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V–115 [Revised]

From Crestview, FL; INT Crestview 001° and Montgomery, AL, 204° radials; Montgomery; INT Montgomery 323° and Vulcan, AL, 177° radials; Vulcan; Choo Choo, GA; Volunteer, TN; Hazard, KY; Charleston, WV; Parkersburg, WV; Newcomerstown, OH; INT Newcomerstown 038° and Franklin, PA, 239° radials; Franklin; Tidioute, PA; Jamestown, NY; Buffalo, NY.

* * * * *

V–209 [Revised]

From Semmes, AL, via INT Semmes 356° and Eaton, MS, 080° radials; Kewanee, MS; Brookwood, AL; Vulcan, AL; INT Vulcan 097° and Gadsden, AL, 233° radials; Gadsden; and INT Gadsden 042° and Choo Choo, GA, 214° radials; Choo Choo.

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V–243 [Revised]

From Craig, FL, via Waycross, GA; Vienna, GA; LaGrange, GA; INT LaGrange 342° and Choo Choo, GA, 189° radials; Choo Choo; Bowling Green, KY; Huntingburg, IN; to Terre Haute, IN.

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V–333 [Revised]

From INT Rome, GA, 133° and Gadsden, AL, 091° radials via Rome; Choo Choo, GA; Hinch Mountain, TN; Lexington, KY.

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V–415 [Revised]

From Montgomery, AL, via INT Montgomery 029° and Choo Choo, GA, 189° radials; INT Choo Choo 189° and Rome, GA, 252° radials; Rome; INT Rome 060° and Foothills, SC, 258° radials; Foothills; Spartanburg, SC; to INT Spartanburg 101° and Charlotte, NC, 229° radials.

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Section 71.203 Domestic Low Altitude Reporting Points

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Chattanooga, TN [Removed]
Choo Choo, GA [New]

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NELLO: [Revised]

INT of Atlanta, GA, 001°, Choo Choo, GA, 127° radials.

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Section 71.607 Jet Routes

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J–118 [Revised]

From Memphis, TN, via Choo Choo, GA; to Spartanburg, SC.

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Issued in Washington, DC, on December 16, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92–31002 Filed 12–22–92; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8459]

RIN 1545–A099

Settlement Funds

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the tax treatment of transfers to funds, accounts, and trusts used in the settlement of certain controversies, the taxation of income earned by these funds, and the tax treatment of distributions made by these funds. Changes to the applicable law were made by the Tax Reform Act of 1986 and the Technical and Miscellaneous Revenue Act of 1988. The regulations affect these settlement funds, taxpayers who make transfers to these funds, and taxpayers who receive distributions from these funds. The regulations are necessary to provide these taxpayers with guidance needed to comply with these changes.

DATES: These regulations are effective January 1, 1993. Thus, the regulations apply to transfers to, income earned by, and distributions made by a qualified settlement fund after December 31, 1992. The regulations provide transition rules for funds, accounts, and trusts established after August 16, 1986.

FOR FURTHER INFORMATION CONTACT: Linda M. Kroening of the Office of Assistant Chief Counsel (Income Tax & Accounting), telephone (202) 622–4910 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information requirements contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1545–1299.

The estimated total annual reporting burden is 3,751 hours. The estimated annual burden per respondent varies from 25 minutes to 12 hours and 45 minutes, depending on individual circumstances, with an estimated average of 1 hour.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or lesser time, depending on their particular circumstances.

Comments regarding the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224 and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

On February 14, 1992, the Internal Revenue Service published a notice of proposed rulemaking in the **Federal Register** (57 FR 5399) regarding settlement funds. The preamble to that notice contains an explanation of the proposed rules. A public hearing was held on May 27, 1992. After consideration of the public comments regarding the proposed regulations, the regulations are adopted as revised by this Treasury decision.

Explanation of Statutory Provisions

Section 468B (a) through (d) provides rules for the taxation of designated settlement funds and for taxpayers that make qualified payments to such funds. Section 468B(e) provides that section 468B (other than subsection (g)) does not apply with respect to any liability of a taxpayer arising under a workers compensation act or any contested liability (within the meaning of section 461(f)) of a taxpayer. Section 468B(f) provides that, except as provided in regulations, any payment in respect of a liability arising out of personal injury, death, or property damage (and not described in section 468B(e)) that is made to a trust fund or escrow fund that is not a designated settlement fund does not constitute economic performance.

Section 468B(g) provides that "[n]othing in any provision of law shall be construed as providing that an escrow account, settlement fund, or similar fund is not subject to current income tax." In addition, section 468B(g) provides that "[t]he Secretary shall prescribe regulations providing for the taxation of any such account or fund whether as a grantor trust or otherwise." Section 468B(g) was enacted, in part, to reverse the finding in Rev. Rul. 71–119, 1971–1 C.B. 163. See § 601.601(d)(2)(ii)(*b*) of this Chapter. (Some taxpayers argued that Rev. Rul. 71–119 was authority for avoiding the current taxation of income earned on the assets of an escrow account, settlement fund, or other similar fund.) See H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II–845 n. 2 (1986). In accordance with section 468B(g), Rev. Rul. 92–51, 1992–27 I.R.B. 9, obsoletes Rev. Rul. 71–119 (and modifies or obsoletes related revenue rulings) for funds established after August 16, 1986. Accordingly, no authority exists for the position that the income of an escrow account, settlement fund, or other similar fund is not subject to current taxation.

The provisions applicable to designated settlement funds are generally effective after July 18, 1984, under rules applicable to section 461(h). Section 468B(g) is effective for funds established after August 16, 1986.

Public Comments

Section 1.468B–1 Qualified Settlement Funds

In General

The proposed regulations mandate qualified settlement fund treatment for a fund, account, or trust that satisfies the requirements of a qualified settlement fund. Commentators recommended that the final regulations make the application of the qualified settlement fund rules elective. The Service and the Treasury Department believe that inconsistent tax treatment for similar funds, claimants, or transferors, as well as the accompanying complexity, is undesirable. Therefore, the final regulations do not provide electivity.

The proposed regulations invited comments regarding the extent to which qualified settlement funds should be available for the claims of general creditors and security holders in bankruptcy. Generally, commentators stated that the qualified settlement fund rules should not be imposed in the bankruptcy context. Some commentators recommended that the qualified settlement fund rules be applied to a bankruptcy fund on an elective basis.

The Service and the Treasury Department have concluded that the application of the regulations should not be elective. The final regulations exclude claims of general trade creditors and debtholders that relate to a title 11 or similar case, or to a workout. However, qualified settlement fund treatment remains available for other liabilities such as tort liabilities irrespective of whether the liability, for example, relates to a title 11 case. For instance, if a corporation is a defendant in a class action involving a tort liability and subsequently files a petition for bankruptcy, the defendant's bankruptcy will not affect the qualified settlement fund treatment of a fund, account, or trust established to resolve or satisfy the tort liability.

Coordination With Other Entity Classifications

The final regulations continue to provide that, for all purposes of the Internal Revenue Code (Code), the status of a fund, account, or trust as a qualified settlement fund overrides its possible classification as a trust, a § 1.461–2(c)(1) contested liability fund, or, if it is organized as a trust under applicable state law, an association or partnership. Unless it is organized as a trust under state law, however, an association or partnership does not qualify as a qualified settlement fund.

Requirements of a Qualified Settlement Fund

Under the proposed regulations, a fund, account, or trust is a qualified settlement fund only if it satisfies three requirements. The first requirement is that it must be established pursuant to an order of, or be approved by, a governmental authority and must be subject to the continuing supervision or jurisdiction of that governmental authority. A governmental authority is defined as the United States, any state, territory, possession, or political subdivision thereof, or any agency or instrumentality (including a court of law) of any of the foregoing. The second requirement under the proposed regulations is that the fund, account, or trust must be established to resolve or satisfy one or more claims that result from an event, or series of events, that has occurred and that gives rise to liabilities under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA); out of a

tort, breach of contract (which is not defined in the same manner as in § 1.461–4(g)(2)(i)), or violation of law; or designated by the Commissioner in a revenue ruling or revenue procedure.

The third requirement under the proposed regulations is that the fund, account, or trust must be a trust under state law or its assets must otherwise be segregated from other assets of the transferor (and related persons).

Governmental Order or Approval Requirement

Commentators have asked whether the first requirement is met if a court enters a dismissal of a lawsuit pursuant to a settlement between the parties but does not order the establishment of, or approve, a fund, account, or trust that is established by the parties to the lawsuit in connection with the settlement. In such cases, the fund, account, or trust would not meet the governmental order or approval requirement because it was neither established pursuant to an order of, nor approved by, the governmental authority.

One commentator requested that arbitration panels be included as a governmental authority. To further the goals of alternative dispute resolution procedures, the final regulations treat certain arbitration panels as governmental authorities. Another commentator requested the elimination of the requirement in the proposed regulations that a fund, account, or trust be subject to the continuing supervision of the governmental authority. Accordingly, the final regulations do not require continuing supervision but retain the requirement that the fund, account, or trust be subject to the continuing jurisdiction of the governmental authority that either ordered its establishment or approved it.

Resolve or Satisfy Requirement

One commentator requested that the final regulations clarify whether all potential claims must be asserted before a fund, account, or trust satisfies the requirement of § 1.468B–1(c)(2). In response to this comment, the final regulations clarify that even a single claim satisfies the requirement. In addition, as requested by another commentator, the final regulations clarify that a declared finding of liability is not required. The final regulations also clarify that a § 1.461–2(c)(1) contested liability fund satisfies the "resolve or satisfy requirement" by providing that qualified settlement fund treatment is available for both contested and uncontested liabilities.

Commentators requested that the final regulations allow additional types of qualified settlement fund liabilities to be designated by private letter ruling. This comment was not adopted. The Service and the Treasury Department believe that designating additional types of liabilities only by revenue ruling or revenue procedure will ensure efficient and consistent administration of the qualified settlement fund rules.

Commentators requested that, in addition to CERCLA liabilities, the final regulations also apply to other similar environmental liabilities arising under state law or other federal laws. Certain state and federal environmental laws vary significantly from CERCLA. Therefore, the Service and the Treasury Department will consider adding other categories of environmental liabilities by revenue ruling or revenue procedure after the different laws are individually studied.

Consistent with the rules in section 461(h)(2)(B) (regarding economic performance for liabilities to provide property or services), the final regulations also provide that qualified settlement fund treatment is not available with respect to a liability to provide property or services to the extent a transfer to the fund does not extinguish that liability. However, the final regulations provide an exception to this rule for CERCLA liabilities, if, after a transferor makes a transfer to a fund, account, or trust, the transferor's only remaining liability to the Environmental Protection Agency is a remote, future obligation to provide property or services.

Trust or Segregation Requirement

As requested by some commentators, the final regulations clarify that a separate bank account satisfies the segregation requirement. Commentators also requested clarification as to whether a trust or segregated assets can qualify as a qualified settlement fund if, under state or federal law, the trust or segregated assets may be reached by creditors of the transferor. This contingency does not affect the status of a fund, account, or trust as a qualified settlement fund.

Classification of a Fund Established to Resolve or Satisfy Allowable and Non-allowable Liabilities

Commentators requested clarification as to the proper treatment of a fund, account, or trust that is established to resolve or satisfy claims for liabilities described in § 1.468B–1(c)(2) as well as other types of liabilities. In response to these comments, the final regulations provide that a qualified settlement fund may be used to resolve or satisfy both allowable and non-allowable claims. However, a transfer to a qualified settlement fund with respect to non-allowable claims does not constitute economic performance.

Section 1.468B–2 Taxation of Qualified Settlement Funds and Related Administrative Requirements

Modified Gross Income

The proposed regulations provide that a qualified settlement fund is subject to tax on its modified gross income, which is defined as gross income computed with certain modifications. One modification excludes amounts transferred to the qualified settlement fund by, or on behalf of, the transferor. The other modifications are deductions for administrative costs and other incidental expenses incurred in connection with the operation of the fund; losses sustained by the fund in connection with the sale, exchange, or worthlessness of property; and specially defined net operating losses. One commentator was uncertain as to whether section 382 limitations apply to a qualified settlement fund net operating loss. Taxpayers should note that, since qualified settlement funds are only treated as corporations for purposes of subtitle F, the net operating loss deduction is applied without regard to section 382.

Commentators requested that a qualified settlement fund be allowed to deduct all expenses incurred in operating a trade or business, including its distributive share of partnership expenses. The Service and the Treasury Department believe that the operation of a trade or business is inconsistent with the general nature of a qualified settlement fund. Therefore, the final regulations do not adopt the suggested modification. However, because some previously established qualified settlement funds may hold illiquid partnership interests, the final regulations provide a 10-year transition rule for partnership interests acquired by a qualified settlement fund prior to February 15, 1992. Subject to certain limitations, a qualified settlement fund that holds one of these partnership interests may generally deduct its distributive share of the partnership's items of loss, deduction, or credit, but only to the extent of its distributive share of that partnership's items of income and gain for the same taxable year.

Commentators also requested that a qualified settlement fund be allowed to deduct payments made on behalf of claimants, such as payments for claimants' legal expenses. The Service and the Treasury Department believe

such payments are properly viewed as distributions to the claimants. Accordingly, the final regulations do not allow qualified settlement funds to deduct payments made on behalf of claimants.

The proposed regulations invited comments regarding whether a qualified settlement fund should be taxable on its modified gross income if the transferor is exempt from tax and the distributions are excludable from the claimants' income. Commentators generally recommended that the income of such funds not be taxable. Some commentators also recommended that the final regulations go further and not tax the income of a qualified settlement fund if either the transferor is exempt from tax or the distributions to claimants are excludable from their gross income.

The final regulations do not adopt these suggestions. The Service and the Treasury Department believe that basing the taxation of a qualified settlement fund's income on the tax status of the transferor and the claimants would lead to complex rules that would be difficult for taxpayers and the Service to apply and administer. In many settlement funds with multiple transferors, only some of the transferors are tax exempt. Similarly, many claims allege multiple liabilities only some of which will result in distributions to claimants that are excludable from gross income. Thus, the regulations would have to require burdensome tracing and allocation rules for tax-exempt transferors and excludable liabilities. However, the Service and the Treasury Department agree with the suggestion of some commentators that a longer transition rule will alleviate certain concerns of tax-exempt transferors. Accordingly, the final regulations permit funds to continue to use, until January 1, 1996, a reasonable, consistently applied method of taxation. A tax exempt transferor that has established a fund could, therefore, reasonably continue to take the position until January 1, 1996, that the fund is a grantor trust and the income is exempt from tax.

Taxable Year and Accounting Method

The proposed regulations provide that the taxable year of a qualified settlement fund is the calendar year and that the fund must use the accrual method of accounting. One commentator requested that qualified settlement funds, or at least small qualified settlement funds, be permitted to use the cash receipts and disbursement method of accounting. In the alternative, the commentator requested that the final regulations treat the use of the cash receipts and disbursement method of accounting as a reasonable method of accounting through 1992. The final regulations provide that for a qualified settlement fund established prior to January 1, 1993, the Service will not challenge the fund's use of the cash receipts and disbursement method of accounting prior to 1996.

Treatment as a Corporation for Purposes of Subtitle F

The proposed regulations provide that a qualified settlement fund is treated as a corporation for purposes of subtitle F of the Code. Thus, a qualified settlement fund must file an income tax return for the period it is in existence. This period begins on the first date it satisfies the requirements of § 1.468B–1, and ends on the earlier of the date it no longer meets those requirements or the date it no longer has any assets and will not receive any more transfers. A commentator requested that, to facilitate the "winding up" of a qualified settlement fund, a fund's existence end if the only remaining assets are reserves for certain contingencies, such as taxes. To accommodate this concern, the final regulations permit a qualified settlement fund whose only remaining assets are reserves for potential tax liabilities and related professional fees to request the prompt assessment of tax under section 6501(d).

The proposed regulations designate certain persons, in order of priority, as the administrator of a qualified settlement fund. In response to commentators' requests, the final regulations provide that the administrator may be approved (and not just designated) by the governmental authority, the trustee of a trust that is the qualified settlement fund may be the administrator, and the "default" administrator is the transferor rather than the escrow agent.

The proposed regulations provide that a qualified settlement fund must make an information return for, or withhold on, a distribution to a claimant if the transferor would have been required to if it had made the distribution directly to the claimant. Several commentators stated that the administrator of a qualified settlement fund may lack sufficient information to make this determination. A suggested alternative was to require gross proceeds reporting on distributions to claimants. Another suggested alternative was to allow the administrator to reasonably rely on information provided by the transferor.

The Service and the Treasury Department believe that the proposed regulations generally do not impose a greater burden with respect to information reporting or withholding than existed with respect to funds, accounts, or trusts before the enactment of section 468B. In addition, the Service and the Treasury Department believe that administrators generally have the ability to require transferors to provide the information needed to comply with the reporting and withholding requirements. Nevertheless, in response to commentators' concerns, the final regulations make some revisions to the information reporting and withholding rules. For example, the final regulations provide that if one or more transferors to a qualified settlement fund would have been required to make a return, the fund must make a return. This eliminates some of the difficulties an administrator would encounter in determining how to report payments if some, but not all, transferors would have been required to report a direct distribution.

The Service and the Treasury Department believe that gross proceeds reporting would impose an undue burden on claimants and the Service because the reported information will not identify a claimant's gross income from a distribution. Therefore, except as otherwise required under subtitle F, qualified settlement funds are not subject to gross proceeds reporting.

Section 1.468B–3 Rules Applicable to the Transferor

Transfer of Property—In General

The proposed regulations provide that a transferor must treat a transfer of property to a qualified settlement fund as a sale or exchange of that property for purposes of section 1001(a). One commentator was uncertain whether, under this rule, the transfer of a transferor's obligation to provide services or property at a reduced price in the future would result in gain or loss to the transferor. Under general principles of federal income tax law, the issuance of a transferor's debt, obligation to provide services or property in the future, or obligation to make a payment described in § 1.461–4(g), is generally not a transfer of property by the transferor. Thus, it generally does not result in a sale or exchange by the transferor. The final regulations clarify this.

Transfer of Transferor's Stock or Partnership Interests

The proposed regulations reserve on the treatment of transfers to a qualified settlement fund of a transferor's stock and of a partnership interest in a partnership that is controlled by the transferor. Commentators recommended

that such transfers be treated the same as transfers of other property but that to prevent valuation abuses the final regulations could require appraisals of the stock or partnership interests and disclosure of such transfers by the transferor.

Accordingly, the final regulations generally treat transfers of a transferor's stock, an interest in a transferor that is a partnership, or a partnership interest in which the transferor is a direct or indirect partner the same as transfers of other property. However, the final regulations require the transferor to obtain an appraisal for partnership interests and its stock if it is not publicly traded, to attach a copy of the appraisal to its income tax return, and to provide a copy of the appraisal to the administrator of the qualified settlement fund.

Statement to the Qualified Settlement Fund and the Internal Revenue Service

The proposed regulations provide that for each year in which a transferor transfers cash or property to a qualified settlement fund, the transferor must provide to the administrator a statement indicating the cash or property transferred and also attach a copy of the statement to its income tax return. A commentator requested that transferors be allowed to use a combined statement to maintain the confidentiality of the amounts they contributed to a settlement fund.

Accordingly, the final regulations allow any two or more transferors to provide a combined statement to the administrator. A transferor that uses a combined statement, however, must attach a schedule to its income tax return that describes each asset the transferor transferred to the qualified settlement fund.

Distributions to Transferors

The proposed regulations provide that a distribution from a qualified settlement fund to a transferor is excluded from the gross income of the transferor to the extent the transferor has been denied economic performance with respect to a transfer to the fund. Commentators requested that the final regulations expand the tax benefit rule to any distribution to a transferor that relates to a prior transfer for which the transferor did not receive a tax benefit. The final regulations provide that a distribution is excluded from the gross income of the transferor to the extent provided by section 111(a).

In response to another commentator's request, the final regulations clarify that information reporting or withholding rules apply with respect to distributions to transferors. The final regulations provide that a qualified settlement fund is deemed to be in a trade or business and to have made the distribution to the transferor in the course of its trade or business for purposes of sections 6041 and 6041A.

Section 1.468B–4 Taxability of Distributions to Claimants

Under the proposed regulations, the inclusion of a distribution in the claimant's gross income is determined by reference to the claim for which the distribution is made and as if the distribution were made directly by the transferor. Several commentators stated that, to avoid double taxation, a claimant should not be taxed on a distribution to the extent it is attributable to income earned by and taxed to a qualified settlement fund. As shown by the following examples, the Service and the Treasury Department believe that the proposed regulations do not generally impose double taxation.

Facts. Corporation X, a defendant in a class action alleging tort liabilities, is subject to a 34% tax rate. The claimants and the qualified settlement fund are subject to a 31% tax rate. Corporation X and the qualified settlement fund it establishes earn a 10% rate of return on investments.

Example 1. On January 1, 1993, Corporation X establishes a qualified settlement fund and transfers $93.55 to the fund. The qualified settlement fund earns $9.35 of interest during 1993 and pays $2.90 of tax. On January 1, 1994, the fund makes a taxable distribution of the remaining $100 to the claimants.

Example 2. On January 1, 1993, Corporation X establishes a reserve and deposits $93.55 in a separate bank account. The account is neither ordered nor approved by a governmental authority and, therefore, is not a qualified settlement fund. Corporation X earns $9.35 of interest during 1993 and pays $3.18 of tax. On January 1, 1994, Corporation X makes a taxable distribution of the remaining $99.72 to the claimants.

Thus, under the rule in the proposed regulations, not only is there no double taxation but, if the transferor is subject to tax at the maximum corporate tax rate, the overall combined tax with respect to the earnings component of distributions to claimants could be slightly less if the fund is a qualified settlement fund rather than an account that is the transferor's property. In addition, as shown in *Example 3* below, the result in Example 1 is the same (on an after-tax basis) as if the defendant pays the claimant directly on January 1, 1993, instead of either depositing money in a bank account or transferring money to a qualified settlement fund. The final regulations, therefore, retain the rule in the proposed regulations.

Example 3. On January 1, 1993, Corporation X makes a taxable settlement payment of $93.55 directly to a claimant. The claimant deposits $64.55 ($93.55 less $29 of tax) in a bank account. The claimant earns $6.46 of interest during 1993 and pays $2 of tax. On January 1, 1994, the claimant has $69.01. Thus, on January 1, 1994, the claimant has the same amount on an after-tax basis (approximately $69) as the claimant in Example 1 does after it pays $31 of tax on the $100 distribution it receives from Corporation X.

Section 1.468B–5 Effective Dates and Transition Rules

In General

In general, the final regulations are effective on January 1, 1993. Thus, the final regulations apply to income of a qualified settlement fund earned after, transfers to a fund after, and distributions from a fund after, December 31, 1992.

Request for Alternative Taxation of Post-1992 Fund Income

The proposed regulations provide that a qualified settlement fund in existence on February 14, 1992, and its transferor, may jointly request a ruling from the Service permitting the fund to be taxed in a manner other than that required by the regulations for taxable years ending after December 31, 1992. To obtain a favorable ruling, the proposed regulations require the transferor and the qualified settlement fund to demonstrate that the method of taxation requested is reasonable and is consistent with prior tax positions, and that the fund will exist after 1992 for only a reasonably short period of time.

A commentator requested that a ruling not be required and that instead transferors and qualified settlement funds be allowed to jointly elect to continue to use their current, reasonable method of taxation for the remainder of the fund's existence. As an alternative, the commentator requested that transferors and qualified settlement funds be allowed to continue to use their current, reasonable method of taxation for at least three additional years.

In response to these comments, the final regulations have eliminated the need for a ruling and provide that for funds established after August 16, 1986, but prior to February 15, 1992, the Service will not challenge a reasonable, consistently applied method of taxation for transfers to, income earned by, and distributions made by a fund, account, or trust after August 16, 1986, but prior to 1996.

Taxation of Pre-1993 Fund Income

The proposed regulations provide that the Service will not challenge a reasonable, consistently applied method of taxation for transfers to a fund or income earned by the fund prior to 1993. As discussed above, this safe-harbor rule has been extended to apply to reasonable, consistently applied methods of taxation used prior to 1996.

With respect to a fund, account, or trust that is eligible for this safe-harbor rule, commentators requested that penalties be waived during the period a reasonable, consistently applied method of taxation is used. The final regulations provide that for taxable years beginning prior to January 1, 1993, penalties will generally not be imposed with respect to the use of a reasonable, consistently applied method of taxation.

The proposed regulations provide that transferors to a fund, account, or trust and the person who would be the administrator if the fund were a qualified settlement fund may jointly elect to retroactively apply the qualified settlement fund rules to the fund, account, or trust. Commentators requested, and the final regulations permit, a unilateral election by the person who would be the administrator of the fund, account, or trust.

Section 130 Qualified Assignments

Several commentators requested that the final regulations provide that a designated or qualified settlement fund may enter into a structured settlement agreement with a claimant and may make a section 130 qualified assignment to extinguish the fund's liability to make a distribution to that claimant. The Service and the Treasury Department are considering these and related comments and anticipate providing guidance with respect to the interaction of section 130 qualified assignments and section 468B(g) in the future.

Other Escrow Accounts, Settlement Funds, or Similar Funds

Commentators requested that additional rules under section 468B(g) be provided for the tax treatment of funds, accounts, or trusts that are not qualified settlement funds, such as escrow accounts used in the sale of property and section 1031 qualified escrow accounts. The Service and the Treasury Department are aware of the need for guidance in this area. In order that the final qualified settlement fund regulations not be delayed, however, the Service and the Treasury Department have decided to address these other issues in future projects.

Special Analyses

It has been determined that these final regulations 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 Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, a copy of the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Linda M. Kroening of the Office of Assistant Chief Counsel (Income Tax & Accounting), Office of Chief Counsel, Internal Revenue Service. However, other personnel from the Internal Revenue Service and Treasury Department participated in developing the regulations, in matters of both substance and style.

List of Subjects

26 CFR 1.461–1 through 1.469–11T

Accounting, Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are 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 to read as follows:

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

§ 1.468B also issued under 26 U.S.C. 461(h) and 468B. §§ 1.468B–0 through 1.468B–5 also issued under 26 U.S.C. 461(h) and 468B. * * *

Par. 2. Sections § 1.468B and 1.468B–0 through 1.468B–5 are added to read as follows:

§ 1.468B Designated settlement funds.

A designated settlement fund, as defined in section 468B(d)(2), is taxed in the manner described in § 1.468B–2. The rules for transferors to a qualified settlement fund described in § 1.468B–3 apply to transferors to a designated settlement fund. Similarly, the rules for claimants of a qualified settlement fund described in § 1.468B–4 apply to claimants of a designated settlement fund. A fund, account, or trust that does not qualify as a designated settlement fund is, however, a qualified settlement fund if it meets the requirements of a qualified settlement fund described in § 1.468B–1.

§ 1.468B–0 Table of contents.

This section contains a listing of the headings of §§ 1.468B–1 through 1.468B–5.

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§ 1.468B–1 Qualified settlement funds.

(a) *In general.* A qualified settlement fund is a fund, account, or trust that satisfies the requirements of paragraph (c) of this section.

(b) *Coordination with other entity classifications.* If a fund, account, or trust that is a qualified settlement fund could be classified as a trust within the meaning of § 301.7701–4 of this chapter, it is classified as a qualified settlement fund for all purposes of the Internal Revenue Code (Code). If a fund, account, or trust, organized as a trust under applicable state law, is a qualified settlement fund, and could be classified as either an association (within the meaning of § 301.7701–2 of this chapter) or a partnership (within the meaning of § 301.7701–3 of this chapter), it is classified as a qualified settlement fund for all purposes of the Code. If a fund, account, or trust, established for contested liabilities pursuant to § 1.461–2(c)(1) is a qualified settlement fund, it is classified as a qualified settlement fund for all purposes of the Code.

(c) *Requirements.* A fund, account, or trust satisfies the requirements of this paragraph (c) if—

(1) It is established pursuant to an order of, or is approved by, the United States, any state (including the District of Columbia), territory, possession, or political subdivision thereof, or any agency or instrumentality (including a court of law) of any of the foregoing and is subject to the continuing jurisdiction of that governmental authority;

(2) It is established to resolve or satisfy one or more contested or uncontested claims that have resulted or may result from an event (or related series of events) that has occurred and that has given rise to at least one claim asserting liability—

(i) Under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (hereinafter referred to as CERCLA), as amended, 42 U.S.C. 9601 et seq.; or

(ii) Arising out of a tort, breach of contract, or violation of law; or

(iii) Designated by the Commissioner in a revenue ruling or revenue procedure; and

(3) The fund, account, or trust is a trust under applicable state law, or its assets are otherwise segregated from other assets of the transferor (and related persons).

(d) *Definitions.* For purposes of this section—

(1) *Transferor.* A "transferor" is a person that transfers (or on behalf of whom an insurer or other person transfers) money or property to a qualified settlement fund to resolve or satisfy claims described in paragraph (c)(2) of this section against that person.

(2) *Related person.* A "related person" is any person who is related to the transferor within the meaning of sections 267(b) or 707(b)(1).

(e) *Governmental order or approval requirement*—(1) *In general.* A fund, account, or trust is "ordered by" or "approved by" a governmental authority described in paragraph (c)(1) of this section when the authority issues its initial or preliminary order to establish, or grants its initial or preliminary approval of, the fund, account, or trust, even if that order or approval may be subject to review or revision. Except as otherwise provided in paragraph (j)(2) of this section, the governmental authority's order or approval has no retroactive effect and does not permit a fund, account, or trust to be a qualified settlement fund prior to the date the order is issued or the approval is granted.

(2) *Arbitration panels.* An arbitration award that orders the establishment of, or approves, a fund, account, or trust is an order or approval of a governmental authority described in paragraph (c)(1) of this section if—

(i) The arbitration award is judicially enforceable;

(ii) The arbitration award is issued pursuant to a bona fide arbitration proceeding in accordance with rules that are approved by a governmental authority described in paragraph (c)(1) of this section (such as self-regulatory organization-administered arbitration proceedings in the securities industry); and

(iii) The fund, account, or trust is subject to the continuing jurisdiction of the arbitration panel, the court of law that has jurisdiction to enforce the arbitration award, or the governmental authority that approved the rules of the arbitration proceeding.

(f) *Resolve or satisfy requirement*—(1) *Liabilities to provide services or property.* Except as otherwise provided in paragraph (f)(2) of this section, a liability is not described in paragraph (c)(2) of this section if it is a liability for the provision of services or property, unless the transferor's obligation to provide services or property is extinguished by a transfer or transfers to the fund, account, or trust.

(2) *CERCLA liabilities.* A transferor's liability under CERCLA to provide services or property is described in paragraph (c)(2) of this section if

following its transfer to a fund, account, or trust the transferor's only remaining liability to the Environmental Protection Agency (if any) is a remote, future obligation to provide services or property.

(g) *Excluded liabilities.* A liability is not described in paragraph (c)(2) of this section if it—

(1) Arises under a workers compensation act or a self-insured health plan;

(2) Is an obligation to refund the purchase price of, or to repair or replace, products regularly sold in the ordinary course of the transferor's trade or business;

(3) Is an obligation of the transferor to make payments to its general trade creditors or debtholders that relates to a title 11 or similar case (as defined in section 368(a)(3)(A)), or a workout; or

(4) Is designated by the Commissioner in a revenue ruling or a revenue procedure (see § 601.601(d)(2)(ii)(*b*) of this chapter).

(h) *Segregation requirement*—(1) *In general.* If it is not a trust under applicable state law, a fund, account, or trust satisfies the requirements of paragraph (c)(3) of this section if its assets are physically segregated from other assets of the transferor (and related persons). For example, cash held by a transferor in a separate bank account satisfies the segregation requirement of paragraph (c)(3) of this section.

(2) *Classification of fund established to resolve or satisfy allowable and non-allowable claims.* If a fund, account, or trust is established to resolve or satisfy claims described in paragraph (c)(2) of this section as well as other types of claims (*i.e.*, non-allowable claims) arising from the same event or related series of events, the fund is a qualified settlement fund. However, under § 1.468B–3(c), economic performance does not occur with respect to transfers to the qualified settlement fund for non-allowable claims.

(i) [Reserved]

(j) *Classification of fund prior to satisfaction of requirements in paragraph (c) of this section*—(1) *In general.* If a fund, account, or trust is established to resolve or satisfy claims described in paragraph (c)(2) of this section, the assets of the fund, account, or trust are treated as owned by the transferor of those assets until the fund, account, or trust also meets the requirements of paragraphs (c) (1) and (3) of this section. On the date the fund, account, or trust satisfies all the requirements of paragraph (c) of this section, the transferor is treated as transferring the assets to a qualified settlement fund.

(2) *Relation-back rule*—(i) *In general.* If a fund, account, or trust meets the requirements of paragraphs (c)(2) and (c)(3) of this section prior to the time it meets the requirements of paragraph (c)(1) of this section, the transferor and administrator (as defined in § 1.468B–2(k)(3)) may jointly elect (a relation-back election) to treat the fund, account, or trust as coming into existence as a qualified settlement fund on the later of the date the fund, account, or trust meets the requirements of paragraphs (c)(2) and (c)(3) of this section or January 1 of the calendar year in which all the requirements of paragraph (c) of this section are met. If a relation-back election is made, the assets held by the fund, account, or trust on the date the qualified settlement fund is treated as coming into existence are treated as transferred to the qualified settlement fund on that date.

(ii) *Relation-back election.* A relation-back election is made by attaching a copy of the election statement, signed by each transferor and the administrator, to (and as part of) the timely filed income tax return (including extensions) of the qualified settlement fund for the taxable year in which the fund is treated as coming into existence. A copy of the election statement must also be attached to (and as part of) the timely filed income tax return (including extensions), or an amended return that is consistent with the requirements of §§ 1.468B–1 through § 1.468B–4, of each transferor for the taxable year of the transferor that includes the date on which the qualified settlement fund is treated as coming into existence. The election statement must contain—

(A) A legend, "§ 1.468B–1 Relation-Back Election", at the top of the first page;

(B) Each transferor's name, address, and taxpayer identification number;

(C) The qualified settlement fund's name, address, and employer identification number;

(D) The date as of which the qualified settlement fund is treated as coming into existence; and

(E) A schedule describing each asset treated as transferred to the qualified settlement fund on the date the fund is treated as coming into existence. The schedule of assets does not have to identify the amount of cash or the property treated as transferred by a particular transferor. If the schedule does not identify the transferor of each asset, however, each transferor must include with the copy of the election statement that is attached to its income tax return (or amended return) a schedule describing each asset the transferor is treated as transferring to the qualified settlement fund.

(k) *Examples.* The following examples illustrate the rules of this section:

Example 1. In a class action brought in a United States federal district court, the court holds that the defendant, Corporation X, violated certain securities laws and must pay damages in the amount of $150 million. Pursuant to an order of the court, Corporation X transfers $50 million in cash and transfers property with a fair market value of $75 million to a state law trust. The trust will liquidate the property and distribute the cash proceeds to the plaintiffs in the class action. The trust is a qualified settlement fund because it was established pursuant to the order of a federal district court to resolve or satisfy claims against Corporation X for securities law violations that have occurred.

Example 2. (i) Assume the same facts as in *Example 1*, except that Corporation X and the class of plaintiffs reach an out-of-court settlement that requires Corporation X to establish and fund a state law trust before the settlement agreement is submitted to the court for approval.

(ii) The trust is not a qualified settlement fund because it neither is established pursuant to an order of, nor has it been approved by, a governmental authority described in paragraph (c)(1) of this section.

Example 3. On June 1, 1994, Corporation Y establishes a fund to resolve or satisfy claims against it arising from the violation of certain securities laws. On that date, Corporation Y transfers $10 million to a segregated account. On December 1, 1994, a federal district court approves the fund. Assuming Corporation Y and the administrator of the qualified settlement fund do not make a relation-back election, Corporation Y is treated as the owner of the $10 million dollars, and is taxable on any income earned on that money, from June 1 through November 30, 1994. The fund is a qualified settlement fund beginning on December 1, 1994.

Example 4. (i) On September 1, 1993, Corporation X, which has a taxable year ending on October 31, enters into a settlement agreement with a plaintiff class for asserted tort liabilities. Under the settlement agreement, Corporation X makes two $50 million payments into a segregated fund, one on September 1, 1993, and one on October 1, 1993, to resolve or satisfy the tort liabilities. A federal district court approves the settlement agreement on November 1, 1993.

(ii) The administrator of the fund and Corporation X elect to treat the fund as a qualified settlement fund prior to governmental approval under the relation-back rule of paragraph (j)(2) of this section. The administrator must attach the relation-back election statement to the fund's income tax return for calendar year 1993, and Corporation X must attach the election to its original or amended income tax return for its taxable year ending October 31, 1993.

(iii) Pursuant to the relation-back election, the fund begins its existence as a qualified

settlement fund on September 1, 1993, and Corporation X is treated as transferring $50 million to the qualified settlement fund on September 1, 1993, and $50 million on October 1, 1993.

(iv) With respect to these transfers, Corporation X must provide the statement described in § 1.468B–3(e) to the administrator of the qualified settlement fund by February 15, 1994, and must attach a copy of this statement to its original or amended income tax return for its taxable year ending October 31, 1993.

Example 5. Assume the same facts as in *Example 4*, except that the court approves the settlement on May 1, 1994. The administrator must attach the relation-back election statement to the fund's income tax return for calendar year 1994, and Corporation X must attach the election statement to its original or amended income tax return for its taxable year ending October 31, 1994. Pursuant to this election, the fund begins its existence as a qualified settlement fund on January 1, 1994. In addition, Corporation X is treated as transferring to the qualified settlement fund all amounts held in the fund on January 1, 1994. With respect to the transfer, Corporation X must provide the statement described in § 1.468B–3(e) to the administrator of the qualified settlement fund by February 15, 1995, and must attach a copy of this statement to its income tax return for its taxable year ending October 31, 1994.

Example 6. Corporation Z establishes a fund that meets all the requirements of section 468B(d)(2) for a designated settlement fund, except that Corporation Z does not make the election under section 468B(d)(2)(F). Although the fund does not qualify as a designated settlement fund, it is a qualified settlement fund because the fund meets the requirements of paragraph (c) of this section.

Example 7. Corporation X owns and operates a landfill in State A. State A requires Corporation X to transfer money to a trust annually based on the total tonnage of material placed in the landfill during the year. Under the laws of State A, Corporation X will be required to perform (either itself or through contractors) specified closure activities when the landfill is full, and the trust assets will be used to reimburse Corporation X for those closure costs. The trust is not a qualified settlement fund because it is established to secure the liability of Corporation X to perform the closure activities.

§ 1.468B–2 Taxation of qualified settlement funds and related administrative requirements.

(a) *In general.* A qualified settlement fund is a United States person and is subject to tax on its modified gross income for any taxable year at a rate equal to the maximum rate in effect for that taxable year under section 1(e).

(b) *Modified gross income.* The "modified gross income" of a qualified settlement fund is its gross income, as defined in section 61, computed with the following modifications—

(1) In general, amounts transferred to the qualified settlement fund by, or on behalf of, a transferor to resolve or satisfy a liability for which the fund is established are excluded from gross income. However, dividends on stock of a transferor (or a related person), interest on debt of a transferor (or a related person), and payments in compensation for late or delayed transfers, are not excluded from gross income.

(2) A deduction is allowed for administrative costs and other incidental expenses incurred in connection with the operation of the qualified settlement fund that would be deductible under chapter 1 of the Internal Revenue Code in determining the taxable income of a corporation. Administrative costs and other incidental expenses include state and local taxes, legal, accounting, and actuarial fees relating to the operation of the qualified settlement fund, and expenses arising from the notification of claimants and the processing of their claims. Administrative costs and other incidental expenses do not include legal fees incurred by, or on behalf of, claimants.

(3) A deduction is allowed for losses sustained by the qualified settlement fund in connection with the sale, exchange, or worthlessness of property held by the fund to the extent the losses would be deductible in determining the taxable income of a corporation under section 165 (f) or (g), and sections 1211(a) and 1212(a).

(4) A deduction is allowed for the amount of a net operating loss of the qualified settlement fund to the extent the loss would be deductible in determining the taxable income of a corporation under section 172(a). For purposes of this paragraph (b)(4), the net operating loss of a qualified settlement fund for a taxable year is the amount by which the deductions allowed under paragraphs (b)(2) and (b)(3) of this section exceed the gross income of the fund computed with the modification described in paragraph (b)(1) of this section.

(c) *Partnership interests held by a qualified settlement fund on February 14, 1992*—(1) *In general.* For taxable years ending prior to January 1, 2003, a qualified settlement fund that holds a partnership interest it acquired prior to February 15, 1992, is allowed a deduction for its distributive share of that partnership's items of loss, deduction, or credit described in section 702(a) that would be deductible in determining the taxable income (or in the case of a credit, the income tax liability) of a corporation to the extent of the fund's distributive share of that partnership's items of income and gain described in section 702(a) for the same taxable year. For purposes of this paragraph (c)(1), a distributive share of a partnership credit is treated as a deduction in an amount equal to the amount of the credit divided by the rate described in paragraph (a) of this section.

(2) *Limitation on changes in partnership agreements and capital contributions.* For purposes of paragraph (c)(1) of this section, changes in a qualified settlement fund's distributive share of items of income, gain, loss, deduction, or credit are disregarded if—

(i) They result from a change in the terms of the partnership agreement on or after December 18, 1992, or a capital contribution to the partnership on or after December 18, 1992, unless the partnership agreement as in effect prior to December 18, 1992, requires the contribution; and

(ii) A principal purpose of the change in the terms of the partnership agreement or the capital contribution is to circumvent the limitation described in paragraph (c)(1) of this section.

(d) *Distributions to transferors and claimants.* Amounts that are distributed by a qualified settlement fund to, or on behalf of, a transferor or a claimant are not deductible by the fund.

(e) *Basis of property transferred to a qualified settlement fund.* A qualified settlement fund's initial basis in property it receives from a transferor (or from an insurer or other person on behalf of a transferor) is the fair market value of that property on the date of transfer to the fund.

(f) *Distribution of property.* A qualified settlement fund must treat a distribution of property as a sale or exchange of that property for purposes of section 1001(a). In computing gain or loss, the amount realized by the qualified settlement fund is the fair market value of the property on the date of distribution.

(g) *Other taxes.* The tax imposed under paragraph (a) of this section is in lieu of any other taxation of the income of a qualified settlement fund under subtitle A of the Internal Revenue Code. Thus, a qualified settlement fund is not subject to the alternative minimum tax of section 55, the accumulated earnings tax of section 531, the personal holding company tax of section 541, or the maximum capital gains rate of section 1(h). A qualified settlement fund is, however, subject to taxes that are not imposed on the income of a taxpayer, such as the tax on transfers of property to foreign entities under section 1491.

(h) *Denial of credits against tax.* The tax imposed on the modified gross

income of a qualified settlement fund under paragraph (a) of this section may not be reduced or offset by any credits against tax provided by part IV of subchapter A of chapter 1 of the Internal Revenue Code.

(i) [Reserved]

(j) *Taxable year and accounting method.* The taxable year of a qualified settlement fund is the calendar year. A qualified settlement fund must use an accrual method of accounting within the meaning of section 446(c).

(k) *Treatment as corporation for purposes of subtitle F.* Except as otherwise provided in §§ 1.468B–5(b), for purposes of subtitle F of the Internal Revenue Code, a qualified settlement fund is treated as a corporation and any tax imposed under paragraph (a) of this section is treated as a tax imposed by section 11. Subtitle F rules that apply to qualified settlement funds include, but are not limited to—

(1) A qualified settlement fund must file an income tax return with respect to the tax imposed under paragraph (a) of this section for each taxable year that the fund is in existence, whether or not the fund has gross income for that taxable year.

(2) A qualified settlement fund is in existence for the period that—

(i) Begins on the first date on which the fund is treated as a qualified settlement fund under § 1.468B–1; and

(ii) Ends on the earlier of the date the fund—

(A) No longer satisfies the requirements of § 1.468B–1; or

(B) No longer has any assets and will not receive any more transfers. (See paragraph (m) of this section for procedures for the prompt assessment of tax.)

(3) The income tax return of the qualified settlement fund must be filed on or before March 15 of the year following the close of the taxable year of the qualified settlement fund unless the fund is granted an extension of time for filing under section 6081. The return must be made by the administrator of the qualified settlement fund. The "administrator" (which may include a trustee if the qualified settlement fund is a trust) of a qualified settlement fund is, in order of priority—

(i) The person designated, or approved, by the governmental authority that ordered or approved the fund for purposes of § 1.468B–1(c)(1);

(ii) The person designated in the escrow agreement, settlement agreement, or other similar agreement governing the fund;

(iii) The escrow agent, custodian, or other person in possession or control of the fund's assets; or

(iv) The transferor or, if there are multiple transferors, all the transferors, unless an agreement signed by all the transferors designates a single transferor as the administrator.

(4) The administrator of a qualified settlement fund must obtain an employer identification number for the fund.

(5) A qualified settlement fund must deposit all payments of tax imposed under paragraph (a) of this section (including any payments of estimated tax) with an authorized government depositary in accordance with § 1.6302–1.

(6) A qualified settlement fund is subject to the addition to tax imposed by section 6655 in the case of an underpayment of estimated tax computed with respect to the tax imposed under paragraph (a) of this section. For purposes of section 6655(g)(2), a qualified settlement fund's taxable income is its modified gross income and a transferor is not considered a predecessor of a qualified settlement fund.

(l) *Information reporting and withholding requirements*—(1) *Payments to a qualified settlement fund.* Payments to a qualified settlement fund are treated as payments to a corporation for purposes of the information reporting requirements of part III of subchapter A of chapter 61 of the Internal Revenue Code.

(2) *Payments and distributions by a qualified settlement fund*—(i) *In general.* Payments and distributions by a qualified settlement fund are subject to the information reporting requirements of part III of subchapter A of chapter 61 of the Internal Revenue Code (Code), and the withholding requirements of subchapter A of chapter 3 of subtitle A and subtitle C of the Code.

(ii) *Special rules.* The following rules apply with respect to payments and distributions by a qualified settlement fund—

(A) A qualified settlement fund must make a return for, or must withhold tax on, a distribution to a claimant if one or more transferors would have been required to make a return or withhold tax had that transferor made the distribution directly to the claimant;

(B) For purposes of sections 6041(a) and 6041A, if a qualified settlement fund makes a payment or distribution to a transferor, the fund is deemed to make the payment or distribution to the transferor in the course of a trade or business;

(C) For purposes of sections 6041(a) and 6041A, if a qualified settlement fund makes a payment or distribution on behalf of a transferor or a claimant, the fund is deemed to make the payment or distribution to the recipient of that payment or distribution in the course of a trade or business;

(D) With respect to a distribution or payment described in paragraph (1)(2)(ii)(C) of this section and the information reporting requirements of part III of subchapter A of chapter 61 of the Internal Revenue Code, the qualified settlement fund is also deemed to have made the distribution or payment to the transferor or claimant.

(m) *Request for prompt assessment.* A qualified settlement fund is eligible to request the prompt assessment of tax under section 6501(d). For purposes of section 6501(d), a qualified settlement fund is treated as dissolving on the date the fund no longer has any assets (other than a reasonable reserve for potential tax liabilities and related professional fees) and will not receive any more transfers.

(n) *Examples.* The following examples illustrate the rules of this section:

Example 1. On June 30, 1993, a United States federal district court approves the settlement of a lawsuit under which Corporation X must transfer $10,833,000 to a qualified settlement fund on August 1, 1993. The $10,833,000 includes $10 million of damages incurred by plaintiffs on October 1, 1992, and $833,000 of interest calculated at 10 percent annually from October 1, 1992, to August 1, 1993. The $833,000 of interest is not a payment to the qualified settlement fund in compensation for a late or delayed transfer to the fund within the meaning of paragraph (b)(1) of this section because the payment of $10,833,000 to the fund is not due until August 1, 1993.

Example 2. Assume the same facts as in *Example 1* except that the settlement agreement also provides for interest to accrue at a rate of 12 percent annually on any amount not transferred to the qualified settlement fund on August 1, 1993, and the only transfer Corporation X makes to the fund is $11,374,650 on January 1, 1994. The additional payment of $541,650 ($11,374,650 paid on January 1, 1994, less $10,833,000 due on August 1, 1993) is a payment to the qualified settlement fund in compensation for a late or delayed transfer to the fund within the meaning of paragraph (b)(1) of this section.

§ 1.468B–3 Rules applicable to the transferor.

(a) *Transfer of property*—(1) *In general.* A transferor must treat a transfer of property to a qualified settlement fund as a sale or exchange of that property for purposes of section 1001(a). In computing the gain or loss, the amount realized by the transferor is the fair market value of the property on the date the transfer is made (or is treated as made under § 1.468B–1(g)) to the qualified settlement fund. Because

the issuance of a transferor's debt, obligation to provide services or property in the future, or obligation to make a payment described in § 1.461–4(g), is generally not a transfer of property by the transferor, it generally does not result in gain or loss to the transferor under this paragraph (a)(1). If a person other than the transferor transfers property to a qualified settlement fund, there may be other tax consequences as determined under general federal income tax principles.

(2) *Anti-abuse rule.* The Commissioner may disallow a loss resulting from the transfer of property to a qualified settlement fund if the Commissioner determines that a principal purpose for the transfer was to claim the loss and—

(i) The transferor places significant restrictions on the fund's ability to use or dispose of the property; or

(ii) The property (or substantially similar property) is distributed to the transferor (or a related person).

(b) *Qualified appraisal requirement for transfers of certain property*—(1) *In general.* A transferor must obtain a qualified appraisal to support a loss or deduction it claims with respect to a transfer to a qualified settlement fund of the following types of property—

(i) Nonpublicly traded securities (as defined in § 1.170A–13(c)(7)(ix)) issued by the transferor (or a related person); and

(ii) Interests in the transferor (if the transferor is a partnership) and in a partnership in which the transferor (or a related person) is a direct or indirect partner.

(2) *Provision of copies.* The transferor must provide a copy of the qualified appraisal to the administrator of the qualified settlement fund no later than February 15 of the year following the calendar year in which the property is transferred. The transferor also must attach a copy of the qualified appraisal to (and as part of) its timely filed income tax return (including extensions) for the taxable year of the transferor in which the transfer is made.

(3) *Qualified appraisal.* A "qualified appraisal" is a written appraisal that—

(i) Is made within 60 days before or after the date the property is transferred to the qualified settlement fund;

(ii) Is prepared, signed, and dated by an individual who is a qualified appraiser within the meaning of § 1.170A–13(c)(5);

(iii) Includes the information required by paragraph (b)(4) of this section; and

(iv) Does not involve an appraisal fee of the type prohibited by § 1.170A–13(c)(6).

(4) *Information included in a qualified appraisal.* A qualified appraisal must include the following information—

(i) A description of the appraised property;

(ii) The date (or expected date) of the property's transfer to the qualified settlement fund;

(iii) The appraised fair market value of the property on the date (or expected date) of transfer;

(iv) The method of valuing the property, such as the comparable sales approach;

(v) The specific basis for the valuation, such as specific comparable sales or statistical sampling, including a justification for using comparable sales or statistical sampling and an explanation of the procedure employed;

(vi) The terms of any agreement or understanding entered into (or expected to be entered into) by or on behalf of the transferor (or a related person) or the qualified settlement fund that relates to the use, sale, or other disposition of the transferred property, including, for example, the terms of any agreement or understanding that temporarily or permanently—

(A) Restricts the qualified settlement fund's right to use or dispose of the property; or

(B) Reserves to, or confers upon, any person other than the qualified settlement fund any right (including designating another person as having the right) to income from the property, to possess the property (including the right to purchase or otherwise acquire the property), or to exercise any voting rights with respect to the property;

(vii) The name, address, and taxpayer identification number of the qualified appraiser; and if the qualified appraiser is acting in his or her capacity as a partner in a partnership, an employee of any person, or an independent contractor engaged by a person other than the transferor, the name, address, and taxpayer identification number of the partnership or the person who employs or engages the qualified appraiser;

(viii) The qualifications of the qualified appraiser, including the appraiser's background, experience, education, and membership, if any, in professional appraisal associations; and

(ix) A statement that the appraisal was prepared for income tax purposes.

(5) *Effect of signature of the qualified appraiser.* Any appraiser who falsely or fraudulently overstates the value of the transferred property referred to in a qualified appraisal may be subject to a civil penalty under section 6701 for aiding and abetting an understatement of tax liability and may have appraisals disregarded pursuant to 31 U.S.C. 330(c).

(c) *Economic performance*—(1) *In general.* Except as otherwise provided in this paragraph (c), for purposes of section 461(h), economic performance occurs with respect to a liability described in § 1.468B–1(c)(2) (determined with regard to § 1.468B–1(f) and (g)) to the extent the transferor makes a transfer to a qualified settlement fund to resolve or satisfy the liability.

(2) *Right to a refund or reversion*—(i) *In general.* Economic performance does not occur to the extent—

(A) The transferor (or a related person) has a right to a refund or reversion of a transfer if that right is exercisable currently and without the agreement of an unrelated person that is independent or has an adverse interest (e.g., the court or agency that approved the fund, or the fund claimants); or

(B) Money or property is transferred under conditions that allow its refund or reversion by reason of the occurrence of an event that is certain to occur, such as the passage of time, or if restrictions on its refund or reversion are illusory.

(ii) *Right extinguished.* With respect to a transfer described in paragraph (c)(2)(i) of this section, economic performance is deemed to occur on the date, and to the extent, the transferor's right to a refund or reversion is extinguished.

(3) *Obligations of a transferor.* Economic performance does not occur when a transferor transfers to a qualified settlement fund its debt (or the debt of a related person). Instead, economic performance occurs as the transferor (or related person) makes principal payments on the debt. Similarly, economic performance does not occur when a transferor transfers to a qualified settlement fund its obligation (or the obligation of a related person) to provide services or property in the future, or to make a payment described in § 1.461–4(g). Instead, economic performance with respect to such an obligation occurs as services, property or payments are provided or made to the qualified settlement fund or a claimant.

(d) *Payment of insurance amounts.* No deduction is allowed to a transferor for a transfer to a qualified settlement fund to the extent the transferred amounts represent amounts received from the settlement of an insurance claim and are excludable from gross income. If the settlement of an insurance claim occurs after a transferor makes a transfer to a qualified settlement fund for which a deduction has been taken, the transferor must

include in income the amounts received from the settlement of the insurance claim to the extent of the deduction.

(e) *Statement to the qualified settlement fund and the Internal Revenue Service*—(1) *In general.* A transferor must provide the statement described in paragraph (e)(2) of this section to the administrator of a qualified settlement fund no later than February 15 of the year following each calendar year in which the transferor (or an insurer or other person on behalf of the transferor) makes a transfer to the fund. The transferor must attach a copy of the statement to (and as part of) its timely filed income tax return (including extensions) for the taxable year of the transferor in which the transfer is made.

(2) *Required statement*—(i) *In general.* The statement required by this paragraph (e) must provide the following information—

(A) A legend, "§ 1.468B–3 Statement", at the top of the first page;

(B) The transferor's name, address, and taxpayer identification number;

(C) The qualified settlement fund's name, address, and employer identification number;

(D) The date of each transfer;

(E) The amount of cash transferred; and

(F) A description of property transferred and its fair market value on the date of transfer.

(ii) *Combined statements.* If a qualified settlement fund has more than one transferor, any two or more of the transferors may provide a combined statement to the administrator that does not identify the amount of cash or the property transferred by a particular transferor. If a combined statement is used, however, each transferor must include with its copy of the statement that is attached to its income tax return a schedule describing each asset that the transferor transferred to the qualified settlement fund.

(f) *Distributions to transferors*—(1) *In general.* A transferor must include in gross income any distribution (including a deemed distribution described in paragraph (f)(2) of this section) it receives from a qualified settlement fund. If property is distributed, the amount includible in gross income and the basis in that property, is the fair market value of the property on the date of the distribution.

(2) *Deemed distributions*—(i) *Other liabilities.* If a qualified settlement fund makes a distribution on behalf of a transferor to a person that is not a claimant, or to a claimant to resolve or satisfy a liability of the transferor (or a related person) other than a liability described in § 1.468B–1(c)(2) for which the fund was established, the distribution is deemed made by the fund to the transferor. The transferor, in turn, is deemed to have made a payment to the actual recipient.

(ii) *Constructive receipt.* To the extent a transferor acquires a right to a refund or reversion described in paragraph (c)(2) of this section of all or a portion of the assets of a qualified settlement fund subsequent to the transfer of those assets to the fund, the fund is deemed to distribute those assets to the transferor on the date the right is acquired.

(3) *Tax benefit rule.* A distribution described in paragraph (f)(1) or (f)(2) of this section is excluded from the gross income of a transferor to the extent provided by section 111(a).

(g) *Example.* The following example illustrates the rules of this section:

Example. On March 1, 1993, Individual A transfers $1 million to a qualified settlement fund to resolve or satisfy claims against him resulting from certain violations of securities laws. Individual A uses the cash receipts and disbursements method of accounting. Since Individual A does not use the accrual method of accounting, the economic performance rules of paragraph (c) of this section are not applicable. Therefore, whether, when, and to what extent Individual A can deduct the transfer is determined under applicable provisions of the Internal Revenue Code, such as sections 162 and 461.

§ 1.468B–4 Taxability of distributions to claimants.

Whether a distribution to a claimant is includible in the claimant's gross income is generally determined by reference to the claim in respect of which the distribution is made and as if the distribution were made directly by the transferor. For example, to the extent a distribution is in satisfaction of damages on account of personal injury or sickness, the distribution may be excludable from gross income under section 104(a)(2). Similarly, to the extent a distribution is in satisfaction of a claim for foregone taxable interest, the distribution is includible in the claimant's gross income under section 61(a)(4).

§ 1.468B–5 Effective dates and transition rules.

(a) *In general.* Section 468B, including section 468B(g), is effective as provided in the Tax Reform Act of 1986 and the Technical and Miscellaneous Revenue Act of 1988. Except as otherwise provided in this section, §§ 1.468B–1 through 1.468–4 are effective on January 1, 1993. Thus, the regulations apply to income of a qualified settlement fund earned after December 31, 1992, transfers to a fund after December 31, 1992, and distributions from a fund after December 31, 1992. For purposes of § 1.468B–3(c) (relating to economic performance), previously transferred assets held by a qualified settlement fund on the date these regulations first apply to the fund (i.e., January 1, 1993, or the earlier date provided under paragraph (b)(2) of this section) are treated as transferred to the fund on that date, to the extent no taxpayer has previously claimed a deduction for the transfer.

(b) *Taxation of certain pre-1996 fund income*—(1) *Reasonable method*—(i) *In general.* With respect to a fund, account, or trust established after August 16, 1986, but prior to February 15, 1992, that satisfies (or, if it no longer exists, would have satisfied) the requirements of § 1.468B–1(c), the Internal Revenue Service will not challenge a reasonable, consistently applied method of taxation for transfers to the fund, income earned by the fund, and distributions made by the fund after August 16, 1986, but prior to January 1, 1996. A method is generally considered reasonable if, depending on the facts and circumstances, all transferors and the administrator of the fund have consistently treated transfers to the fund, income earned by the fund, and distributions made by the fund after August 16, 1986, as if the fund were—

(A) A grantor trust and the transferors are the grantors;

(B) A complex trust and the transferors are the grantors; or

(C) A designated settlement fund.

(ii) *Qualified settlement funds established after February 14, 1992, but before January 1, 1993.* With respect to a fund, account, or trust established after February 14, 1992, but prior to January 1, 1993, that satisfies the requirements of § 1.468B–1(c), the Internal Revenue Service will not challenge a reasonable, consistently applied method of taxation as described in paragraph (b)(1)(i) of this section for transfers to, income earned by, and distributions made by the fund prior to January 1, 1993. However, pursuant to paragraph (a) of this section, sections 1.468B–1 through 1.468B–4 apply to transfers to, income earned by, and distributions made by the qualified settlement fund after 1992.

(iii) *Use of cash method of accounting.* For purposes of paragraphs (b)(i) and (b)(ii) of this section, for taxable years beginning prior to January 1, 1996, the Internal Revenue Service will not challenge the use of the cash receipts and disbursement method of accounting by a fund, account, or trust.

(iv) *Unreasonable position.* In no event is it a reasonable position to assert, pursuant to Rev. Rul. 71–119 (see § 601.601(d)(2)(ii)(*b*) of this chapter), that there is no current taxation of the income of a fund established after August 16, 1986.

(v) *Waiver of penalties.* For taxable years beginning prior to January 1, 1993, if a fund, account or trust is subject to section 468B(g) and the Internal Revenue Service does not challenge the method of taxation for transfers to, income earned by, and distributions made by, the fund pursuant to paragraph (b)(1)(i) or (b)(1)(ii) of this section, penalties will not be imposed in connection with the use of such method. For example, the penalties under section 6655 for failure to pay estimated tax, section 6651(a)(1) for failure to file a return, section 6651(a)(2) for failure to pay tax, section 6656 for failure to make deposit of taxes, and section 6662 for accuracy-related underpayments will generally not be imposed.

(2) *Election to apply qualified settlement fund rules*—(i) *In general.* The person that will be the administrator of a qualified settlement fund may elect to apply §§ 1.468B–1 through 1.468B–4 to transfers to, income earned by, and distributions made by, the fund in taxable years ending after August 16, 1986. The election is effective beginning on the first day of the earliest open taxable year of the qualified settlement fund. For purposes of this paragraph (b)(2), a taxable year is considered open if the period for assessment and collection of tax has not expired pursuant to the rules of section 6501. The election statement must provide the information described in paragraph (b)(2)(ii) of this section and must be signed by the person that will be the administrator. Such person must also provide each transferor of the qualified settlement fund with a copy of the election statement on or before March 15, 1993.

(ii) *Election statement.* The election statement must provide the following information—

(A) A legend, "§ 1.468B–5(b)(2) Election", at the top of the first page;

(B) Each transferor's name, address, and taxpayer identification number;

(C) The qualified settlement fund's name, address, and employer identification number; and

(D) The date the qualified settlement fund was established within the meaning of § 1.468B–1(j).

(iii) *Due date of returns and amended returns.* The election statement described in paragraph (b)(2)(ii) of this section must be filed with, and as part of, the qualified settlement fund's timely filed tax return for the taxable year ended December 31, 1992. In addition, the qualified settlement fund must file an amended return that is consistent with the requirements of §§ 1.468B–1 through 1.468B–4 for any taxable year to which the election applies in which the fund took a position inconsistent with those requirements. Any such amended return must be filed no later than March 15, 1993, and must include a copy of the election statement described in paragraph (b)(2)(ii) of this section.

(iv) *Computation of interest and waiver of penalties.* For purposes of section 6601 and section 6611, the income tax return for each taxable year of the qualified settlement fund to which the election applies is due on March 15 of the year following the taxable year of the fund. For taxable years of a qualified settlement fund ending prior to January 1, 1993, the income earned by the fund is deemed to have been earned on December 31 of each taxable year for purposes of section 6655. Thus, the addition to tax for failure to pay estimated tax under section 6655 will not be imposed. The penalty for failure to file a return under section 6651(a)(1), the penalty for failure to pay tax under section 6651(a)(2), the penalty for failure to make deposit of taxes under section 6656, and the accuracy-related penalty under section 6662 will not be imposed on a qualified settlement fund if the fund files its tax returns for taxable years ending prior to January 1, 1993, and pays any tax due for those taxable years, on or before March 15, 1993.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. Section 602.101(c) is amended by adding the entries to the table to read as follows:

§ 602.101 OMB Control Numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
§ 1.468B–1(j)	1545–1299
§ 1.468B–2(k)	1545–1299
§ 1.468B–2(l)	1545–1299
§ 1.468B–3(b)	1545–1299
§ 1.468B–3(e)	1545–1299
§ 1.468B–5(b)	1545–1299
* * * * *	

Shirley D. Peterson,

Commissioner of Internal Revenue.

Approved: October 30, 1992.

Fred T. Goldberg, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 92–31054 Filed 12–18–92; 8:45 am]

BILLING CODE 4830–01–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

Anderson, Indiana; designated and notice agencies

CFR Correction

In title 29 of the Code of Federal Regulations, parts 1600 to 1899, revised as of July 1, 1992, on page 180, the entry for Anderson, Indiana was inadvertently removed from paragraph (a) of § 1601.74. The reinstated text reads as follows:

§ 1601.74 Designated and notice agencies.

(a) * * *

Anderson (IN) Human Relations Commission

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BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–92–103]

Special Local Regulations for Marine Events; New Year's Eve Fireworks; Delaware River, Philadelphia, PA

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of special local regulations.

SUMMARY: This notice implements special local regulations for the New Year's Eve Fireworks Display. The display will be launched from barges anchored off Penns Landing, Delaware River, Philadelphia, Pennsylvania on December 31, 1992. The regulations are needed to control vessel traffic in the immediate vicinity of the event due to the confined nature of the waterway and expected spectator craft congestion during the event. The regulations restrict general navigation in the area for

the safety of life and property on the navigable waters during the event.

EFFECTIVE DATES: The regulations in 33 CFR 100.509 are effective from 11 p.m., December 31, 1992 until 1 a.m., on January 1, 1993. If inclement weather causes the postponement of the event, the regulations are effective from 5 p.m. until 7 p.m., on January 1, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204, or Commander, Coast Guard Group, Hampton Roads (804) 483–8559.

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and LT John B. Gately, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation

The Delaware River Port Authority submitted an application to hold a New Years Day fireworks display. The display will be launched from barges anchored off Penns Landing, Delaware River, Philadelphia, Pennsylvania. Since many spectator vessels are expected to be in the area to watch the fireworks, the regulations in 33 CFR 100.509 are being implemented for this event. The fireworks will be launched from within the regulated area. The waterway will be closed during the display. Since the closure will not be for an extended period, commercial traffic should not be severely disrupted.

Dated: December 11, 1992.

W.T. Leland,

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

[FR Doc. 92–31096 Filed 12–22–92; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CDG1 92–130]

Safety Zone: South Street Seaport New Years Eve Fireworks, Lower East River, New York

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard plans to establish a temporary safety zone for a fireworks display within all waters of the Lower East River south of the Brooklyn Bridge and north of a line drawn from Manhattan's Wall Street Heliport, to Pier 5, Brooklyn. The fireworks display will take place on Thursday, December 31st, 1992 from 11:30 p.m. to 1 a.m. on January 1, 1993, with a rain date of the 1st. Temporary closure of the waters surrounding the launching barges is needed to protect the boating public from the safety hazards associated with a pyrotechnic fireworks display in these waters.

EFFECTIVE DATE: This regulation will be effective from 11:30 p.m. on December 31, 1992 through 1 a.m. on January 1, 1993. (Rain date of January 1, 1993).

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) J.E. Peschel, Waterways Management Officer, Coast Guard Group New York (212) 668–7933.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LTJG J.E. Peschel, Captain of the Port, New York and LCDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation. Publishing an NPRM and delaying its effective date would be contrary to public interest since the event takes place on a public holiday where immediate action is needed to respond to any potential hazards and sufficiently protect the boating public. Due to the date that this application was received, there was not sufficient time to publish proposed rules in advance of the event.

Background and Purpose

This regulation is required to protect the maritime public from possible dangers and hazards from falling debris or unexploded pyrotechnics associated with a fireworks display in the waters of the Lower East River. The safety zone will surround a barge based program directed over the waters of the Lower East River. This one and one half hour zone allows time for Coast Guard personnel to clear vessels from the area both before and during the display, and ensure all pyrotechnics have been extinguished prior to reopening the area to maritime traffic. No vessel will be permitted to enter or move within the safety zone unless permitted to do so by Captain of the Port, New York.

Regulatory Evaluation

This regulation is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). Due to the limited duration of the display within this one and one half hour window, the extensive advisories made to the affected maritime community, and the fact that the event is taking place at night on a holiday weekend which typically experiences minimal commercial marine traffic, the impact of this regulation is expected to be minimal. The Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

For reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

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

Environment

The Coast Guard considered the environmental impact of this regulation and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, it is an action under the Coast Guard's statutory authority to protect public safety, and thus is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

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

For reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—[AMENDED]

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

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

2. A temporary section, 165.T01–130 is added to read as follows:

§ 165.T01–130 South Street Seaport New Years Eve Fireworks, Lower East River, New York.

(a) *Location.* The safety zone will include all waters bank to bank of the Lower East River south of the Brooklyn Bridge and north of a line drawn from Manhattan's Wall Street Heliport, to Pier 5, Brooklyn.

(b) *Effective period.* This regulation will be effective from 11:30 p.m. on December 31, 1992 through 1 a.m. on January 1, 1993. (Rain date of January 1, 1993)

(c) *Regulations.* (1) No person or vessel may enter, transit, or remain in the safety zone during the effective period of regulation unless participating in the event as authorized by the U.S. Coast Guard Captain of the Port (COTP), New York. The COTP will attempt to minimize any delays for commercial vessels transiting the area and will monitor channel 16 VHF–FM.

(2) All persons and vessels shall comply with the instructions of the COTP NY or the designated on scene personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed.

Dated: December 14, 1992.

R. M. Larrabee,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 92–31097 Filed 12–22–92; 8:45 am]

BILLING CODE 4910–14–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1258

RIN 3095–AA19

Use of Motion Picture Research Room; Self-Service Copying

AGENCY: National Archives and Records Administration.

ACTION: Final rule.

SUMMARY: This final rule adopts without change the fees for self-service copying of videotapes on NARA-provided equipment that were established as an interim rule on October 8, 1992 (57 FR 46304). Self-service copying of videotapes is available in the Motion Picture, Sound, and Video Research Room in the National Archives Building.

EFFECTIVE DATE: December 23, 1992.

FOR FURTHER INFORMATION CONTACT: Mary Ann Palmos or Nancy Allard at 202–501–5110.

SUPPLEMENTARY INFORMATION: The interim rule on part 1258 was published with the final rule implementing revised policies for self-service copying in the Motion Picture, Sound, and Video Research Room. No comments were received on the interim rule during the 30-day public comment period.

This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

List of Subjects in Part 1258

Archives and records.

For the reasons set forth in the preamble, 36 CFR part 1258 is amended to read as follows:

PART 1258—FEES

1. The authority citation for part 1258 continues to read as follows:

Authority: 44 U.S.C. 2116(c).

2. Section 1258.12 is amended by redesignating paragraphs (g) and (h) as paragraphs (h) and (i), respectively, and adding a new paragraph (g) to read as follows:

§ 1258.12 Fee schedule.

* * * * *

(g) *Self-service video copying in the Motion Picture, Sound and Video Research Room:*

(1) Initial 90-minute use of video copying station with 120-minute videocassette: $15.25.

(2) Additional 90-minute use of video copying station with no videocassette: $8.75.

(3) Blank 120-minute videocassette: $6.75.

* * * * *

Dated: December 9, 1992.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 92–31112 Filed 12–22–92; 8:45 am]

BILLING CODE 7515–01–M

POSTAL SERVICE

39 CFR Part 601

Procurement Manual; Miscellaneous Amendments

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service announces that it is making numerous miscellaneous amendments to the Procurement Manual, including, for example, raising the simplified purchasing ceiling from $50,000 to $100,000. This change has also raised the competitive threshold (which is ten percent of the simplified ceiling) to $10,000. In addition, this change has raised the thresholds for the annual procurement plan requirement and for publicizing in the Commerce Business Daily. Other changes clarify that additional competition is not required when using Federal Supply Schedules. A new section has been added discussing the General Service's Administration's Information Resource Management Service and nonmandatory schedule contracts for Federal Information Processing (FIP) Resources. Another change allows, at the contracting officer's discretion, and when adequate competition is expected, the release of a solicitation mailing list to any firm or individual who has been sent a solicitation.

EFFECTIVE DATE: December 15, 1992.

FOR FURTHER INFORMATION CONTACT: Paul D. McGinn, (202) 268–4638.

SUPPLEMENTARY INFORMATION: The Procurement Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR 601.100), has been amended by the issue of PM Circular 92–1, dated December 15, 1992.

In accordance with 39 CFR 601.105, notice of these changes is hereby published in the **Federal Register** and the text of the changes is filed with the Director, Office of the Federal Register. Subscribers to the basic manual will receive these amendments from the Postal Service. (For other availability of the Procurement Manual, see 39 CFR 601.104.)

List of Subjects in 39 CFR Part 601

Government procurement, Incorporation by reference, Postal Service.

PART 601—[AMENDED]

The authority citation for part 601 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 410, 411, 2008, 5001–5605.

§ 601.100 [Amended]

Explanation of Changes

Procurement Manual Circular 92–1 contains several changes recently approved by the Procurement Policy Committee. A list and short description of the changes follow. The full text of the changes follows this explanation.

A. Various Parts. The simplified purchasing ceiling has been raised from $50,000 to $100,000. This change has also raised the competitive threshold (which is ten percent of the simplified ceiling) to $10,000. In addition, this change has raised the thresholds for the annual procurement plan requirement and for publicizing in the Commerce Business Daily. Except for the text changes required by the new publicizing threshold, these revisions will require pen-and-ink changes throughout parts of the PM. These parts are listed on page 2 of this PM Circular.

B. Part 3.1.5.b, General Services Administration (Other Government Sources). Subsection 3.1.5.b.2 has been revised to clarify that additional competition is not required when using Federal Supply Schedules. A new subsection 3.1.5.b.3 has been added discussing the General Services Administration's Information Resource Management Service and nonmandatory schedule contracts for Federal Information Processing (FIP) Resources.

C. Part 3.2.1, Policy (Publicizing Purchasing Actions) has been revised to state that contracts which will be awarded using simplified procedures, and that solicitations which will result in contracts valued at $100,000 and under need not be publicized.

D. Part 4.1.2, Solicitations. Subsection 4.1.2.k.4, Release of Solicitation Mailing Lists, has been revised to allow, at the contracting officer's discretion, and when adequate competition is expected, the release of a solicitation mailing list to any firm or individual who has been sent a solicitation.

Pen-and-Ink Changes

Use pen and ink to change "$50,000" to "$100,000" in the following PM citations:

Part 2.1.4, Annual Procurement Summary Plans, Paragraph a.
Part 2.3.2, Use (Specifications and Statements of Work) Paragraph c, Product Descriptions, Subparagraph 5.
Part 3.1.5, Other Government Sources, Paragraph b, General Services Administration, Subparagraph e.2, Oral Orders.
Part 3.1.6, Commercial Sources, Paragraph e, Determining Responsibility and Nonresponsibility.
Part 4.2.1, Simplified Purchasing, General, Paragraph b, Ceiling.
Part 4.2.2, Solicitations, Paragraph e, Posting and Synopsis.
Part 11.5.2, Minor Repairs and Alterations, Paragraphs a, Applicability, and b, Purchase Method.

Text Changes

3.1.5.b.2 Federal Supply Schedules

(a) General. Federal Supply Schedules (FSS) are summaries of ordering contracts negotiated by GSA's Federal Supply Service. They include Single-Award, Multiple-Award, and New Item Introductory Schedules. GSA (FSS) terms and conditions, rather than those used by the Postal Service, apply to orders placed against FSS. Purchasing organizations may order against FSS when they meet their quality and delivery requirements. Additional competition is not required when using FSS.

* * * * *

3.1.5.b.3 Information Resources Management Service (IRMS) Nonmandatory Schedule Contracts for Federal Information Processing (FIP) Resources

Nonmandatory schedule contracts for Federal Information Processing (FIP) Resources are established by GSA's Information Resources Management Service (IRMS). FIP resources include telecommunications and FIP equipment, software, support services, maintenance, related supplies, and systems. GSA refers to these contracts as "Group 70 Schedule Contracts (ADP Equipment)" and Group 58 Schedule Contracts (Telecommunications Equipment)". GSA contract terms and conditions, rather than those used by the Postal Service, apply to orders placed against these contracts. GSA requires that needs be synopsized and that competition be obtained when these contracts are used. The procedures of 3.2.1 and 4.2.1.d satisfy the GAS requirement.

3.2.1 Policy

a. All solicitations valued at over $100,000 must be publicized unless (1) precluded by urgency, (2) they fall within the exceptions dealing with leased space set out in Chapter 11 (3) advance notice of sources sought was previously published in the market research phase of the procurement or (4) approval has been given to simplified procedures for the procurement.

* * * * *

4.1.2 Solicitations

* * * * *

k.4 Release of Solicitation Mailing Lists. When a procurement is deemed highly competitive (i.e., five or more potential offerors) and no harm to competition is anticipated from releasing the specific source list, the contracting officer may consider it advantageous to the Postal Service to release the source list to anyone who is sent a copy of that solicitation. If the source list has not been released and is requested under the Freedom of Information Act (FOIA) it is not necessary to release it to all prospective offerors, but only to the specific FOIA requestor. The source list, in this instance, is considered general information that should not give the recipient any advantage over other offerors.

Stanley F. Mires,

Chief Counsel, Legislative Division.

[FR Doc. 92–31041 Filed 12–22–92; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AD–FRL–4548–5]

National Emission Standards for Hazardous Air Pollutants; Amendment to Vinyl Chloride Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correcting amendments.

SUMMARY: This document contains a correction to the final regulations originally published on October 21, 1976 (41 FR 46564). The regulations are found in title 40, chapter I, part 61, subpart F of the Code of Federal Regulations. They control vinyl chloride emissions resulting from production of ethylene dichlorides, vinyl chloride, or one or more polymers containing any fraction of polymerized vinyl chloride.

EFFECTIVE DATE: December 23, 1992.

FOR FURTHER INFORMATION: For further information about this correction notice contact Ms. Lynn Hutchinson (919) 541–5624, Standards Development Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

Background

The regulations that are the subject of this correction notice supersede § 61.60 on the effective date. Section 61.60 deals with the applicability of the regulations for research and

development reactors. The appropriate exemption criteria for a research and development reactor should be equal to 4.17 cubic meters or 1100 gallons. The standard was originally published equating 4.07 cubic meters to 1100 gallons. Effective September 23, 1988 (41 FR 36972), § 61.10 was amended to make the metric units and English units of volume equivalent under the research and development reactor applicability exemption. Since 4.07 cubic meters is actually equal to 1075 gallons, the amendment resolved the inequality by changing the exemption threshold to 4.07 cubic meters or 1075 gallons. However, the appropriate exemption threshold should have remained equal to 1100 gallons, and 4.07 cubic meters should have been changed to 4.17 cubic meters.

Need for Correction

As published, the final regulations contain an error that causes the applicability criteria for a research and development reactor to be more stringent than was originally intended.

List of Subjects in 40 CFR Part 61

Air pollution control, Asbestos, Benzene, Beryllium, Coke oven emissions, Hazardous substances, Incorporation by reference, Inorganic arsenic, Intergovernmental relations, Mercury, Radionuclides, Reporting and recordkeeping requirements, Vinyl chloride, Volatile hazardous air pollutants.

For the reason set out in the preamble, title 40, chapter I, part 61 of the Code of Federal Regulations is amended as follows:

PART 61—NATIONAL EMISSION STANDARD FOR HAZARDOUS AIR POLLUTANTS

1. The authority citation for part 61 continues to read as follows:

Authority: Sections 101, 112, 114, 116, 301 of the Clean Air Act as amended (43 U.S.C. 7401, 7412, 7414, 7416, 7601).

§ 61.60 [Amended]

2. In § 61.60, paragraph (c), the phrase "4.07 m^3 (1075 gal)" is revised to read "4.17 m^3 (1100 gal)".

Dated: December 11, 1992.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 92-31157 Filed 12-22-92; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[OPP-300265A; FRL-4177-4]

RIN 2070-AB78

Ascorbic Acid; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of ascorbic acid (CAS Reg. No. 50-81-7) when used as an inert ingredient (stabilizer and preservative) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest. This regulation was requested by Monsanto Co. and DowElanco.

EFFECTIVE DATE: This regulation becomes effective December 23, 1992.

ADDRESSES: Written objections, identified by the document control number, [OPP-300265A], 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: Connie Welch, Registration Support Branch, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 219, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-7252.

SUPPLEMENTARY INFORMATION: In the Federal Register of October 28, 1992 (57 FR 48769), EPA issued a proposed rule that gave notice that the Monsanto Co., 700 14th St., NW., Suite 1100, Washington, DC 20005, and DowElanco, 9002 Purdue Rd., Indianapolis, IN 46268-1189, had submitted pesticide petitions (PP's) 1E4000 and 2E4136 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose to amend 40 CFR 180.1001(c) by establishing an exemption from the requirement of a tolerance for residues of ascorbic acid (CAS Reg. No. 50-81-7) when used as an inert ingredient (stabilizer and preservative) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest.

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.

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

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance exemption will protect the public health. Therefore, the tolerance exemption 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: December 8, 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. Section 180.1001(c) is amended by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert Ingredients	Limits	Uses
* * * * * * *		
Ascorbic acid (CAS Reg. No. 50-81-7)		Stabilizer, preservative
* * * * * * *		

* * * * *

[FR Doc. 92-31009 Filed 12-22-92; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[OPP-300266A; FRL-4175-1]

RIN 2070-AB78

Nonyl, Decyl, and Undecyl Glycosides; Tolerance Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of a mixture of nonly, decyl, and undecyl glycosides when used as an inert ingredient (surfactant) in pesticide formulations applied to growing crops, raw agricultural commodities after harvest, and animals. This regulation was requested by the Henkel Corp.

EFFECTIVE DATE: This regulation becomes effective December 23, 1992.

ADDRESSES: Written objections, identified by the document control number, [OPP-300266A], 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: Kerry B. Leifer, Registration Support Branch, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 711L, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-5180.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 21, 1992 (56 FR 48009), EPA issued a proposed rule that gave notice that at the request of the Henkel Corp., 300 Brookside Ave., Ambler, PA 19002, the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), had proposed to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for residues of a nonyl, decyl, and undecyl glycoside mixture when used as an inert ingredient (surfactant) in pesticide formulations applied to growing crops, raw agricultural commodities after harvest, and animals.

Inert ingredients are all active 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.

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 Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 8, 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. In § 180.1001 by amending paragraphs (c) and (e) by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * * * * * *		
Nonly, decyl, and undecyl glycoside mixture with a mixture of nonly, decyl, and undecyl oligosaccharides and related reaction products (primarily decanol and undecanol) produced as an aqueous-based liquid (50 to 65 percent solids) from the reaction of primary alcohols (containing 15 to 20 percent secondary alcohol isomers) in a ratio of 20 percent C_9, 40 percent C_{10}, and 40 percent C_{11} with carbohydrates (average glucose to alkyl chain ratio 1.3 to 1.8).	.....	Surfactant
* * * * * * *		

* * * * *

(e) * * *

Inert ingredients	Limits	Uses
* * * * * * *		
Nonly, decyl, and undecyl glycoside mixture with a mixture of nonly, decyl, and undecyl oligosaccharides and related reaction products (primarily decanol and undecanol) produced as an aqueous-based liquid (50 to 65 percent solids) from the reaction of primary alcohols (containing 15 to 20 percent secondary alcohol isomers) in a ratio of 20 percent C_9, 40 percent C_{10}, and 40 percent C_{11} with carbohydrates (average glucose to alkyl chain ratio 1.3 to 1.8).	.....	Surfactant
* * * * * * *		

[FR Doc. 92–31010 Filed 12–22–92; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 180

[OPP–300259A; FRL–4172–6]
RIN 2070–AB78

Alkyl Acrylate/Methacrylate Copolymers; Tolerance Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance 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 regulation was requested by Landec Corp.

EFFECTIVE DATE: This regulation becomes effective December 23, 1992.

ADDRESSES: Written objections, identified by the document control number, [OPP-300259A], 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: Kerry B. Leifer, Registration Support Branch, Registration Division (H7505C), 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: In the Federal Register of September 16, 1992 (57 FR 42727), EPA issued a proposed rule that gave notice that the Landec Corp., 3603 Haven Ave., Menlo Park, CA 94025, had requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose 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 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, or 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 Agency received a comment which stated that the value of the minimum average molecular weight given in the proposed rule was in error. The commenter noted that the range of number average molecular weight for the 12 alkyl acrylate/methacrylate copolymers is 3,000 - 80,000; therefore, the minimum number average molecular weight specified in the proposed rule should be 3,000 rather than 20,000. The Agency agrees with the commenter. This correction does not materially affect the basis for the establishment of the tolerance exemption because the Agency has modified § 180.1112 of the final rule accordingly.

There were no requests for referral to an advisory committee recieved 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 Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 8, 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. 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 number average molecular weight 3,000, 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. 92-31011 Filed 12-22-92; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Part 180

[PP 0F3885/R1170; FRL-4170-5]

RIN 2070-AB78

Pseudomonas Cepacia Type Wisconsin; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of the biological pesticide *Pseudomonas cepacia* type Wisconsin in or on all raw agricultural commodities when applied as a seed treatment for growing agricultural crops in accordance with good agricultural practices. This exemption was requested by Stine Microbial Products.

EFFECTIVE DATE: This regulation becomes effective December 23, 1992.

ADDRESSES: Written objections, identified by the document control number, [PP 0F3885/R1170], 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)-557-6900.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 3, 1991 (56 FR 13642), EPA issued a notice that Stine Microbial Products, 4722 Pflaum Rd.,

Madison, WI 53704, had submitted pesticide petition (PP) 0F3885 to EPA, proposing to amend 40 CFR part 180 by establishing a regulation pursuant to the Federal Food, Drug, and Cosmetics Act (21 U.S.C. 346a and 371), to exempt from the requirement of a tolerance the residues of the biological pesticide *Pseudomonas cepacia* type Wisconsin in or on all raw agricultural commodities when applied as a seed treatment for growing agricultural crops in accordance with good agricultural practices.

There were no comments received in response to the notice.

The organism is a naturally occurring biotype of the bacterial species *Pseudomonas cepacia* which is found world-wide. The original isolates of *Pseudomonas cepacia* type Wisconsin were identified as colonizers of the roots and rhizospheres of maize. Further testing indicated that this biotype will colonize roots of many crop plants. *Pseudomonas cepacia* type Wisconsin has been shown to produce antibiotics which are effective against a diverse range of plant pathogenic fungi. *Pseudomonas cepacia* is not generally regarded as a human or animal pathogen. Products containing this organism are intended to be used for formulating other end-use products or as a seed treatment. When applied to seeds, the bacteria colonize the developing root system, and by producing antibiotics, protect the seedling from a range of plant pathogenic fungi and nematodes.

The data submitted in the petition and 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, an acute dermal toxicity study, an acute pulmonary toxicity/pathogenicity study, and an acute intravenous toxicity/pathogenicity study. All studies were conducted with the rat as the test animal. A review of these studies indicated that the organism was not toxic to test animals when administered via dermal and intravenous routes. The active ingredient was not infective or pathogenic to test animals when administered via the oral, pulmonary, or intravenous route. No reports of hypersensitivity have been recorded from personnel working with this organism. All of the toxicity studies submitted are considered acceptable. The toxicity data provided are sufficient to show that there are no foreseeable health hazards to humans or domestic animals likely to arise from the use of this organism as a seed treatment.

Acceptable daily intake (ADI) and maximum permissible intake (MPI) considerations are not relevant to this petition because the data submitted demonstrated that this biological control agent is 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 this biological control agent.

Pseudomonas cepacia type Wisconsin is considered useful for the purposes for which the exemption from the requirement of a tolerance is sought. Based on the information considered, the Agency concludes that establishment of a tolerance is not necessary to 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: December 8, 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 § 180.1115, to read as follows:

§ 180.1115 Pseudomonas cepacia type Wisconsin; exemption from the requirement of a tolerance.

The biological pesticide *Pseudomonas cepacia* type Wisconsin is exempted from the requirement of a tolerance in or on all raw agricultural commodities when applied as a seed treatment for growing agricultural crops in accordance with good agricultural practices.

[FR Doc. 92-31012 Filed 12-22-92; 8:45 am]
BILLING CODE 6560-50-F

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40 CFR Part 271

[FRL-4548-2]

Michigan: Schedule of Compliance for Modification of Michigan's Hazardous Waste Program

AGENCY: Environmental Protection Agency, (EPA).

ACTION: Notice of Michigan's compliance schedule to adopt program modifications.

SUMMARY: On September 22, 1986, the Environmental Protection Agency promulgated amendments to the deadlines for modifications to State Resource Conservation and Recovery Act (RCRA) programs and published requirements for States to be placed on a compliance schedule to adopt necessary program modifications. EPA is today publishing a compliance schedule for Michigan to modify its program in accordance with § 271.21(g) to adopt Federal program modifications

EFFECTIVE DATE: December 23, 1992.

FOR FURTHER INFORMATION CONTACT: Judy Feigler, Michigan Regulatory Specialist, RCRA Program Management Branch, U.S. Environmental Protection Agency, Region V, HRM–7J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–4179.

SUPPLEMENTARY INFORMATION:

A. Background

Final authorization to implement the Michigan hazardous waste program within the State in lieu of the Federal RCRA program is granted by U.S. EPA if the Agency finds the State program: (1) Is "equivalent" to the Federal program; (2) is "consistent" with the Federal program and other State programs; and (3) provides for adequate enforcement (Section 3006(b), 42 U.S.C. 6926(b)). U.S. EPA regulations for final authorization appear at 40 CFR 271.1–271.25. In order to retain authorization, a State must revise its program to adopt new Federal requirements by the cluster deadlines and procedures specified in 40 CFR 272.21. See 51 FR 33712, September 22, 1986, for a complete discussion of these procedures and deadlines.

B. Michigan

Michigan received final authorization of its hazardous waste program on October 30, 1986 (see 51 FR 36804, October 16, 1986), and subsequent revisions on January 23, 1990 (see 54 FR 48608, November 24, 1989), and June 24, 1991 (see 56 FR 18517, April 23, 1991). On August 12, 1992, Michigan submitted a request under the provisions of 40 CFR 271.21(g)(1)(iii) for an extension of time to obtain necessary program revisions contained in RCRA Cluster 1. Today, U.S. EPA is publishing a compliance schedule pursuant to 40 CFR 271.21(g)(1)(v) for Michigan to complete program revisions for the following Federal RCRA Cluster 1 regulations:

1. Petroleum Refinery Primary and Secondary Oil/Water/Solids Separation Sludge Listings (F037 and F038), 55 FR 46354, November 2, 1990;

2. Wood Preserving Listings, 55 FR 50450, December 6, 1990;

3. Petroleum Refinery Primary and Secondary Oil/Water/Solids Separation Sludge Listings; Correction, 55 FR 51707, December 17, 1990;

4. Land Disposal Restrictions for Third Scheduled Wastes; Technical Correction, 56 FR 3864, January 31, 1991;

5. Toxicity Characteristic; Hydrocarbon Recovery Operations, 56 FR 3978, February 1, 1991;

6. Burning of Hazardous Waste in Boilers and Industrial Furnaces, 56 FR 7134, February 21, 1991;

7. Removal of Strontium Sulfide from the List of Hazardous Waste; Technical Amendment, 56 FR 7567, February 25, 1991;

8. Toxicity Characteristic; Hydrocarbon Recovery Operations, 56 FR 13406, April 2, 1991;

9. Organic Air Emission Standards for Process Vents and Equipment Leaks; Technical Amendment, 56 FR 19290, April 26, 1991;

10. Mining Exclusion III, 56 FR 27300, June 13, 1991;

The deadline under 40 CFR 271.21 for Michigan to adopt the Federal RCRA Cluster 1 regulations was July 1, 1992. However, the State's work on RCRA Cluster 1 rulemaking was postponed until after the State could finish promulgating rules for non-HSWA Clusters V and VI and HSWA Clusters I and II.

The State has agreed to complete the needed program revisions to its authorized program according to the following schedule:

1. The Department of Natural Resources will open public comment on the draft rules package by August 1, 1993. The comment period will end on September 15, 1993.

2. Once the proposed rule package is approved by the Michigan Legislative Service Bureau, the Michigan Attorney General, and the Michigan Joint Committee on Administrative Rules, the rules will be submitted to the Michigan Secretary of State for codification in the Act 64 Administrative Rules. The State expects to complete this process and finally adopt the rules by December 31, 1993.

4. Michigan expects to submit an application to U.S. EPA requesting authorization for the Federal regulations listed above by March 1, 1994.

Authority: This notice is issued under the authority of Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the RCRA of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: December 9, 1992.

William H. Sanders III,

Acting Regional Administrator.

[FR Doc. 92–31153 Filed 12–22–92; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 300

[FRL–4545–6]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of a site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the Metal Working Shop Superfund Site in Lake Ann, Michigan from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of Michigan have determined that all appropriate Fund-financed responses under CERCLA have been implemented and that no further cleanup by responsible parties is appropriate. Moreover, EPA and the State of Michigan have determined that no remedial action is necessary at the site. The response is protective of public health, welfare, and the environment.

EFFECTIVE DATE: December 23, 1993.

FOR FURTHER INFORMATION CONTACT:

Samuel Borries, Remedial Project Manager, U.S. Environmental Protection Agency, Region V, 77 W. Jackson Boulevard, Chicago, Illinois 60604, (312) 353–3156.

Phillip Schutte, Office of Public Affairs, U.S. Environmental Protection Agency, Region V, 77 W. Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8685.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Metal Working Shop, Lake Ann, Michigan.

A notice of intent to delete the site was published September 10, 1992 (57 FR 41452). The closing date for comments on the Notice of Intent to Delete was October 13, 1992. EPA received no comments and will therefore prepare no responsiveness summary.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substances Response Trust Fund (Fund-) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial action in the unlikely event that conditions at the site warrant such action. Section 300.425(e) of the NCP states that Fund-financed actions

may be taken at sites deleted from the NPL.

Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Hazardous waste.

Dated: November 17, 1992.

Valdas V. Adamkus,

Regional Administrator, USEPA Region V.

For the reasons set out in the preamble 40 CFR, part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of appendix B to part 300 is amended by removing the site for "Metal Working Shop, Lake Ann, Michigan".

3. The total number of sites in Table 1, of Appendix B to part 300, "1085" is revised to read "1084".

[FR Doc. 92–30509 Filed 12–22–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 300

[FRL–4545–7]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of a site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the ARRCOM site in Rathdrum, Idaho from the National Priorities List (NPL). The NPL is appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of Idaho have determined that all appropriate Fund-financed responses under CERCLA have been implemented and that no further cleanup by responsible parties is appropriate. Moreover, EPA and the State of Idaho have determined that remedial actions conducted at the site to date have been protective of public health, welfare, and the environment.

EFFECTIVE DATE: December 23, 1992.

FOR FURTHER INFORMATION CONTACT: Fran Allans, Remedial Project Manager, U.S. Environmental Protection Agency, Region 10, 422 W. Washington, Boise, Idaho 83702, (208) 334–9047.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: ARRCOM, Rathdrum, Idaho.

A notice of intent to delete for this site was published October 2, 1992 (57 FR 45599). The closing date for comments on the Notice of Intent to Delete was November 2, 1992. EPA received no comments.

EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund-financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.66(c)(8) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Hazardous waste.

Dated: November 16, 1992.

Dana A. Rasmussen,

Regional Administrator, U.S. EPA Region 10.

For the reasons set out in the preamble 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the site for "ARRCOM (Drexler Enterprises), Rathdrum, Idaho."

3. The total number of sites in Table 1 of Appendix B to part 300, "1084" is revised to read "1083".

[FR Doc. 92–30510 Filed 12–22–92; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 52a

RIN 0905–AC27

National Institutes of Health Center Grants

AGENCY: Public Health Service, HHS.

ACTION: Final rule.

SUMMARY: The National Institutes of Health (NIH) is amending its center grant regulations to: indicate their general applicability to all center grant programs statutorily authorized in title IV of the Public Health Service (PHS) Act; incorporate program changes and changes in PHS Act section numbers which resulted from the enactment of the Health Research Extension Act of 1985 (Pub. L. 99–158), the National Deafness and Other Communication Disorders Act of 1988 (Pub. L. 100–553), and the Health Omnibus Programs Extension of 1988 (Pub. L. 100–607); and make minor language and technical changes.

EFFECTIVE DATE: Effective December 23, 1992.

FOR FURTHER INFORMATION CONTACT: John Migliore, NIH Regulations Officer, National Institutes of Health, Building 31, room 3B–11, Bethesda, Maryland 20892—telephone (301) 496–4606. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: Regulations governing National Institutes of Health (NIH) center grants were published in the **Federal Register** on December 4, 1985 (50 FR 49692). On November 20, 1985, the Health Research Extension Act of 1985 (Pub. L. 99–158) was enacted, reauthorizing the authorities and programs of the National Institutes of Health. As a result of the law, the sections of the PHS Act that authorized various center grant programs were renumbered, thus requiring a change of the legal citations in the "Authority" section of these regulations. Later, Public Laws 100–553 and 100–607 were enacted, authorizing new center grants programs. The NIH is amending the current regulations at 42 CFR part 52a to incorporate these changes into its center grants regulations.

In addition, since the basic policies governing the award of center grants under the authorities of sections 414, 422, 431, 441, 445, 445A, 464, and 23216 of the PHS Act are substantially similar, the NIH is revising its current regulations to encompass all center

grant programs authorized statutorily in title IV of the PHS Act including: Alzheimer's Disease Research Centers; Centers for Acquired Immunodeficiency Syndrome Research; Diabetes Research and Training Centers; Claude D. Pepper Older Americans Independence Centers; Kidney and Urologic Diseases Centers; Multipurpose Arthritis and Musculoskeletal Diseases Centers; Multipurpose Deafness and Other Communication Disorders Centers; National Cancer Research and Demonstration Centers; National Research and Demonstration Centers for Heart, Blood Vessel, Lung and Blood Diseases and Blood Resources; and National Research and Demonstration Centers for Sickle Cell Anemia.

The NIH is also revising its current regulations to include references to several additional HHS policies and regulations affecting its center grant regulations. Section 52a.8 is being revised to include:

(1) References to new HHS regulations at 42 CFR part 50, subpart A, regarding the responsibilities of PHS awardees and applicant institutions for dealing with and reporting possible misconduct in science published on August 8, 1989 (54 FR 32446);

(2) New HHS regulations at 45 CFR part 93 regarding new restrictions on lobbying published on February 26, 1990 (55 FR 6736);

(3) New HHS regulations at 45 CFR part 76, subpart F, on drug-free workplace requirements published on May 25, 1990 (55 FR 21677); and

(4) PHS policy on humane care and use of laboratory animals.

As stated in section 52a.1, this final rule does not apply to grants for construction, unless specifically noted, traditional research projects, or general research support. Although certain types of research project grants have been commonly referred to as "center grants," those grants differ from the support programs specifically authorized by sections 414, 422, 431, 441, 445, 464, and 2316 the PHS Act and are governed by the research project grant regulations at 42 CFR part 52.

This final rule does not repeat provisions of the authoring legislation, and thus must be read in conjunction with the cited sections of the PHS Act, as appropriate for the particular center grants program.

The NIH announced its intention to amend the regulations at 42 CFR part 52a and invited public comment on the regulations in a Notice of Proposed Rulemaking published in the Federal Register on May 13, 1991 (56 FR 21974). The public was given 60 days to comment. No comments were received. Consequently, these final regulations are, except for minor editorial changes, the same as the proposed regulations.

Information Collection Requirements

Sections 52a.4 and 52a.6 of this final rule contain information collections which are subject to OMB approval under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). The information collections have been approved by OMB under OMB Control No. 0925–0001. The applications (Standard Form PHS 398 Application for Public Health Service Grant and PHS 2590 Application for Continuation of Public Health Service Grant) used in the information collections specified in sections 52a.4 and 52a.6 and the burden hours associated with the application requirements in these regulations are included with the approval of the applications in OMB Control No. 0925–0001.

Regulatory Impact and Regulatory Flexibility Analysis

This final rule extends existing policies and procedures governing the award and administration of discretionary grants to eligible institutions to support certain health research centers. While these centers benefit those segments of the public afflicted by the health problems addressed by the centers, and physicians and other health professionals who receive training in those health areas, the centers do not have a significant economic or policy impact on a broad cross-section of the public. Therefore, the Secretary has determined that the regulations do not constitute a "major rule" as defined under Executive Order No. 12291. Furthermore, these regulations only affect those few institutions interested in obtaining assistance to carry out a center's authorized programs, subject to the normal accountability requirements for grant funds. No entity is obligated to apply for grant support.

Additionally, the Secretary has determined that this final rule does not have a significant economic impact on a substantial number of small entities, and therefore does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980 (5 U.S.C. chapter 6).

Family and Federalism Impact

This final rule has been reviewed under the requirements of Executive Order 12606, "The Family", and Executive Order 12612, "Federalism", and the Secretary has determined that it will not have a significant potential negative impact on family well-being, States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbered programs affected by this final rule are:

93.173 Multipurpose Deafness and Other Communication Disorders Centers;
93.397 Cancer Centers Support;
93.837 Heart and Vascular Diseases Research;
93.838 Lung Diseases Research;
93.839 Blood Diseases and Resources Research;
93.846 Arthritis, Musculoskeletal, and Skin Diseases Research;
93.847 Diabetes, Endocrinology, and Metabolism Research
93.848 Digestive Diseases and Nutrition Research;
93.849 Kidney Diseases, Urology and Hematology Research;
93.855 Allergy, Immunology, and Transplantation Research; and
93.866 Aging Research.

List of Subjects in 42 CFR Part 52a

Acquired Immunodeficiency Syndrome; Alzheimer's disease; Arthritis; Cancer; Diabetes; Grant programs-Health; Medical research; Sickle Cell Anemia.

For the reasons set out in the preamble, subchapter D of chapter 1 of title 42 of the Code of Federal Regulations, part 52a, is revised to read as set forth below.

Dated: November 29, 1991.

James O. Mason,

Assistant Secretary for Health.

Approved: January 28, 1992.

Louis W. Sullivan,

Secretary.

Editorial Note: This document was received at the Office of the Federal Register December 18, 1992.

PART 52a—NATIONAL INSTITUTES OF HEALTH CENTER GRANTS

Sec.

52a.1 To which programs do these regulations apply?
52a.2 Definitions.
52a.3 Who is eligible to apply?
52a.4 What information must each application contain?
52a.5 How will NIH evaluate applications?
52a.6 Information about grant awards.
52a.7 For what purposes may a grantee spend grant funds?
52a.8 Other HHS regulations that apply.
52a.9 Additional conditions.

Authority: 42 U.S.C. 216, 285a–3, 285b–4, 285c–5, 285d–6, 285e–2, 285e–3, 285m–3, and 300cc–16.

§ 52a.1 To which programs do these regulations apply?

(a) This part applies to grants by the National Institutes of Health and its organizational components to support the planning, establishment, expansion and operation of research and demonstration, multipurpose, and other centers. Specifically, this part applies to National Cancer Research and Demonstration Centers (including payments for construction), as authorized by section 414 of the Act; National Research and Demonstration Centers for Heart, Blood Vessel, Lung, and Blood Diseases, Sickle Cell Anemia, and Blood Resources (including payments for construction), as authorized by section 422 of the Act; Research and Training Centers (including diabetes mellitus, and digestive, endocrine, metabolic, kidney and urologic diseases), as authorized by section 431 of the Act; Multipurpose Arthritis and Musculoskeletal Disease Centers (including payments for alteration, but not construction), as authorized by section 441 of the Act; Alzheimer's Disease Centers, as authorized by section 445 of the Act; Claude D. Pepper Older Americans Independence Centers, as authorized by section 445A of the Act; Multipurpose Deafness and Other Communication Disorders Centers, as authorized by section 464C of the Act; and Centers for Acquired Immunodeficiency Syndrome Research, as authorized by section 2316 of the Act.

This part does not apply to:

(1) Grants for construction (see 42 CFR part 52b), except as noted above;

(2) Grants covered by 42 CFR part 52 (grants for research projects); or

(3) Grants for general research support under section 301(a)(3) of the Act (42 U.S.C. 241(a)(3)).

(b) This part also applies to cooperative agreements made to support the centers specified in paragraph (a) of this section. When a reference is made in this part to "grants," the reference shall include "cooperative agreements."

§ 52a.2 Definitions.

As used in this part:

"Act" means the Public Health Service Act, as amended (42 U.S.C. 201 et seq.).

"Center" means:

(1) For purposes of grants authorized in section 414 of the Act, an agency or institution which provides for planning and conducting basic and clinical research into, training in, and demonstration of advanced diagnostic, control, prevention and treatment methods for cancer;

(2) For purposes of grants authorized in section 422 of the Act, an agency or institution which provides for planning and basic and clinical research into, training in, and demonstration of, management of blood resources and advanced diagnostic, prevention, and treatment methods (including emergency medical services) for heart, blood vessel, lung, or blood diseases, including sickle cell anemia;

(3) For purposes of grants authorized in section 431 of the Act, a single institution or a consortium of cooperating institutions, which conducts research, training, information programs, epidemiological studies, data collection activities, and development of model programs in diabetes mellitus and related endocrine and metabolic diseases;

(4) For purposes of grants authorized in section 441 of the Act, a facility which conducts basic and clinical research as well as research into arthritis and musculoskeletal diseases, orthopedic procedures, training, and information programs for the health community and the general public;

(5) For purposes of grants authorized in section 445 of the Act, an agency or institution (including university medical centers) which conducts basic and clinical research (including multidisciplinary research) into, training in, and demonstration of advanced diagnostic, prevention, and treatment methods for Alzheimer's disease;

(6) For purposes of grants authorized in section 445A of the Act, an agency or institution which conducts: (i) Research into the aging processes and into the diagnosis and treatment of diseases, disorders, and complications related to aging, including menopause, which research includes research on such treatments, and on medical devices and other medical interventions regarding such diseases, disorders, and complications, that can assist individuals in avoiding institutionalization and prolonged hospitalization and in otherwise increasing the independence of the individuals; and (ii) programs to develop individuals capable of conducting such research;

(7) For purposes of grants authorized in section 464C of the Act, a single institution or a consortium of cooperating institutions which conducts basic and clinical research into, training in, information and continuing education programs for the health community and the general public about, and demonstration of advanced diagnostic, prevention, and treatment methods for, disorders of hearing and other communication processes and complications resulting from such disorders; or

(8) For purposes of grants authorized in section 2316 of the Act, an entity for basic and clinical research into, and training in, advanced diagnostic, prevention, and treatment methods for acquired immunodeficiency.

As required in a section of the Act cited in this part or at the determination of the Director of the NIH awarding organizational component, a center may include the facilities of a single institution or a consortium of cooperating institutions and, if practical, may be part of an equitable geographical distribution of centers, or an environment with proven research capabilities.

"NIH" means the National Institutes of Health and its organizational components that award grants.

"Nonprofit" as applied to any agency or institution means an agency or institution which is a corporation or an association, no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual.

§ 52a.3 Who is eligible to apply?

(a) Any public or private non-profit agency, institution, or consortium of agencies or institutions is eligible to apply for a grant under sections 414, 422, 441, 445, and 445A and 2316 of the Act.

(b) Any public or private non-profit or for-profit agency, institution or consortium of agencies or institutions is eligible to apply for a grant under sections 431 and 464C of the Act.

(c) Any applicant under this part must be located in a State, the District of Columbia, Puerto Rico, the Virgin Islands, the Canal Zone, Guam, American Samoa, or the successor States of the Trust Territory of the Pacific Islands (the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau).

§ 52a.4 What information must each application contain?

Each application under this part must include detailed information as to the following:

(a) The personnel, facilities, and other resources available to the applicant with which to initiate and maintain the proposed center grants program;

(b) Any research, training, demonstration, or information dissemination activities in which the applicant is currently engaged; the sources of funding for these activities; and the relevance of these activities to the proposed center grants program;

(c) Proposed research, training, demonstration, and information dissemination activities;

(d) The proposed organizational structure of the center and the relationship of the proposed center to the applicant organization(s);

(e) The names and qualifications of the center director and key staff members who would be responsible for conducting the proposed activities;

(f) Proposed methods for monitoring and evaluating individual activities and the overall center program;

(g) Proposed methods for coordinating the center's activities, where appropriate, with similar efforts by other public and private organizations;

(h) The availability of any community resources necessary to carry out proposed activities; and

(i) Efforts to be made to generate and collect income from sources other than NIH to be used to further the purposes of the center program. NIH encourages these efforts. Income may include, but is not limited to, that generated from the sale or rental of products or services produced by grant-supported activities, such as laboratory tests, computer time, and payments received from patients or third parties, where appropriate (the disposition of grant-related income is governed by 45 CFR 74.40 through 74.47 and 45 CFR 92.25);

(j) The proposed budget for the center and a justification for the amount of the grant funds requested; and

(k) Any other information that the Director of the awarding institute may request.

[Approved under OMB Control Number 0925–0001]

§ 52a.5 How will NIH evaluate applications?

(a) NIH considers the following in evaluating Center grant applications:

(1) The scientific and technical merit of the proposed program;

(2) The qualifications and experience of the center director and other key personnel;

(3) The statutory and program purposes to be accomplished;

(4) The extent to which the various components of the proposed program would be coordinated into one multi-disciplinary effort within the center;

(5) The extent to which the center's activities would be coordinated with similar efforts by other organizations;

(6) The administrative and managerial capability of the applicant;

(7) The reasonableness of the proposed budget in relation to the proposed program; and

(8) Other factors which the awarding institute, center, or division considers appropriate in light of its particular statutory mission.

(b) Where required by statute or NIH policy, applications are reviewed by appropriate national advisory councils or boards before awards are made. NIH grants may be awarded generally only after approval recommendations from both appropriate scientific peer review groups and national advisory councils or boards.

§ 52a.6 Information about grant awards.

(a) The notice of grant award specifies how long NIH intends to support the project without requiring the project to recompete for funds. This period, called the project period, will usually be for 1–5 years.

(b) Generally, the grant will initially be for one year, and subsequent continuation awards will also be for one year at a time. A grantee must submit a separate application to have the support continued for each subsequent year. Decisions regarding continuation awards and the funding level of such awards will be made after consideration of such factors as the grantee's progress and management practices, and the availability of funds. In all cases, continuation awards require a determination by the NIH that continued funding is in the best interest of the Federal Government.

(c) Neither the approval of any application, nor the award of any grant commits or obligates the Federal Government in any way to make any additional, supplemental, continuation, or other award with respect to any approved application or portion of an approved application.

[Approved under OMB Control Number 0925–0001]

§ 52a.7 For what purposes may a grantee spend grant funds?

A grantee shall only spend funds it receives under this part according to the approved application and budget, the authorizing legislation, the terms and conditions of the award, the applicable cost principles prescribed in subpart Q of 45 CFR part 74 and 45 CFR 92.22, and the regulations of this part.

§ 52a.8 Other HHS regulations that apply.

Several other regulations and policies apply to this part. These include, but are not necessarily limited to:

42 CFR Part 50, Subpart A—Responsibilities of PHS awardee and applicant institutions for dealing with and reporting possible misconduct in science

42 CFR Part 50, Subpart D—Public Health Service grant appeals procedures

45 CFR Part 16—Procedures of the Departmental Grant Appeals Board

45 CFR Part 46—Protection of human subjects

45 CFR Part 74—Administration of grants

45 CFR Part 75—Informal grant appeals procedures

45 CFR Part 76—Governmentwide debarment and suspension (nonprocurement) and governmentwide requirements for drug-free workplace (grants)

45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services—Effectuation of Title VI of the Civil Rights Act of 1964

45 CFR Part 81—Practice and procedure for hearings under part 80 of this title

45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance

45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance

45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

45 CFR Part 92—Uniform administrative requirements for grants and cooperative agreements to State and local governments

45 CFR Part 93—New restrictions on lobbying

51 FR 16958 or successor—NIH Guidelines for Research Involving Recombinant DNA Molecules

Public Health Service Policy on Humane Care and Use of Laboratory Animals.

§ 52a.9 Additional conditions.

NIH may, with respect to any grant award, impose additional conditions prior to or at the time of any award when, in NIH's judgment, the conditions are necessary to assure or protect advancement of the approved program, the interests of the public health, or the conservation of grant funds.

[FR Doc. 92–31105 Filed 12–22–92; 8:45 am]

BILLING CODE 4140–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket Nos. 91–169 and 85–38; FCC 92–508]

Cable Television Technical and Operational Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: In response to petitions for reconsideration of the Report and Order in MM Dockets Nos. 91–169 and 85–38, 57 FR 11000 (April 1, 1992), in which the Commission adopted technical standards for cable television systems, the Commission clarifies the Report and Order, and modifies certain of the technical standards adopted. The Commission clarifies the location of tests for compliance with the standards, the majority of which tests must still be made after a signal passes through a converter. The Commission modifies, with conditions, testing for the amplitude characteristic standard, so that testing may be conducted prior to a signal passing through a converter. Such manner of testing is allowable only for seven years from the rule's effective date. The Commission reduces the number of test points required for technically integrated cable systems utilizing microwave hubs. The Commission affirms the need to ensure that cable subscribers' privacy rights are protected as part of complaint resolution processes. The Commission declines to adopt specific rules addressing co-channel interference. This action is intended to define a basic quality to be expected by cable subscribers, without unnecessarily burdening cable operators.

EFFECTIVE DATE: December 30, 1992.

FOR FURTHER INFORMATION CONTACT: Barrett L. Brick, Cable Television Branch, Mass Media Bureau, (202) 632–7480 [legal issues], or John Wong, Cable Television Branch, Mass Media Bureau, (202) 254–3420 [technical issues].

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order in MM Docket Nos. 91–169 and 85–38, FCC 92–508, adopted November 10, 1992, and released November 24, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422.

Summary of Memorandum Opinion and Order

1. In this Memorandum Opinion and Order, the Commission clarifies and modifies, in part, its technical standards for cable television systems. These standards were adopted in the Commission's Report and Order in MM Docket Nos. 91–169 and 85–38, 7 FCC Rcd 2021, 57 FR 11000 (1992). The intent of this action is to define a basic quality of service cable subscribers are entitled to receive, without unnecessarily burdening cable operators.

2. The Commission retains its amplitude characteristic standard as adopted. However, prior to December 30, 1999, cable operators may measure this standard prior to a signal's passing through a converter. Nevertheless, during this time period, should subscriber complaints arise from a system failing to meet this standard, the cable operator will be required to provide a converter that will allow the system to meet the standard at the subscriber's terminal. Should complaints be systemic, the Commission may order a system-wide converter replacement.

3. The Commission retains its requirement that proof-of-performance tests be made at each nonmechanically continuous section of cable plant. However, the Commission requires only one test point for each portion of a cable system served by a technically integrated microwave hub. In addition, the test points for each microwave hub may be counted against the total number of test points required for a system, so long as at least one point for each portion of the system is tested. The Commission defines "technically integrated" as having 75% or more of the video channels received from a common headend.

4. The Commission clarifies the location of testing for proof-of-performance tests, the majority of which still must be made after a signal passes through a converter. Converters used in testing must reflect the types supplied to nearby subscribers. Visual signal level variations shall be tested prior to a converter. Aural carrier levels can be maintained between 6.5 and 17 dB below the associated visual carrier level for baseband converters. Only a single channel need be measured for hum modulations at each test point, and a single unmodulated carrier may be used to demonstrate compliance. The Commission clarifies that for tests of channels made prior to a trap, a statement detailing the effects of the device on the trapped channel and, if necessary, on adjacent channels must be included. The Commission also clarifies that color measurements need only be made at the output of the modulating or processing equipment (generally, the headend).

5. The Commission declines to adopt specific rules concerning co-channel interference, but notes that cable operators are expected to make reasonable efforts to ensure signal quality, and to use good engineering practices and proper equipment in signal processing.

6. The Commission requires cable operators to provide governmental authorities aggregate data on complaints received, rather than individual complaints containing protected personally identifiable information, to accommodate privacy concerns.

7. The Commission clarifies that signal leakage enforcement is the sole responsibility of the Commission, and is not delegated to state or local authorities. The Commission also clarifies that franchising authorities should afford cable operators notice of signal quality problems and an opportunity to come into compliance prior to ordering retesting.

Paperwork Reduction

8. Public recordkeeping burden for this collection of information is estimated to average 26 hours and 22 minutes per recordkeeper, including the time for reviewing instruction, 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 of the Federal Communications Commission, Office of Managing Director, Washington, DC 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060–0289), Washington, DC 20503.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Amendatory Text

Part 76 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 76—Cable Television Service

1. The authority citation for part 76 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

2. Section 76.5 is amended by adding paragraph (kk) to read as follows:

§ 76.5 Definitions.

* * * * *

(kk) Technically Integrated. Having 75% or more of the video channels received from a common headend.

3. Section 76.601 is amended by revising paragraphs (c)(1), (c)(2) and (c)(4) and by adding a note to read as follows:

§ 76.601 Performance tests.

* * * * *

(c) * * *

(1) For cable television systems with 1000 or more subscribers but with 12,500 or fewer subscribers, proof-of-performance tests conducted pursuant to this section shall include measurements taken at six (6) widely separated points. However, within each cable system, one additional test point shall be added for every additional 12,500 subscribers or fraction thereof (*e.g.*, 7 test points if 12,501 to 25,000 subscribers; 8 test points if 25,001 to 37,500 subscribers, *etc.*). In addition, for technically integrated portions of cable systems that are not mechanically continuous (*i.e.*, employing microwave connections), at least one test point will be required for each portion of the cable system served by a technically integrated microwave hub. The proof-of-performance test points chosen shall be balanced to represent all geographic areas served by the cable system. At least one-third of the test points shall be representative of subscriber terminals most distant from the system input and from each microwave receiver (if microwave transmissions are employed), in terms of cable length. The measurements may be taken at convenient monitoring points in the cable network: Provided, that data shall be included to relate the measured performance of the system as would be viewed from a nearby subscriber terminal. An identification of the instruments, including the makes, model numbers, and the most recent date of calibration, a description of the procedures utilized, and a statement of the qualifications of the person performing the tests shall also be included.

(2) Proof-of-performance tests to determine the extent to which a cable television system complies with the standards set forth in § 76.605(a) (3), (4), and (5) shall be made on each of the NTSC or similar video channels of that system. Unless otherwise as noted, proof-of-performance tests for all other standards in § 76.605(a) shall be made on a minimum of four (4) channels plus one additional channel for every 100 MHz, or fraction thereof, of cable distribution system upper frequency limit (*e.g.*, 5 channels for cable television systems with a cable distribution system upper frequency limit of 101 to 216 MHz; 6 channels for cable television systems with a cable distribution system upper frequency limit of 217–300 MHz; 7 channels for cable television systems with a cable distribution upper frequency limit to 300 to 400 MHz, *etc.*). The channels selected for testing must be representative of all the channels within the cable television system.

* * * * *

(4) The operator of each cable television system shall conduct triennial proof-of-performance tests of its system to determine the extent to which the system complies with the technical standards set forth in § 76.605(a)(11).

* * * * *

Note: Prior to requiring any additional testing pursuant to § 76.601(d), the local franchising authority shall notify the cable operator who will be allowed thirty days to come into compliance with any perceived signal quality problems which need to be corrected. The Commission may request cable operators to test their systems at any time.

4. Section 76.605 is amended by revising paragraphs (a)(3), (a)(4) introductory text, (a)(5), (a)(6), (a)(10), (a)(11), and (a)(12), by revising Note (2), and by adding Notes (4), (5) and (6) to read as follows:

§ 76.605 Technical standards.

(a) * * *

(3) The visual signal level, across a terminating impedance which correctly matches the internal impedance of the cable system as viewed from the subscriber terminal, shall not be less than 1 millivolt across an internal impedance of 75 ohms (0 dBmV). Additionally, as measured at the end of a 30 meter cable drop that is connected to the subscriber tap, it shall not be less than 1.41 millivolts across an internal impedance of 75 ohms (+3 dBmV). (At other impedance values, the minimum visual signal level, as viewed from the subscriber terminal, shall be the square root of 0.0133(Z) millivolts and, as measured at the end of a 30 meter cable drop that is connected to the subscriber tap, shall be 2 times the square root of 0.00662(Z) millivolts, where Z is the appropriate impedance value).

(4) The visual signal level on each channel, as measured at the end of a 30 meter cable drop that is connected to the subscriber tap, shall not vary more than 8 decibels within any six-month interval, which must include four tests performed in six-hour increments during a 24-hour period in July or August and during a 24-hour period in January or February, and shall be maintained within:

* * * * *

(5) The rms voltage of the aural signal shall be maintained between 10 and 17 decibels below the associated visual signal level. This requirement must be met both at the subscriber terminal and at the output of the modulating and processing equipment (generally the headend). For subscriber terminals that use equipment which modulate and remodulate the signal (*e.g.*, baseband converters), the rms voltage of the aural signal shall be maintained between 6.5 and 17 decibels below the associated visual signal level at the subscriber terminal.

(6) The amplitude characteristic shall be within a range of ±2 decibels from 0.75 MHz to 5.0 MHz above the lower boundary frequency of the cable television channel, referenced to the average of the highest and lowest amplitudes within these frequency boundaries.

(i) Prior to December 30, 1999, the amplitude characteristic may be measured after a subscriber tap and before a converter that is provided and maintained by the cable operator.

(ii) As of December 30, 1999, the amplitude characteristic shall be measured at the subscriber terminal.

* * * * *

(10) The peak-to-peak variation in visual signal level caused by undesired low frequency disturbances (hum or repetitive transients) generated within the system, or by inadequate low frequency response, shall not exceed 3 percent of the visual signal level. Measurements made on a single channel using a single unmodulated carrier may be used to demonstrate compliance with this parameter at each test location.

(11) As of June 30, 1995, the following requirements apply to the performance of the cable television system as measured at the output of the modulating or processing equipment (generally the headend) of the system:

(i) The chrominance-luminance delay inequality (or chroma delay), which is the change in delay time of the chrominance component of the signal relative to the luminance component, shall be within 170 nanoseconds.

(ii) The differential gain for the color subcarrier of the television signal, which is measured as the difference in amplitude between the largest and smallest segments of the chrominance signal (divided by the largest and expressed in percent), shall not exceed ±20%.

(iii) The differential phase for the color subcarrier of the television signal which is measured as the largest phase difference in degrees between each segment of the chrominance signal and reference segment (the segment at the blanking level of O IRE), shall not exceed ±10 degrees.

(12) As an exception to the general provision requiring measurements to be made at subscriber terminals, and without regard to the type of signals carried by the cable television system, signal leakage from a cable television system shall be measured in accordance with the procedures outlined in § 76.609(h) and shall be limited as follows:

* * * * *

Note 2: For systems serving rural areas as defined in § 76.5, the system may negotiate with its local franchising authority for standards less stringent than those in §§ 76.605(a)(3), 76.605(a)(7), 76.605(a)(8), 76.605(a)(10) and 76.605(a)(11). Any such agreement shall be reduced to writing and be associated with the system's proof-of-performance records.

* * * * *

Note 4: Should subscriber complaints arise from a system failing to meet § 76.605(a)(6) prior to December 30, 1999, the cable operator will be required to provide a converter that will allow the system to meet the standard immediately at the complaining subscriber's terminal. Further, should the problem be found to be system-wide, the Commission may order all converters on the system be changed to meet the standard.

Note 5: Should subscriber complaints arise from a system failing to meet § 76.605(a)(10), the cable operator will be required to remedy the complaint and perform test measurements on § 76.605(a)(10) containing the full number of channels as indicated in § 76.601(c)(2) at the complaining subscriber's terminal. Further, should the problem be found to be system-wide, the Commission may order that the full number of channels as indicated in § 76.601(c)(2) be tested at all required locations for future proof-of-performance tests.

Note 6: A franchising authority may apply to the Commission for a waiver to impose cable technical standards that are more stringent than the standards prescribed by the Commission.

5. Section 76.607 is revised to read as follows:

§ 76.607 Resolution of complaints.

Cable system operators shall establish a process for resolving complaints from subscribers about the quality of the television signal delivered. These records shall be maintained for at least a one-year period. Aggregate data based upon these complaints shall be made available for inspection by the Commission and franchising authorities, upon request. Subscribers shall be advised, at least once each calendar year, of the procedures for resolution of complaints by the cable system operator, including the address of the responsible officer of the local franchising authority.

Note: Prior to being referred to the Commission, complaints from subscribers about the quality of the television signal delivered must be referred to the local franchising authority and the cable system operator.

6. Section 76.609 is amended by revising paragraph (h)(2) to read as follows:

§ 76.609 Measurements.

* * * * *

(h) * * *

(2) Field strength shall be expressed in terms of the rms value of synchronizing peak for each cable television channel for which signal leakage can be measured.

* * * * *

[FR Doc. 92–30875 Filed 12–22–92; 8:45 am]
BILLING CODE 6712–01–M

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47 CFR Part 80

[FCC 92–532]

Implementation of Changes to Bridge-to-Bridge Act

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted an *Order* to implement recent minor statutory changes to the Vessel Bridge-to-Bridge Radiotelephone Act of 1971 (Bridge-to-Bridge Act) and changes in the Coast Guard's Rules pertaining to same.

EFFECTIVE DATE: January 22, 1993.

FOR FURTHER INFORMATION CONTACT: Marc S. Martin, (202) 632–7175, Private Radio Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order*, FCC 92–532, adopted November 30, 1992, and released December 14, 1992. The full text of this *Order* is available for inspection and copying during normal business hours in the FCC Reference Center, room 230, 1919 M Street, NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, Washington, DC 20036, telephone (202) 452–1422.

Summary of Order

1. In response to a request from the Coast Guard, this *Order* adopts minor amendments to the Commission's Maritime Services Rules, 47 CFR part 80, to reflect a recent change to the Coast Guard's Rules, 33 CFR 1201–1208, pertaining to vessels subject to the Vessel Bridge-to-Bridge Radiotelephone Act of 1971 (Bridge-to-Bridge Act). The Bridge-to-Bridge Act requires certain classes of vessels to carry marine VHF radio equipment capable of interoperability. The purpose of the Bridge-to-Bridge Act is to prevent ship collisions in harbors and navigable waters of the United States by providing common marine VHF channels to communicate from one ship's bridge to another ship's bridge.

2. The Coast Guard adopted new rules, effective August 19, 1992, requiring vessels subject to the Bridge-to-Bridge Act to be equipped with radio installations capable of operating on certain additional marine VHF channels. In addition, the Coast Guard implemented a recent statutory amendment to the Bridge-to-Bridge Act which broadened the statute's applicability to power driven vessels. By this action, the Commission conforms its rules to the recent changes to the Coast Guard's Rules.

3. Section 1.412(c) of the Commission's Rules, 47 CFR 1.412(c), provides that rule changes may be adopted without prior notice where the Commission for good cause finds that notice and comment procedures are unnecessary, so long as the basis for the good cause finding is published with the rules changes. Section 1.412(c) of the Rules reflects the requirements contained in the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B).

4. We find that a notice and comment rule making proceeding in this matter is unnecessary. The changes to our rules merely reflect changes the Coast Guard previously made to its rules, effective August 19, 1992, pursuant to the notice and comment requirements of the APA. None of the changes to our rules are intended to create, alter, or revoke substantive rights and duties. See *United States* versus *United States Trucking Corp.*, 317 F.Supp. 69 (S.D.N.Y. 1970). Further, most U.S. vessels and approximately half of the foreign flag vessels subject to the Bridge-to-Bridge Act were already equipped with radio equipment in compliance with the requirements of the Coast

Guard's Final Rule at the time it was adopted.[1] Therefore, the burden of compliance with the changes to our rules which implement the Final Rule is not substantial, nor do these changes add to the burden already imposed by the Coast Guard. Accordingly, we conclude that these changes constitute minor, noncontroversial amendments to the rules. Therefore, it is unnecessary to comply with the notice and comment requirements of the APA.

5. In accordance with section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that the rules would not, if promulgated, have a significant economic impact on a substantial number of small business entities for reasons given above.

6. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520, and found to contain no new or modified form, information collection and/or record retention requirements, and will not increase or decrease burden hours imposed on the public.

7. Accordingly, *It is Ordered* That part 80 of the Commission's Rules is amended as set forth below; effective thirty days after publication in the **Federal Register.**

Donna R. Searcy,

Secretary, Federal Communications Commission.

List of Subjects in 47 CFR Part 80

Marine safety.

Final Rule

Part 80 of chapter 1 of title 47 of the Code of Federal Regulations is amended as follows:

[1] See Final Rule, 57 FR at 14485.

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. Section 80.309 is amended by revising the first sentence to read as follows:

§ 80.309 Watch required by the Bridge-to-Bridge Act.

In addition to the watch requirement contained in § 80.148, all vessels subject to the Bridge-to-Bridge Act must keep a watch on the designated navigational frequency. * * *

* * * * *

3. Section 80.1001 is amended by revising paragraph (a) to read as follows:

§ 80.1001 Applicability.

* * * * *

(a) Every power-driven vessel of 20 meters or over in length while navigating;

* * * * *

4. Section 80.1011 is revised to read as follows:

§ 80.1011 Transmitter.

(a) The bridge-to-bridge transmitter must be capable of transmission of G3E emission on the navigational frequency 156.650 MHz (Channel 13) and the Coast Guard liaison frequency 157.100 MHz (Channel 22A). Additionally, the bridge-to-bridge transmitter must be capable of transmission of G3E emission on the navigational frequency of 156.375 MHz (Channel 67) while transiting any of the following waters:

(1) The lower Mississippi River from the territorial sea boundary, and within either the Southwest Pass safety fairway or the South Pass safety fairway specified in § 166.200 of the U.S. Coast Guard's Rules, 33 CFR 166.200, to mile 242.4 AHP (Above Head of Passes) near Baton Rouge;

(2) The Mississippi River-Gulf Outlet from the territorial sea boundary, and within the Mississippi River-Gulf outlet Safety Fairway specified in Section 166.200 of the U.S. Coast Guard's Rules, 33 CFR 166.200, to that channel's junction with the Inner Harbor Navigation Canal; and

(3) The full length of the Inner Harbor Navigation Canal from its junction with the Mississippi River to that canal's entry to Lake Pontchartrain at the New Seabrook vehicular bridge.

(b) [Reserved]

5. Section 80.1013 is revised to read as follows:

§ 80.1013 Receiver.

The bridge-to-bridge receiver must be capable of reception of G3E emission on the navigational frequency 156.650 MHz (Channel 13) and the Coast Guard liaison frequency 157.100 MHz (Channel 22A). In addition, the bridge-to-bridge receiver must be capable of reception of G3E emission on the navigational frequency of 156.375 MHz (Channel 67) while transiting in the waters of the lower Mississippi River as described in §§ 80.1011(a)(1), (a)(2) and (a)(3) of this part.

[FR Doc. 92–30968 Filed 12–22–92; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 57, No. 247
Wednesday, December 23, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150–AC07

Availability of Official Records

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations pertaining to the availability of official records to conform the regulations to existing case law and agency practice. The proposed amendments would have three aspects: It would inform the public of three additional exceptions to a submitter's right to withdraw submitted information; it would provide more specific guidance for marking proprietary information; and it would inform the public of agency practice regarding reproduction and distribution of submitted copyrighted material.

DATES: The comment period expires March 8, 1993. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for those comments received on or before this date.

ADDRESSES: Comments may be mailed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attn: Docketing and Service Branch. Comments may be hand-delivered to Docketing and Service Branch, One White Flint North, 11555 Rockville Pike, Rockville, MD between 7:45 am and 4:15 pm Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mary Patricia Siemien, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–504–1565.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission is proposing to amend 10 CFR 2.790 to conform its regulations pertaining to the availability of official records to existing case law and agency practice.

Document Withdrawal

10 CFR 2.790(c) currently provides that if the Commission (or an NRC official with delegated authority) denies a request to withhold information from public disclosure which an applicant seeks to have withheld under 10 CFR 2.790(a)(4), the applicant has a right to withdraw the information unless the information has been submitted in a rulemaking proceeding and subsequently forms the basis for a final rule. In this case, the information will not be withheld from public disclosure and will not be returned to the applicant. The NRC is proposing to amend 10 CFR 2.790(c) to add three additional circumstances where information submitted to the NRC will not be returned to the applicant.

The first exception would provide that a document submitted to NRC will not be returned nor may it be withdrawn if it has been made available to or prepared for a Federal Advisory Committee. Section 10(b) of the Federal Advisory Committee Act (FACA) requires that, subject to the FOIA, these records be available for public inspection and copying until the Committee is abolished. Although the Federal Advisory Committee Act permits the closing of Federal Advisory Committee meetings (FACA, sec. 10(d)), all reports received by the committee must be contained in the minutes of the meeting to which they pertain (FACA, sec. 10(c)). The FACA has no provision for withdrawal of a document that has been provided to an advisory committee. In this connection it is important to note that a copy of many of the documents submitted to NRC is provided routinely to the Commission's Advisory Committee on Reactor Safeguards (ACRS) and the Commission's Advisory Committee on Nuclear Waste (ACNW).

The second exception would provide that when information contained in a record submitted to the NRC has been requested pursuant to the Freedom of Information Act (5 U.S.C. 552(b)), the record will not be returned to the submitter. When the NRC receives a FOIA request for a record, that record is "captured" as an agency record. The NRC is then obligated under the FOIA to determine whether to disclose the record or to withhold it, in part or in its entirety, under one of nine exemptions specified in the Act. If the agency discloses the information in a record which a submitter seeks to have withheld from public disclosure, the return of the submitted document provides no protection. Therefore, there generally is no reason for its return. If the record is withheld from public disclosure in response to a FOIA request, the agency is obligated to retain the record for six years under the record retention provisions of its Records Retention and Disposal Schedule, which has been approved by the National Archives and Records Administration. This schedule reflects a decision of the District of Columbia Circuit Court that the statute of limitations for appealing the denial of information requested under the FOIA is six years and ten days from the agency's receipt of the request. (*Spannaus* v. *Department of Justice*, 824 F. 2d (D.C. Cir. 1987)).

The third exception would relate to documents considered in connection with an open Commission meeting held in accordance with the Commission's Sunshine Act regulations, 10 CFR part 9, subpart C. Information discussed at a Sunshine Act meeting is generally subject to the same openness requirements as the meetings themselves. To the extent that proprietary information may be involved in matters discussed by the Commission, 10 CFR 9.104 provides that the meetings may be closed. However, after balancing the interests, if the Commission determines to release the information, there is no reason to provide for its return to the submitter, except for any material that may have been extraneous to the submittal officially before the Commission and that may easily be segregated from the remainder.

Document Marking

The Commission is proposed to amend 10 CFR 2.790(b)(1)(i) to require that any document that contains information which a submitter seeks to have withheld from public disclosure because it contains "Trade secrets and commercial or financial information obtained from a person and privileged

or confidential" (10 CFR 2.790(a)(4)), be clearly marked, on the first page and on every other page that contains this information, to indicate that this type of information is contained within the document. The Commission has a centralized operation for receiving incoming mail relating to its licensing activities. When mail is opened, a determination is made as to whether the information is to be made public. To ensure that information which a submitter seeks to be withheld from public disclosure under 10 CFR 2.790(a)(4) is not placed in the NRC Public Document Room, any document containing this type of information must be clearly marked to indicate that it contains information that the submitter considers company confidential (proprietary) information. The Commission will not be accountable for the public release of a document that is not marked in accordance with the Commission's regulations. Further, to avoid unnecessary delay and wasted effort, if withholding from public disclosure is not intended, any markings that could be misinterpreted as indicating a desire for withholding from public disclosure must be removed before submitting the document to NRC.

Material Subject to Copyright Protection

The rule proposes to redesignate the current 10 CFR 2.790(e) as 10 CFR 2.790(f). The rule proposes a new 10 CFR 2.790(e) that would provide notice to persons submitting copyrighted information to the NRC, that by submitting the material, the submitter authorizes NRC to reproduce sufficient copies of the copyrighted information to carry out its regulatory and public information responsibilities under the Atomic Energy Act of 1954, as amended, and other applicable Federal laws, including the Freedom of Information Act. This authorization includes NRC's reproduction contractor acting within the scope of the reproduction contract with NRC.

Current Commission regulations do not specify how copyrighted material submitted to the NRC in connection with licensing or regulatory activities is handled. Recent submissions of material bearing copyright notices led the Commission's staff to consider this issue. This in turn led to a recognition of the recent changes in U.S. copyright law (Title 17 United States Code), which no longer require a copyright notice on a document in order for that document to be subject to copyright protection. Thus, a much larger quantity of documents may be affected and identifying documents entitled to protection against copying is no longer a matter that the NRC can determine simply by looking for a copyright notice. Because the NRC regularly reproduces and distributes copies of material submitted to the NRC in connection with its licensing and regulatory activities, it has become important to describe explicitly how the Commission will handle material submitted to it that may be subject to protection against copying under the copyright law. Although NRC's copying activities may well be encompassed by the "fair use" provisions of the copyright law, the Commission believes it is preferable to state clearly in its regulations the Commission's policy with respect to copying and distributing documents submitted to the agency.

Specifically, the proposed regulation provides notice that the submission of a document to the NRC in connection with NRC licensing and regulatory activities authorizes NRC to reproduce and distribute copies required for its regulatory and public information responsibilities. Another provision of the proposed rule provides that the submission of a document to the NRC in connection with its licensing or regulatory activities is deemed to be a representation to the NRC by the submitter that the submitter has the authority to submit the document and to authorize the NRC to make copies of the document, whether or not the document bears a copyright notice.

The proposed regulation is designed to assure that copyright restrictions do not limit public access to information submitted to the NRC in connection with its licensing and regulatory activities. The Commission's practice has been to provide broad public access to this information and thus meet its responsibility to keep the public informed of its activities relating to licensing and regulation of nuclear facilities and materials. The Commission believes that making these documents available to the public is essential to satisfy its regulatory and public information responsibilities.

The proposed regulation authorizes only the NRC to copy and distribute the document and does not extend these rights to other persons receiving copies from NRC. The proposed rule provides that if the document bears a copyright notice or is accompanied by an explicit statement that the document is protected under the copyright law, a notice would be placed on the document indicating that the NRC has the authority to copy the document; however, all copyright markings contained on the submitted document would be retained.

The proposed rule states that the NRC would not accept documents submitted in connection with NRC licensing or regulatory activities which bear or are accompanied by a statement that purports to restrict the copying of these documents by the NRC or that indicates that the submitter lacks the authority to permit the NRC to copy and distribute the document. These documents would not be considered by the Commission and would be returned to the submitter unless the Commission has granted a waiver of the regulation. However, with respect to distribution of documents to the general public, only one copy per request will be made of documents bearing a copyright notice or documents accompanied by an explicit statement indicating that the document is protected under the copyright law. In the absence of such an explicit statement, the Commission will continue its customary reproduction practices.

In addition to the provisions included in this proposed rule, the NRC intends to post near each copying machine on NRC premises a copyright notice. This notice will inform users and persons obtaining copies from the NRC that, although NRC has been authorized to copy the material pursuant to 10 CFR 2.790(e), this authorization does not extend to persons obtaining copies or access to documents from NRC and that these persons are responsible for any copyright infringement that may result from their activities.

Submitters of copyrighted information are on notice that, in order to meet its routine regulatory and public information responsibilities under the Atomic Energy Act of 1954, as amended, NRC reproduces sufficient paper and microfiche copies to meet its staff and contract needs, the needs of users of its headquarters Public Document Room (PDR) and Local Public Document Rooms (LPDRs), and to service subscribers of microfiche copies by the Department of Commerce National Technical Information Service (NTIS). As part of its normal practice, the NRC reproduces an average of 35 additional paper copies of written submittals made to the Commission. The copies are dispatched to the NRC staff; one copy is placed in the NRC Public Document Room, and, on occasion, a copy may be provided to an NRC contractor or an organization having an information exchange agreement with the NRC. In many instances, a copy of a document submitted to NRC is also routinely provided to the Advisory Committee on Reactor Safeguards (ACRS) and the Advisory Committee on Nuclear Waste (ACNW). The NRC films each record on

48X, (360-framed, packed) microfiche and currently duplicates 167 microfiche copies, which are made available to the staff, contractors and public users, if any, of the NRC's Nuclear Documents System (NUDOCS). Of these 167 microfiche copies, 71 copies are provided for agency staff use at locations in NRC headquarters and regional offices. Four microfiche copies are placed in the PDR, and one in each of the NRC's 76 power-reactor LPDRs, which are maintained in facilities accessible to the public, such as local and university libraries. An additional microfiche copy is provided to the NTIS, which provides microfiche copies to 20 subscribers in the United States and various foreign countries. Three copies are provided to NRC contractors. One copy is provided to the Institute for Nuclear Power Operations. Ten microfiche copies are maintained for archival reserve and replacement purposes.

The Commission also contracts with a private reproduction company to reproduce copies of records in the PDR collection in response to requests by individuals and organizations, including the processing of standing orders for copies of certain types of public records. Reproduction fees for the contractor service and use of the onsite copying machines are published at 10 CFR 9.35. Billing is handled directly between the contractor and the person or organization ordering the copy and payment is made directly to the contractor. Reference librarians assist users in this interface as needed. In addition, the PDR maintains an electronic on-line system, the Bibliographic Retrieval System (BRS) which permits both retrieval of document citations and subject data and the ordering of desired copies. NRC also maintains an electronic document control system entitled NUDOCS which, for certain documents, has full-text search and retrieval capability. Written submittals to NRC, other than proprietary information, are accessible to the public through the NUDOCS system.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

Paperwork Reduction Act Statement

This proposed rule contains no information collection requirements and, therefore, is not subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Regulatory Analysis

The current regulations in § 2.790 provide submitters of information the right to have the information returned to them upon their request. The amendment proposed in this rule would conform NRC's regulations concerning the availability of official records to existing case law and current agency practice. The proposed amendments would inform the public of three additional exceptions to an applicant's right to withdraw submitted information and of current agency practice concerning the reproduction and distribution of submitted copyright material.

The proposed amendments reflect current agency administrative and procedural practice and would have only minor impact on the benefits or costs associated with the Commission's regulations. Some submitters currently mark documents as specified in the proposed amendments. For others, the proposed amendments shift some responsibility to the submitter for ensuring that privileged material is protected. While actual benefits would accrue to the Commission, they are largely intangible and difficult to quantify. The foregoing constitutes the regulatory analysis for this proposed rule.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed rule clarifies the right of the submitter of information to have that information returned on request and informs the public of the additional exceptions to the right of withdrawal and of agency practice concerning the reproduction and distribution of copyrighted material. The proposed rule does not impose any obligation or have any financial impact on entities including any regulated entities that may be "small entities" as defined by the Regulatory Flexibility Act (5 U.S.C. 601(3)) or under the size standards adopted by the NRC (50 FR 50241; December 9, 1985).

Backfit Analysis

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

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR part 2.

PART 2—RULES OF PRACTICES FOR DOMESTIC LICENSING PROCEEDINGS

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

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552).

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)), sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201(b), (i), (o), 2236, 2282); sec. 206, 88 Stat 1246 (42 U.S.C. 5846). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99–240, 99 Stat. 1842 (42 U.S.C. 2012b et seq.).

2. In § 2.790, paragraph (e) is redesignated as paragraph (f); the introductory text of paragraph (b)(1) and paragraph (c) are revised; and a new paragraph (e) is added to read as follows:

§ 2.790 Public inspections, exemptions, requests for withholding.

* * * * *

(b)(1) A person who proposes that a document or a part of a document be withheld in whole or part from public disclosure on the ground that it contains trade secrets, privileged or confidential commercial or financial information shall mark the first page of the document and every other page containing this information "Confidential Information Submitted Under 10 CFR 2.790" or "Proprietary Information Submitted under 10 CFR 2.790", to indicate that it contains information the submitter seeks to have withheld. The person shall also submit an application for withholding accompanied by an affidavit which:

* * * * *

(c)(1) If a request for withholding information under paragraph (b) of this section is denied, the Commission shall notify the applicant of the denial and state the reasons for the denial. The notice of denial will specify a time, not less than 30 days after the date of the notice, when the document will be placed in the Public Document Room. If the applicant requests withdrawal of the document within the time specified in the notice, the document will not be placed in the Public Document Room and will be returned to the applicant unless the information—

(i) Was submitted in a rulemaking proceeding and subsequently forms the basis for a final rule;

(ii) Is contained in a document that was made available to or prepared for an NRC advisory committee;

(iii) Was discussed at an open Commission meeting held in accordance with 10 CFR part 9, subpart C; or

(iv) Is subject to a request submitted pursuant to the Freedom of Information Act.

(2) If a request for withholding information under paragraph (b) of this section is granted, the Commission shall notify the applicant of this determination.

* * * * *

(e)(1) Any person submitting information to NRC to be considered in connection with NRC licensing or regulatory activities, whether or not such information bears a copyright notice, shall be deemed to authorize the NRC, including NRC's reproduction contractor acting within the scope of the reproduction contract with NRC, to reproduce and to distribute fficient copies to carry out the Commission's regulatory and public information responsibilities. Any person submitting such information to NRC shall be deemed to represent to the NRC that such person has the authority to submit such document and the authority to authorize NRC to reproduce and distribute such document and shall hold the Commission harmless from damages that result from the Commission's reproduction or distribution of such documents.

(2) The Commission shall return to the submitter a document bearing or accompanied by a statement purporting to restrict the NRC from copying the document in accordance with this regulation or a document which bears or is accompanied by a statement representing that the submitter lacks the authority to permit NRC to copy and distribute the document. These documents will not be considered by the Commission in the absence of a waiver of this regulation. The Commission may waive the requirements of this paragraph when requested, or by its own initiative, in circumstances the Commission deems appropriate.

* * * * *

Dated at Rockville, MD, this 17th day of December, 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 92–31088 Filed 12–22–92; 8:45 am]

BILLING CODE 7590–01–M

FEDERAL RESERVE SYSTEM

12 CFR Part 215

[Regulation O; Docket No. R-0785]

Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks; Loans to Holding Companies and Affiliates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule with request for comment.

SUMMARY: The Board is proposing to revise Regulation O to implement recent amendments to section 22(h) of the Federal Reserve Act, contained in the Housing and Community Development Act of 1992. The Board is requesting public comment on three exceptions to the aggregate insider lending limit in Regulation O and is inviting suggestions on additional transactions that would meet the statutory exemptive criteria.

DATES: Comments should be submitted on or before January 19, 1993.

ADDRESSES: Comments, which should refer to Docket No. R-0785, may be mailed to the Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, to the attention of Mr. William Wiles, Secretary. Comments addressed to the attention of Mr. Wiles may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments may be inspected in room B-1122 between 9 a.m. and 5 p.m. weekdays, except as provided in section 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Gordon Miller, Attorney (202/452-2534), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Housing and Community Development Act of 1992 (HCDA), Pub. L. 102-550, 106 Stat. 3672 (1992), effective October 28, 1992, amended section 22(h) of the Federal Reserve Act (Act), 12 U.S.C. § 375b, to authorize the Board to adopt exceptions from the definition of "extension of credit" that pose minimal risk to the lending bank. The Board is proposing three exceptions to the aggregate lending limit in Regulation O (12 CFR part 215) to implement this amendment.

Background

The Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), Pub. L. 102-242, 105 Stat. 2355 (1991), amended section 22(h) of the Act, effective May 18, 1992, by establishing a new 100 percent of capital limit on the aggregate amount of credit a member bank may extend to its insiders and their related interests as a class.[1] Unlike the single borrower lending limit under section 22(h), the new aggregate lending limit did not

[1] FDICIA also authorized the Board by regulation to make exceptions to this limit, subject to certain requirements and restrictions, for member banks with less than $100 million in deposits. *See* 12 U.S.C. § 375b(5)(C). The Board has exercised this authority for the one-year period ending May 18, 1993. 12 CFR 215.4(d)(2).

incorporate the exceptions from the loan to one borrower rule found in the National Bank Act. *See* 12 U.S.C. § 84. In addition, FDICIA eliminated the flexibility the Board previously had enjoyed under section 22(h) to exclude from coverage credit transactions that posed no risk to the bank. As a result, a bank was required to include certain loans when calculating its aggregate insider lending limit under Regulation O that it was not required to include when calculating its single borrower lending limit under Regulation O.

In order to reduce this inconsistency between the individual and aggregate lending limits in Regulation O, the Board recommended that Congress restore to the Board the ability to make exceptions to the lending limit. Congress responded in HCDA by granting the Board the authority to make exceptions by regulation to the definition of "extension of credit" in section 22(h) of the Act for transactions that the Board determines pose minimal risk. The legislative history of this provision states that the Board should make a "zero-based review" of all exceptions, rather than to adopt the exceptions under the National Banking Act as a whole. *See* 138 Cong. Rec. S17,914-15 (daily ed. Oct. 8, 1992).

Discussion of Issues

Under the concentration of credit rules of the National Bank Act, certain categories of loans or extensions of credit are deemed, as a result of the manner in which they are collateralized, to pose minimal risk of loss to a bank, and the ability of a national bank to engage in such transactions is made subject to relaxed quantitative limitations or is not subject to any quantitative limitations at all. *See* 12 U.S.C. § 84. The Board proposes to adopt three of these categories as exceptions from the definition of "extension of credit" as it applies to the aggregate lending limit at section 215.4(d) of Regulation O. These three categories are:

(1) Extensions of credit secured by obligations of the United States or other obligations fully guaranteed as to principal and interest by the United States;

(2) Extensions of credit to or secured by commitments or guarantees of the United States or its agencies; and

(3) Extensions of credit secured by a segregated deposit account with the lending bank.

The Board therefore proposes and requests public comment on these three categories as an initial group of exceptions to the aggregate lending limit under Regulation O. The Board also requests public comment on any other categories of extensions of credit which should be included, either with or without quantitative limitations, as additional exceptions to the aggregate lending limit.

By making these exceptions effective only with respect to the aggregate lending limit, the general prohibitions in Regulation O on extensions of credit to insiders, found in §§ 215.4(a) and (b), remain in effect as safeguards against abuse of these exceptions.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. § 601 *et seq.*) requires an agency to publish an initial regulatory flexibility analysis with any notice of proposed rulemaking. Two of the requirements of an initial regulatory flexibility analysis, a description of the reasons why the action by the agency is being considered, and a statement of the objectives of, and legal basis for, the proposed rule (5 U.S.C. § 603(b)), are contained in the supplementary information above.

The Board's proposed rule imposes no additional reporting or recordkeeping requirements, nor are there relevant federal rules that duplicate, overlap, or conflict with the proposed rule. The proposed rule will apply to all member banks, regardless of size. The proposed rule should not have a negative economic impact on small institutions. Instead, the rule should relieve their regulatory burden and will increase the ability of small institutions to make loans and other extensions of credit that pose little or no risk of loss to the member bank, and to attract and retain outside directors to whom such loans and other extensions of credit may be made in the same manner and to the same extent as they may be made to persons who are not insiders of the bank.

List of Subjects in 12 CFR Part 215

Credit, Federal Reserve System, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, and pursuant to the Board's authority under section 22(h) of the Federal Reserve Act (12 U.S.C. § 375b) and section 955 of the Housing and Community Development Act of 1992 (Pub. L. 102-550, 106 Stat. 3895 (1992)), the Board is amending 12 CFR part 215, part A, as follows:

PART 215—LOANS TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS OF MEMBER BANKS

1. The authority citation for part 215 is revised to read as follows:

Authority: Sections 11(i), 22(g) and 22(h), Federal Reserve Act (12 U.S.C. 248(i), 375a, 375b(7)), 12 U.S.C. 1817(k)(3) and 1972(2)(F)(vi), and section 955 of the Housing and Community Development Act of 1992 (Pub. L. 102-550, 106 Stat. 3895 (1992)).

Subpart A—Loans by Member Banks to Their Executive Officers, Directors, and Principal Shareholders

2. Section 215.4 is amended by adding a new subparagraph (d)(3) to read as follows:

§ 215.4 General prohibitions.

(a) * * *

* * * * *

(d) * * *

(3) *Exceptions.* The general limit specified in paragraph (d)(1) of this section does not apply to:

(i) Extensions of credit secured by bonds, notes, certificates of indebtedness, or Treasury Bills of the United States or by other such obligations fully guaranteed as to principal and interest by the United States;

(ii) Extensions of credit to or secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States; or

(iii) Extensions of credit secured by a segregated deposit account in the member bank.

Board of Governors of the Federal Reserve System, December 17, 1992.

Williams W. Wiles,

Secretary of the Board.

[FR Doc. 92–31125 Filed 12–22–92; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI–59–92]

RIN 1545–AR06

Earnings and Profits of Regulated Investment Companies and Real Estate Investment Trusts

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to regulated investment companies (RICs) and real estate investment trusts (REITs). The proposed regulations provide guidance to RICs and REITs that have earnings and profits accumulated by a corporation during a taxable year when the corporation was not taxable as a RIC or REIT. This guidance is needed to clarify the requirements for maintaining RIC or REIT status after a merger or other reorganization. The proposed regulations also provide procedural guidance to REITs that distribute non-REIT earnings and profits.

DATES: Written comments must be received by February 8, 1993. Requests to appear (with outlines of oral comments to be presented) at the public hearing scheduled for March 1, 1993, must be received by February 8, 1993. See notice of hearing published elsewhere in this issue of the **Federal Register.**

ADDRESSES: Send submissions to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (FI–59–92), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Nellie Howard, 202–622–3018 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document sets forth proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 852 and 857 of the Internal Revenue Code (Code). Section 1071(a)(3) and (4) of the Tax Reform Act of 1984, Pub. L. No. 98–369, 98 Stat. 1049–50, added section 852(a)(2) and (e) of the Code to provide rules relating to certain earnings and profits of RICs. Section 1878(j)(1) of the Tax Reform Act of 1986 (the 1986 Act), Public Law No. 99–514, 100 Stat. 2905, redesignated section 852(a)(3) of the Code as section 852(a)(2) of the Code. Section 852(a)(2) and (e) of the Code is generally effective for taxable years beginning after December 31, 1982. Section 661(b) of the 1986 Act added section 857(a)(3) of the Code to provide rules relating to certain earnings and profits of REITs. Section 857(a)(3) of the Code is effective for taxable years beginning after December 31, 1986.

Explanation of Provisions

This document provides guidance to a RIC or REIT that has non-RIC or non-REIT earnings and profits (that is, earnings and profits that were accumulated by a corporation during a taxable year when the corporation was not taxable as a RIC or REIT). The proposed regulations clarify that a company is not taxable as a RIC or REIT for a taxable year if it has those earnings and profits at the close of the taxable year, even if the earnings and profits were succeeded to in a reorganization.

The legislative history of section 852(a)(2) of the Code indicates a concern that earnings and profits of certain operating companies were not being taxed at the shareholder level. The focus was on operating companies that sold their assets, invested the proceeds in passive investment assets, and obtained conduit treatment without distributing the earnings from the operating activities. H.R. Rep. No. 432, 98th Cong., 2d Sess., pt. 2, at 1744 ff. (1984). Congress had been informed that these companies would have little incentive to pay dividends out of their accumulated earnings from the discontinued business or to liquidate the corporation and subject the shareholders to tax on the liquidation. This could result in a large volume of tax-motivated sales and a substantial reduction in income tax revenues from corporations and their shareholders. *See* Miscellaneous Tax Bills: Hearings Before the Subcomm. on Select Revenue Measures of the House Comm. on Ways and Means, 98th Cong., 1st Sess. 203, 207 and 215 (1983) (statement of Mikel M. Rollyson, Deputy Tax Legislative Counsel, United States Department of the Treasury). To avoid this result, Congress enacted section 852(a)(2), which prevents the corporations from being taxable as RICs if they have these earnings and profits at the end of the taxable year.

In H.R. Rep. No. 432, Congress focused on non-RIC earnings and profits that are carried over when a non-RIC elects RIC status. There is no indication, however, that Congress intended to limit the application of the statute to that fact situation. The same concerns arise no matter how the non-RIC earnings and profits come to be held by a RIC.

The legislative history of section 857(a)(3) of the Code indicates that section 857(a)(3) serves a purpose similar to that of section 852(a)(2) of the Code: Congress did not want companies to be taxable as REITS if they had non-REIT earnings and profits. S. Rep. No. 313, 99th Cong., 2d Sess. 769, 775 (1986). As with RICs, the same principles apply to non-REIT earnings and profits, whether they are carried over when the company converts to REIT status or are succeeded to when a REIT reorganizes with a corporation that is not taxable as a REIT.

Congress has indicated that a company that has non-RIC or non-REIT earnings and profits that prevent it from being taxable as a RIC or a REIT may qualify for taxation as a RIC or a REIT in certain cases by distributing those earnings and profits. H.R. Rep. No. 432, *supra*, at 1746–47 and S. Rep. No. 313, *supra*, at 775. Congress has specified the procedures for making such a distribution in section 852(e) of the Code. Section 852(e) provides rules to allow a company to be eligible to be treated as a RIC for any taxable year subsequent to a taxable year with respect to which it is determined that the RIC qualification requirements were not met. Under these rules, the company can qualify as a RIC if it distributes an amount equal to the accumulated earnings and profits attributable to the non-RIC year, less an interest charge. The proposed regulations clarify that distribution rules similar to those in section 852(e) are to apply to REITs.

The proposed regulations prescribe identical rules for both RICs and REITs. Under the proposed regulations, a RIC that succeeds to non-RIC earnings and profits is generally required to distribute those earnings and profits if the RIC is to continue to be taxable as a RIC. Similarly, a REIT that succeeds to non-REIT earnings and profits is generally required to distribute those earnings and profits if the REIT is to continue to be taxable as a REIT.

Proposed Effective Dates

The proposed regulations are proposed to be effective for taxable years ending on or after December 22, 1992.

Special Analyses

It has been determined 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 Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are timely submitted (preferably a signed original

and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety.

A public hearing on these proposed regulations will be held on March 1, 1993. See the notice of public hearing published elsewhere in this issue of the **Federal Register**.

Drafting Information

The principal author of these regulations is Nellie Howard of the Office of Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, other personnel from the Service and Treasury Department participated in their development.

List of Subjects

26 CFR 1.851–1 through 1.855–1
Income Taxes, Investment companies, Securities.
26 CFR 1.856–0 through 1.860–5
Income taxes, Investments, Trusts and trustees.

Proposed Amendments to the Regulations

Accordingly, 26 CFR 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 continues to read in part as follows:

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

Par. 2. Sections 1.852–12 and 1.857–11 are added to read as follows:

§ 1.852–12 Non-RIC earnings and profits.

(a) *Applicability of section 852(a)(2)(A)*—(1) *In general.* An investment company does not satisfy section 852(a)(2)(A) unless—

(i) Part I of subchapter M applied to the company for all its taxable years ending on or after November 8, 1983; and

(ii) For each corporation to whose earnings and profits the investment company succeeded by the operation of section 381, part I of subchapter M applied for all the corporation's taxable years ending on or after November 8, 1983.

(2) *Special rule.* See section 1071(a)(5)(D) of the Tax Reform Act of 1984, Pub. L. No. 98–369, for a special rule which treats part I of subchapter M as having applied to an investment company's first taxable year ending after November 8, 1983.

(b) *Applicability of section 852(a)(2)(B)*—(1) *In general.* An investment company does not satisfy section 852(a)(2)(B) unless, as of the close of the taxable year, it has no earnings and profits other than earnings and profits that—

(i) Were earned by a corporation in a year to which part I of subchapter M applied to the corporation and, at all times thereafter, were the earnings and profits of a corporation to which part I of subchapter M applied;

(ii) By the operation of section 381 pursuant to a transaction that occurred before December 22, 1992, became the earnings and profits of a corporation to which part I of subchapter M applied and at all times thereafter were the earnings and profits of a corporation to which part I of subchapter M applied;

(iii) Were accumulated in a taxable year ending before January 1, 1984, by a corporation to which part I of subchapter M applied for any taxable year ending before November 8, 1983; or

(iv) Were accumulated in the first taxable year of an investment company that began business in 1983 and that was not a successor corporation.

(2) *Prior law.* For purposes of paragraph (b) of this section, a reference to part I of subchapter M includes a reference to the corresponding provisions of prior law.

(c) *Effective Date.* This regulation is effective for taxable years ending on or after December 22, 1992.

§ 1.857–11 Non-REIT earnings and profits.

(a) *Applicability of section 857(a)(3)(A).* A real estate investment trust does not satisfy section 857(a)(3)(A) unless—

(i) Part II of subchapter M applied to the trust for all its taxable years beginning after February 28, 1986; and

(ii) For each corporation to whose earnings and profits the trust succeeded by the operation of section 381, part II of subchapter M applied for all the corporation's taxable years beginning after February 28, 1986.

(b) *Applicability of section 857(a)(3)(B)*—(1) *In general.* A real estate investment trust does not satisfy section 857(a)(3)(B) unless, as of the close of the taxable year, it has no earnings and profits other than earnings and profits that—

(i) Were earned by a corporation in a year to which part II of subchapter M applied to the corporation and, at all times thereafter, were the earnings and profits of a corporation to which part II of subchapter M applied; or

(ii) By the operation of section 381 pursuant to a transaction that occurred before December 22, 1992, became the earnings and profits of a corporation to which part II of subchapter M applied and at all times thereafter were the earnings and profits of a corporation to which part II of subchapter M applied.

(c) *Distribution procedures similar to those for regulated investment companies to apply.* Distribution procedures similar to those in section 852(e) for regulated investment companies apply to non-REIT earnings and profits of real estate investment trusts.

(d) *Effective date.* This regulation is effective for taxable years ending on or after December 22, 1992.

Shirley D. Peterson,
Commissioner of Internal Revenue.

[FR Doc. 92–30308 Filed 12–22–92; 8:45 am]
BILLING CODE 4830–01–M

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26 CFR Part 1

[FI–59–92]

RIN 1545–AR06

Earnings and Profits of Regulated Investment Companies and Real Estate Investment Trusts; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides a notice of public hearing on proposed regulations relating to regulated investment companies (RICs) and real estate investment trusts (REITs).

DATES: The public hearing will be held on Monday, March 1, 1993, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by February 8, 1993.

ADDRESSES: The public hearing will be held in the Commissioner's Conference Room, room 3313, Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:Corp:T:R (FI–59–92), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–8452 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 852 and 857 of the Internal Revenue Code. The proposed regulations appear elsewhere in 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 Monday, February 8, 1993, 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 questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Service 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. 92–30309 Filed 12–22–92; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 301

[IA–003–89]

RIN 1545–AN02

Recovery of Reasonable Administrative Costs

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under section 7430(a)(1). These regulations relate to the recovery of reasonable administrative costs incurred by taxpayers in connection with an administrative proceeding within the Internal Revenue Service. Changes to the applicable law were made by section 6239(a) of the Technical and Miscellaneous Revenue Act of 1988 (TAMRA) (Pub. L. No. 100–647, 102 Stat. 3342). The proposed regulations affect all taxpayers involved in an administrative proceeding within the Internal Revenue Service, and provide guidance regarding the definition of "reasonable administrative costs" and the period within which the costs must be incurred in order to be recoverable. The proposed regulations also set forth the requirements and procedures for the recovery of such costs, and the definitions of prevailing party, administrative proceeding and administrative proceeding date. A table of contents to the regulations under section 7430 is provided in section 301.7430–0.

DATES: Written comments and requests for a public hearing must be received by February 8, 1993.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, Attn: CC:CORP:T:R (IA–003–89), P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Thomas D. Moffitt of the Office of Assistant Chief Counsel (Field Service), Internal Revenue Service, (202) 622–7900 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, 1111 Constitution Ave., NW., Washington, DC 20224.

The collection of information requirement in these proposed regulations is in § 301.7430–2(c). This information is required by the Internal Revenue Service to process requests for awards of reasonable administrative costs. This information will be used to determine whether a taxpayer is entitled to recover reasonable administrative costs under section 7430(a)(1). The likely respondents are individual taxpayers, businesses and other organizations, including small businesses or organizations.

These estimates are an approximation of 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 time or less time, depending on their particular circumstances.

Estimated total annual reporting burden: 16,000 hours. The estimated annual burden per respondent varies from 90 minutes to 150 minutes, depending on individual circumstances, with an estimated average of 120 minutes.

Estimated annual number of respondents: 8,000.

Estimated annual frequency of responses: One.

Background

This document provides proposed regulations under section 7430 regarding the circumstances under which taxpayers may recover reasonable administrative costs incurred with respect to an administrative proceeding within the Internal Revenue Service with respect to the determination, collection, or refund of any tax, interest or penalty. These regulations reflect amendments made to Internal Revenue Code section 7430 by TAMRA.

Explanation of Regulatory Provisions

In General

Section 7430 (a) of the Internal Revenue Code provides for the recovery of reasonable administrative costs incurred by taxpayers in any administrative proceeding brought by or against the United States in connection with the determination, collection, or refund of any tax, interest, or penalty. Administrative proceedings regarding any type of tax under title 26, including income taxes, estate and gift taxes, employment taxes, and excise taxes, are covered by the proposed regulations.

The Internal Revenue Service has received numerous requests from taxpayers regarding the procedures for requesting reasonable administrative costs and the limitations on such awards. To provide guidance for these and similarly situated taxpayers, § 301.7430–0, and §§ 301.7430–2 through 301.7430–6 are added to the regulations.

In order for the Internal Revenue Service to award reasonable administrative costs a taxpayer must meet the requirements set forth in § 301.7430–2(b). First, the Internal Revenue Service will not make an award of reasonable administrative costs where the underlying substantive issues are or were before a court. Second, in order to be eligible for an award a taxpayer must satisfy the conditions necessary to be a prevailing party. Third, the taxpayer must not have unreasonably protracted the portion of the proceeding for which a recovery is sought. Fourth, the taxpayer must follow the application procedures set forth in § 301.7430–2(c) in order to be eligible for an award of reasonable administrative costs by the Internal

Revenue Service. The prerequisites for being a prevailing party are explained in § 301.7430–5.

The Internal Revenue Service will not consider a request for reasonable administrative costs where the underlying substantive issues are or were before a court as the court may award reasonable administrative costs in its disposition of the case. However, if the court dismisses the case for lack of jurisdiction the fact that the issues were before a court does not bar the Internal Revenue Service from awarding reasonable administrative costs. This is so even though the court in such a situation would have jurisdiction to award reasonable litigation costs. Where the case is not dismissed by the court for lack of jurisdiction, the court may also award reasonable litigation costs incurred in pursuing the claim for reasonable administrative costs in court.

Procedure for Requesting an Award of Costs

Section 301.7430–2(c) sets forth the procedures for recovering reasonable administrative costs. These procedures require that a written request be filed with the Internal Revenue Service personnel that considered the underlying substantive claim, or if that person is unknown to the taxpayer, with the district director for the district that considered the underlying matter. In order to be complete, a request must satisfy seven requirements. First, it must state that neither the underlying substantive issues nor the issue of reasonable administrative costs are before a court or have been before a court. Second, it must contain a clear and concise statement of the reasons why the taxpayer alleges that the position of the Internal Revenue Service was not substantially justified. Third, it must state that the taxpayer substantially prevailed with regard to the amount in controversy, or the most significant issue or set of issues presented. Fourth, it must state that the taxpayer has not unreasonably protracted the portion of the proceeding for which costs are being requested. Fifth, the request must contain a statement supported by a detailed affidavit setting forth the nature and amount of each item sought to be recovered and must be accompanied by a copy of the billing records for requested fees of a representative. Sixth, it must contain an affidavit signed by the taxpayer stating that the taxpayer meets the net worth and size limitations. Seventh, the request must provide an address at which the taxpayer can be contacted.

In addition, if more than $75 per hour, as adjusted for an increase in the cost of living, is requested, the request must contain an affidavit establishing that a special factor such as a limited availability of specially qualified representatives justifies such a rate.

This written request must be made within ninety days following the mailing of the final decision of the Internal Revenue Service to the taxpayer. This period is greater than the 30 days allowed by Rule 231(c)(2)(A) of the Tax Court Rules of Practice and Procedure for filing a motion for reasonable litigation costs after service of a written opinion in an unagreed case, and more closely matches the 90 day period allowed under section 6213(a) for the filing of a petition with the Tax Court in response to a notice of deficiency.

If the Internal Revenue Service denies the taxpayer's request for reasonable administrative costs in whole or in part, the taxpayer may appeal that denial to the Tax Court. If the Internal Revenue Service does not respond to the taxpayer's request within six months of its filing, that failure to respond may be considered by the taxpayer as a denial of the request and the taxpayer may appeal to the Tax Court. This six-month period matches the period allowed by section 6532(a)(1) for the consideration of a claim for refund by the Internal Revenue Service before an action may be filed in the courts.

Administrative Proceeding

Section 301.7430–3(a) defines an administrative proceeding for which reasonable administrative costs are recoverable as any procedure or other action before the Internal Revenue Service commenced after November 10, 1988, except proceedings involving items of general application, private letter rulings and similar requests, technical advice requests unless submitted after the administrative proceeding date, and proceedings in connection with collection actions.

The conference report to TAMRA states that "with respect to a collection action, only reasonable litigation costs are recoverable under this provision." The proposed regulations follow the legislative intent by excluding collection actions from the definition of the administrative proceedings for which costs are recoverable.

Section 301.7430–3(b) defines collection actions for purposes of the exclusion from the definition of administrative proceeding. Collection actions include those taken to collect taxes, interest, additions to tax, penalties and costs. Similarly, for purposes of the proposed regulations, actions under Code sections 7432 and 7433, regarding civil causes of action for damages for failure to release a lien and for unauthorized collection actions, respectively, are collection actions. Thus, reasonable administrative costs for such proceedings are not recoverable under section 7430. Treas. Reg. §§ 301.7432–1(j) and 301.7433–1(h). Actions taken by taxpayers to remedy the failure of the Internal Revenue Service to release a lien under section 6325 and to remedy any unauthorized collection actions as defined by section 7433, are also collection actions. In contrast, proceedings directly relating to a claim for refund filed with the Service Center's Collection Branch or District Director's Collection Division after payment of an assessed tax are not included in the definition of collection action.

Administrative Proceeding Date

The "administrative proceeding date," which determines both when the position of the Internal Revenue Service is first established and when costs may first qualify as reasonable administrative costs, is defined in § 301.7430–3(c) as the earlier of the receipt by the taxpayer of the notice of the decision of the Office of Appeals or the date of the notice of deficiency. The proposed regulations define the notice of the decision of the Office of Appeals as a document which is signed by an individual with authority to settle the dispute on behalf of the Commissioner and which states that it is the final determination of the case. For purposes of these regulations, a notice of claim disallowance issued by the Office of Appeals is included in the definition of a notice of the decision of the Office of Appeals. However, a notice of the final decision of the Office of Appeals does not include a notice of deficiency, even if issued by the Office of Appeals.

For purposes of establishing the administrative proceeding date, the definition of a notice of deficiency includes a notice of final partnership administrative adjustment and a notice of final S corporation administrative adjustment. A notice of deficiency for this purpose also includes a notice rescinded pursuant to section 6212(d).

Reasonable Administrative Costs

Section 301.7430–4 describes the reasonable administrative costs that may be the subject of an award. These costs are the reasonable and necessary amount of costs incurred by the taxpayer in the administrative proceeding. Reasonable administrative costs include administrative fees or

similar charges imposed by the Internal Revenue Service, reasonable expenses of expert witnesses, reasonable costs of any study, analysis, engineering report, test or project for the preparation of the taxpayer's case, and reasonable fees for the services of a representative in the administrative proceeding. A "representative," whose fees may be recovered, is defined as any person compensated for services rendered in connection with the administrative proceeding who is authorized to practice before the Internal Revenue Service or the Tax Court.

Fees for a representative are limited by section 7430(c)(1)(B)(iii) to $75 per hour increased by a cost of living adjustment measured from January 1986, and increased in the case of a special factor such as the limited availability of specially qualified representatives for the administrative proceeding. Specially qualified representatives are defined as those representatives possessing specialized skills or distinctive knowledge uniquely necessary for the representation of the taxpayer in the administrative proceeding. Mere credentials, a specialty or experience in taxation, knowledge available through the use of an expert, or general professional skill do not constitute specialized skills or distinctive knowledge for this purpose. Limited availability is defined as an inability to obtain specially qualified representatives within a reasonable distance from the taxpayer's residence or office at a rate less than or equal to the hourly rate as increased by the cost of living adjustment.

Section 301.7430–4(c) excludes certain costs from the definition of reasonable administrative costs. Reasonable administrative costs do not include costs incurred in connection with a proceeding which is not an administrative proceeding within the meaning of the regulations. An example of such costs is litigation costs. Litigation costs are defined for this purpose as costs enumerated in section 7430(c)(1) incurred in connection with the commencement of tax litigation in any court of the United States, including the preparation and filing of a petition in the Tax Court. Litigation costs also include costs incurred subsequent to the commencement of the litigation. Costs normally included in hourly rates by the representative's profession (e.g., secretarial service) are not recoverable separate and apart from the representative's hourly rate. Costs normally billed separately from the representative's hourly rate (e.g., travel expenses) are reasonable administrative costs which may be recovered in addition to the representative's hourly rate.

Costs for expert witnesses on the subject of prevailing market rates for representatives generally are not reasonable administrative costs. The prevailing market rates for representatives may be initially established by affidavit. Only where it is demonstrated that a specially qualified representative was necessary for the proceeding and the Internal Revenue Service challenges this affidavit are such costs reasonable administrative costs.

Prevailing Party

The taxpayer is a prevailing party, as set forth in § 301.7430–5, where three requirements are met. First, the taxpayer must establish that the position of the Internal Revenue Service was not substantially justified. Second, the taxpayer must substantially prevail with respect to the amount in controversy, or the most significant issue or set of issues presented. Third, the taxpayer must satisfy the net worth and size limitations.

The position of the Internal Revenue Service which the taxpayer must establish was not substantially justified is that taken in the notice that establishes the administrative proceeding date. The position of the Internal Revenue Service also includes any position taken by the Internal Revenue Service subsequent to that date. However, the position of the Internal Revenue Service is never established prior to the Administrative proceeding date.

Whether the position of the Internal Revenue Service was not substantially justified depends in part on whether the taxpayer has provided the Internal Revenue Service with all relevant information and arguments available to the taxpayer. For each cost sought to be awarded, whether the position of the Internal Revenue Service was not substantially justified is scrutinized as of the date the cost was incurred (but not earlier than the administrative proceeding date).

Under section 7430(c)(4)(A)(ii), to be a prevailing party a taxpayer must substantially prevail with respect to the amount in controversy or with respect to the most significant issue or set of issues presented. The determination of whether a taxpayer prevailed with respect to the amount in controversy is determined without increasing or reducing the amount in controversy for amounts carried over from years not in issue.

Section 301.7430–5(e) describes the most significant issue or set of issues presented as those which objectively represent the most significant issues for the taxpayer or the Internal Revenue Service. Such an issue can exist due to the effect of the issue on other transactions or future years not in issue. Not all cases contain a most significant issue or set of issues. In those cases, the amount in controversy will necessarily control.

Under the net worth and size limitations of section 7430(c)(4)(A)(iii), individual taxpayers and estates are eligible for an award of reasonable administrative costs only if their net worth does not exceed two million dollars on the administrative proceeding date. Spouses filing a joint return are treated as one taxpayer for this purpose unless one spouse is relieved from liability under the innocent spouse provision.

Other taxpayers, including owners of unincorporated businesses, partnerships, corporations, units of local government, or organizations (other than section 501(c)(3) organizations and certain cooperative associations) are eligible for an award of reasonable administrative costs only if their net worth as of the administrative proceeding date does not exceed seven million dollars and the taxpayer does not have more than 500 employees. Section 501(c)(3) organizations and those certain cooperative associations are not subject to the seven million dollar limitation; however, they are subject to the 500 employee limitation.

The status of a taxpayer as a prevailing party should be determined by agreement of the parties. If no such agreement is reached then such status is determined by the Internal Revenue Service. However, if the taxpayer disagrees with the Internal Revenue Service's determination, the taxpayer may appeal to the Tax Court.

Proposed Effective Date

The proposed regulations contained in § 301.7430–0 and §§ 301.7430–2 through 301.7430–6 would be effective for claims for reasonable administrative costs filed with the Internal Revenue Service after December 23, 1992 with respect to costs incurred in administrative proceedings commenced after November 10, 1988. However, § 301.7430–6 contains a transition rule which provides that the ninety-day time period for filing a claim for reasonable administrative costs contained in § 301.7430–2(c)(5) would not be effective until March 23, 1993. Thus, taxpayers who have not filed a claim for an award of reasonable administrative costs in connection with an administrative proceeding commenced

after November 10, 1988, have ninety days from December 23, 1992 to file a claim. After this transition period, claims must be filed within the ninety-day period contained in § 301.7430–2(c)(5).

Special Analyses

These rules are not major rules as defined in Executive Order 12291 because the economic or other consequences are a direct result of a statute. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, 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 business.

Comments and Requests for a Public Hearing

Before adopting these regulations, consideration will be given to any written comments that are submitted timely (preferably a signed 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 upon written request to the Internal Revenue Service by any person who also submits written comments on the proposed regulations. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Thomas D. Moffitt, Office of Assistant Chief Counsel (Field Service), Internal Revenue Service. However, other personnel from the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects 26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child Support, Continental Shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

Proposed Amendments to the Regulations

For the reasons set forth in the preamble, 26 CFR part 301 is proposed to be amended as follows:

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. Sections 301.7430–0 and 301.7430–2 through 301.7430–6 are added to read as follows:

§ 301.7430–0 Table of contents.

This section lists the captions that appear in §§ 301.7430–1 through 301.7430–6.

§ 301.7430–1 Exhaustion of Administrative Remedies

(a) In general.
(b) Tax, penalty, and addition to tax.
(1) In general.
(2) Participates.
(c) Revocation of a determination that an organization is described in section 501(c)(3).
(d) Actions involving summonses, levies, liens, jeopardy and termination assessments, etc.
(e) Tax matter.
(f) Exception to requirement that party pursue administrative remedies.
(g) Examples.
(h) Effective date.

§ 301.7430–2 Requirements and Procedures for Recovery of Reasonable Administrative Costs

(a) Introduction.
(b) Requirements for recovery.
(1) Determination by IRS.
(i) Jurisdiction.
(ii) Reasonable administrative costs.
(iii) Administrative proceeding.
(iv) Administrative proceeding date.
(v) Prevailing party.
(vi) Not unreasonably protracted.
(vii) Procedural requirements.
(2) Determination by court.
(c) Procedure for recovering reasonable administrative costs.
(1) In general.
(2) Where request must be filed.
(3) Contents of request.
(i) Statements.
(ii) Affidavit or affidavits.
(iii) Documentation and information.
(4) Form of request.
(5) Period for requesting costs from the IRS.
(6) Notice.
(7) Appeal to Tax Court.
(d) Unreasonable protraction of administrative proceedings.
(e) Examples.

§ 301.7430–3 Administrative Proceeding and Administrative Proceeding Date

(a) Administrative proceeding.
(b) Collection action.
(c) Administrative proceeding date.
(1) General rule.
(2) Notice of the decision of the IRS Office of Appeals.
(3) Notice of deficiency.
(d) Examples.

§ 301.7430–4 Reasonable Administrative Costs

(a) In general.
(b) Costs described.
(1) In general.
(2) Representative and specially qualified representative.
(i) Representative.
(ii) Specially qualified representative.
(3) Limitation on fees for a representative.
(i) In general.
(ii) Cost of living adjustment.
(iii) Special factor adjustment.
(c) Certain costs excluded.
(1) Costs not incurred in an administrative proceeding.
(2) Costs incurred in an administrative proceeding but not reasonable.
(i) In general.
(ii) Special rule for expert witness' fees on issue of prevailing market rates.
(3) Litigation costs.
(4) Examples.

§ 301.7430–5 Prevailing Party

(a) In general.
(b) Position of the IRS.
(c) Substantially justified.
(1) In general.
(2) Exception.
(d) Amount in controversy.
(e) Most significant issue or set of issues.
(f) Net worth and size limitations.
(1) Individuals and estates.
(2) Others.
(3) Special rules for charitable organizations and certain coops.
(g) Determination of prevailing party.
(h) Examples.

§ 301.7430–6 Effective Date

§ 301.7430–2 Requirements and procedures for recovery of reasonable administrative costs.

(a) *Introduction.* Section 7430(a)(1) provides for the recovery, under certain circumstances, of reasonable administrative costs incurred in connection with an "administrative proceeding" before the Internal Revenue Service. Paragraph (b) of this section lists the requirements that a taxpayer must meet to be entitled to an award of reasonable administrative costs.

(b) *Requirements for recovery*—(1) *Determination by the Internal Revenue Service.* The Internal Revenue Service will grant a taxpayer's request for recovery of reasonable administrative costs incurred in connection with an administrative proceeding under section 7430 and this section only if—

(i) *Jurisdiction.* The underlying substantive issues or the issue of reasonable administrative costs are not, and have never been, before any court of the United States (including the Tax Court or United States Court of Federal Claims) with jurisdiction over those issues;

(ii) *Administrative proceeding.* The costs were incurred in connection with an administrative proceeding as defined in § 301.7430–3(a);

(iii) *Administrative proceeding date.* The costs were incurred on or after the administrative proceeding date as defined in § 301.7430–3(c);

(iv) *Reasonable administrative costs.* The costs were reasonable administrative costs as defined in § 301.7430–4;

(v) *Prevailing party.* The taxpayer is a prevailing party as defined in § 301.7430–5;

(vi) *Not unreasonably protracted.* The administrative proceeding was not unreasonably protracted by the taxpayer as discussed in paragraph (d) of this section; and

(vii) *Procedural requirements.* The taxpayer follows the procedures set forth in paragraph (c) of this section.

(2) *Determination by court.* Although the Internal Revenue Service will not grant a request for reasonable administrative costs where the requirements of paragraph (b)(1)(i) of this section are not met, a taxpayer may file a claim for reasonable administrative costs with the court with jurisdiction over the judicial proceeding. The court may award the taxpayer reasonable administrative costs under section 7430(a). Under section 7430(c)(4)(B)(ii), where the final determination with respect to the tax, interest, or penalty at issue is made by a court, the court determines whether the taxpayer qualifies as a prevailing party. Thus, where the requirements of paragraph (b)(1)(i) of this section are not met, the taxpayer's only possibility of obtaining an award of reasonable administrative costs is to obtain an award of such costs from the court. In the event the court awards reasonable administrative costs, it may also award litigation costs for the reasonable costs of pursuing the claim for reasonable administrative costs, provided the requirements under section 7430 regarding an award of reasonable administrative costs are satisfied with respect to such costs. A claim filed with the court should be made in accordance with the rules of the court.

(c) *Procedure for recovering reasonable administrative costs*—(1) *In general.* The Internal Revenue Service will not award administrative costs under section 7430 unless the taxpayer files a written request to recover reasonable administrative costs in accordance with the provisions of this section.

(2) *Where request must be filed.* A request required by paragraph (c)(1) of this section must be filed with the Internal Revenue Service personnel who have jurisdiction over the tax matter underlying the claim for the costs. However, if that person is unknown to the taxpayer making the request, the taxpayer may send the request to the district director for the district that considered the underlying matter.

(3) *Contents of request.* The request must be in writing and must contain the following statements, affidavits, documentation, and information with regard to the taxpayer's administrative proceeding:

(i) *Statements*—

(A) A statement that the underlying substantive issues or the issue of reasonable administrative costs are not, and have never been, before any court of the United States (including the Tax Court or United States Court of Federal Claims) with jurisdiction over those issues;

(B) A clear and concise statement of the reasons why the taxpayer alleges that the position of the Internal Revenue Service in the administrative proceeding was not substantially justified;

(C) A statement sufficient to demonstrate that the taxpayer has substantially prevailed as to the amount in controversy or with respect to the most significant issue or set of issues presented in the proceeding;

(D) A statement that the taxpayer has not unreasonably protracted the portion of the administrative proceeding for which the taxpayer is requesting costs; and

(E) A statement supported by a detailed affidavit executed by the taxpayer or the taxpayer's representative that sets forth the nature and amount of each specific item of reasonable administrative costs for which the taxpayer is seeking recovery.

(ii) *Affidavit or affidavits*—

(A) An affidavit executed by the taxpayer stating that the taxpayer meets the net worth and size limitations of § 301.7430–5(h);

(B) An affidavit meeting the requirements of paragraph (c)(3)(i)(E) of this section; and

(C) If more than $75 per hour, as adjusted by an increase in the cost of living as set forth in § 301.7430–4(b)(3), is claimed for the fees of a representative in connection with the administrative proceeding, then an affidavit that specialized skills and distinctive knowledge as described in that section were necessary in the representation of the taxpayer in the proceeding and that there is a limited availability of representatives possessing such skills and knowledge as described in that section, or an affidavit that another special factor is applicable.

(iii) *Documentation and information*—

(A) A copy of the billing records of the representative for the requested fees; and

(B) An address at which the taxpayer wishes to receive notice of the determination of the Internal Revenue Service with regard to the request for reasonable administrative costs.

(4) *Form of Request.* No specific form is required for the request other than one which satisfies the requirements of paragraph (c)(3) of this section. Where practicable the required statements may be included in a single document. Similarly, where practicable, the required affidavits may be combined in a single affidavit to the extent they are to be executed by the same person.

(5) *Period for requesting costs from the Internal Revenue Service.* To recover reasonable administrative costs pursuant to section 7430 and this section, the taxpayer must file a request for costs no later than 90 days after the date the final decision of the Internal Revenue Service with respect to all tax, additions to tax and penalties at issue in the administrative proceeding is mailed, or otherwise furnished, to the taxpayer. The final decision of the Internal Revenue Service for purposes of this section is the document which resolves the tax liability of the taxpayer with regard to all tax, additions to tax and penalties at issue in the administrative proceeding (such as a Form 870 or closing agreement), or a notice of assessment for that liability (such as the notice and demand under section 6303), whichever is earlier mailed, or otherwise furnished, to the taxpayer. For purposes of this section, if the 90th day falls on a Saturday, Sunday, or a legal holiday, the 90-day period shall end on the next succeeding day which is not a Saturday, Sunday, or a legal holiday. The term "legal holiday" means a legal holiday in the District of Columbia. If the request for costs is to be filed with the Internal Revenue Service at an office of the Internal Revenue Service located outside the District of Columbia but within an internal revenue district, the term "legal holiday" also means a Statewide legal holiday in the State where such office is located.

(6) *Notice.* The Internal Revenue Service is authorized, but not required, to notify the taxpayer of its decision to grant or deny (in whole or in part) an award for reasonable administrative costs under section 7430 and this section by certified mail or registered mail. If the Internal Revenue Service does not respond on the merits to a request by the taxpayer for an award of

reasonable administrative costs filed under paragraph (c)(1) of this section within 6 months after such request is filed, the Internal Revenue Service's failure to respond may be considered by the taxpayer as a decision of the Internal Revenue Service denying an award for reasonable administrative costs.

(7) *Appeal to Tax Court.* A taxpayer may appeal a decision by the Internal Revenue Service denying (in whole or in part) a request for reasonable administrative costs under section 7430 and this section by filing a petition for reasonable administrative costs with the Tax Court. The petition must be in accordance with the Tax Court's Rules of Practice and Procedure and must be filed with the Tax Court after the Internal Revenue Service denies (in whole or in part) the taxpayer's request for reasonable administrative costs.

(d) *Unreasonable protraction of administrative proceeding.* An award of reasonable administrative costs will not be made where the taxpayer unreasonably protracted the administrative proceeding. However, a taxpayer that unreasonably protracted only a portion of the administrative proceeding, but not other portions of the administrative proceeding, may recover reasonable administrative costs for the portion(s) of the administrative proceeding that the taxpayer did not unreasonably protract, if the requirements of paragraph (b)(1) of this section are otherwise satisfied.

(e) *Examples.* The provisions of this section are illustrated by the following examples:

Example 1. Taxpayer A receives a notice of proposed deficiency (30-day letter). A requests and is granted Appeals office consideration. Appeals requests that A submit certain documents as substantiation for the tax matters at issue. Although A complies with this request, the information is lost by the Internal Revenue Service and not considered by Appeals. Appeals then issues a notice of deficiency. A does not file a petition with the Tax Court. After receiving the notice of deficiency, A convinces Appeals that the notice of deficiency is incorrect and that A owes no tax. Appeals then closes the case showing a zero deficiency and mails A a notice to this effect. Assuming that the other requirements of this section are satisfied, A may recover reasonable administrative costs incurred after the date of the notice of deficiency (the administrative proceeding date). To recover these costs, A must file a request for costs with the Appeals office personnel who settled A's tax matter, or if that person is unknown to A, with the district director of the district which considered the underlying matter, within 90 days after the date of mailing of the Office of Appeals' final decision that A owes no tax.

Example 2. Assume the same facts as in *Example 1*, except that after receipt of the notice of deficiency, A meets with an Appeals officer, but no agreement is reached on the tax matters at issue. A then files a petition with the Tax Court and prevails. Since the underlying tax issues have been determined by a court, the Internal Revenue Service will not grant a request for recovery of the reasonable administrative costs incurred by A. To recover reasonable administrative costs, A must file a claim with the Tax Court as prescribed under the Tax Court's Rules of Practice and Procedure.

§ 301.7430–3 Administrative proceeding and administrative proceeding date.

(a) *Administrative proceeding.* For purposes of section 7430, "administrative proceeding" generally means any procedure or other action before the Internal Revenue Service that is commenced after November 10, 1988. However, "administrative proceeding" does not include—

(1) Proceedings involving matters of general application, including hearings on regulations, comments on forms, or proceedings involving revenue rulings or revenue procedures;

(2) Requests for private letter rulings or similar determinations;

(3) Technical advice memoranda, except those submitted after the administrative proceeding date (as defined in paragraph (c) of this section); and

(4) Proceedings in connection with collection actions (as defined in paragraph (b) of this section), including proceedings under sections 7432 or 7433.

(b) *Collection action.* A "collection action" generally includes any action taken by the Internal Revenue Service to collect a tax (or any interest, additional amount, addition to tax, or penalty, together with any costs in addition to the tax) or any action taken in response to the Internal Revenue Service's failure to act in connection with the collection of a tax (including any interest, additional amount, addition to tax, or penalty, together with any costs in addition to the tax). For example, a collection action for purposes of section 7430 and this section includes any action taken by the Internal Revenue Service under Chapter 64 of Subtitle F to collect a tax. Collection actions also include those actions taken by a taxpayer to remedy the Internal Revenue Service's failure to release a lien under section 6325 and to remedy any unauthorized collection action as defined by section 7433. However, an action or procedure directly relating to a claim for refund filed with the Service Center's Collection Branch or District Director's Collection Division after payment of an assessed tax is not a collection action.

(c) *Administrative proceeding date—*(1) *General rule.* For purposes of section 7430 and the regulations thereunder, the term "administrative proceeding date" means the earlier of—

(i) The date of the receipt by the taxpayer of the notice of the decision of the Internal Revenue Service Office of Appeals; or

(ii) The date of the notice of deficiency.

(2) *Notice of the decision of the Internal Revenue Service Office of Appeals.* For purposes of section 7430 and the regulations thereunder, a notice of the decision of the Internal Revenue Service Office of Appeals is the final written document, mailed or delivered to the taxpayer, that is signed by an individual in the Office of Appeals who has been delegated the authority to settle the dispute on behalf of the Commissioner, and states or indicates that the notice is the final determination of the entire case. A notice of claim disallowance issued by the Office of Appeals is a notice of the decision of the Internal Revenue Service Office of Appeals. A notice of deficiency issued by the Office of Appeals is not a notice of the decision of the Internal Revenue Service Office of Appeals.

(3) *Notice of deficiency.* A notice of deficiency is a notice described in section 6212(a), including a notice rescinded pursuant to section 6212(d). For purposes of determining reasonable administrative costs under section 7430 and the regulations thereunder, a notice of final partnership administrative adjustment described in section 6223(a)(2) will be treated as a notice of deficiency. A notice of final S corporation administrative adjustment issued pursuant to section 6223(a)(2) as made applicable to subchapter S items by section 6244 will also be treated as a notice of deficiency.

(d) *Examples.* The provisions of this section are illustrated by the following examples:

Example 1. Taxpayer A receives a notice of proposed deficiency (30-day letter). A files a request for and is granted an Appeals office conference. At the conference, an agreement is reached on the tax matters at issue. A cannot recover any costs because they were not incurred on or after the administrative proceeding date, which is the earlier of the date of receipt by the taxpayer of the notice of the decision of the Internal Revenue Service Office of Appeals, or the date of the notice of deficiency.

Example 2. Taxpayer B receives a notice of proposed deficiency (30-day letter). B pays the amount of the proposed deficiency and files a claim for refund. B's claim is disallowed and a notice of proposed disallowance is issued by the district director. B does not request an Appeals office

conference and the district director issues a notice of claim disallowance. B then files suit in a United States District Court. B cannot recover reasonable administrative costs because, although the district director issued a notice of claim disallowance, the Internal Revenue Service did not issue either a notice of decision of the Internal Revenue Service Office of Appeals or a notice of deficiency.

Example 3. Assume the same facts as in *Example 2*, except that after B files a claim for refund and receives the notice of proposed disallowance, B requests and is granted Appeals office consideration. No agreement is reached with Appeals and the Office of Appeals issues a notice of claim disallowance. B does not file suit in District Court but instead contacts the Appeals office to attempt to reverse the decision. B convinces the Appeals officer that the notice of claim disallowance is in error. The Appeals officer then abates the assessment. Because a notice of claim disallowance issued by Appeals is a notice of the decision of the Internal Revenue Service Office of Appeals, B may recover reasonable administrative costs incurred on or after the receipt of the notice of claim disallowance (the administrative proceeding date), but only if the other requirements of section 7430 and the regulations thereunder are satisfied. B cannot recover the costs incurred prior to receipt of the notice of claim disallowance because they were incurred before the administrative proceeding date.

Example 4. Taxpayer C receives a notice of proposed deficiency (30-day letter). C files a request for and is granted an Appeals office conference. At the Appeals conference no agreement is reached on the tax matters at issue. The Internal Revenue Service then issues a notice of deficiency. Upon receiving the notice of deficiency C does not file a petition with the Tax Court. Instead, C pays the deficiency and files a claim for refund. The claim for refund is considered by the Internal Revenue Service and the district director issues a notice of proposed disallowance. C requests and is granted Appeals office consideration. C convinces Appeals that C's claim is correct and Appeals allows C's claim. C may recover reasonable administrative costs incurred on or after the date of the notice of deficiency (the administrative proceeding date), but only if the other requirements of section 7430 and the regulations thereunder are satisfied.

Example 5. Taxpayer D receives a District Director's Collection Division (Collection) proposed assessment of trust fund taxes (100% penalties) pursuant to section 6672. D requests and is granted Appeals office consideration. Upon consideration, Appeals upholds D's position. D cannot recover reasonable administrative costs because the costs were not incurred on or after the administrative proceeding date.

Example 6. Taxpayer E files an individual income tax return showing a balance due. No payment is made with the return and the Internal Revenue Service assesses the amount shown on the return. The Internal Revenue Service issues a notice and demand for tax pursuant to section 6303. E contacts the Collection Division regarding E's outstanding liability. No agreement is reached with respect to the timing of E's payment, and the Collection Division issues a notice of intent to levy pursuant to section 6331(d). Prior to the levy, E enters into an installment agreement with the Collection Division. The costs that E incurred in connection with the notice and demand were not incurred on or after the administrative proceeding date, nor in an administrative proceeding, but rather in a collection action. Accordingly, E may not recover those costs as reasonable administrative costs under section 7430 and the regulations thereunder.

Example 7. Taxpayer F receives a District Director's Collection Division (Collection) proposed assessment of trust fund taxes (100% penalties) pursuant to section 6672. F requests and is granted Appeals office consideration. Appeals considers the issues and decides to uphold Collection's recommended assessment. Appeals notifies F of this decision in writing. Collection then assesses the tax. Pursuant to section 6672(b), within 30 days after the notice and demand is made, F pays the minimum amount required to commence a court proceeding, files a claim for refund, and furnishes the required bond. Collection then considers and disallows the claim. Appeals then reconsiders the claim and reverses its original position, thus upholding F's position. Appeals then abates the assessment. F may recover reasonable administrative costs incurred after the receipt of the original decision of Appeals (the administrative proceeding date) that Appeals was upholding Collection's recommended assessment, but only if the other requirements of section 7430 and the regulations thereunder are satisfied. F cannot recover costs that are attributable to any procedure or other action before the Collection Division prior to filing his administrative claim for refund.

§ 301.7430–4 Reasonable administrative costs.

(a) *In general.* For purposes of section 7430 and the regulations thereunder, "reasonable administrative costs" are any costs described in paragraph (b) of this section that are incurred in connection with an administrative proceeding (as defined in § 301.7430–3(a)) and incurred on or after the administrative proceeding date (as defined in § 301.7430–3(c)).

(b) *Costs described*—(1) *In general.* The costs described in this paragraph are the reasonable and necessary amount of costs incurred by the taxpayer to present the taxpayer's position with respect to the merits of the tax controversy or the recovery of reasonable administrative costs. These costs include—

(i) Any administrative fees or similar charges imposed by the Internal Revenue Service;

(ii) Reasonable expenses of expert witnesses;

(iii) Reasonable costs of any study, analysis, engineering report, test or project that is necessary for, and incurred in preparation of, the taxpayer's case; and

(iv) Reasonable fees paid or incurred for the services of a representative (as defined in paragraph (b)(2) of this section) in connection with the administrative proceeding.

(2) *Representative and specially qualified representative*—(i) *Representative.* A "representative" is a person compensated for services rendered in connection with the administrative proceeding, who is authorized to practice before the Internal Revenue Service or the Tax Court.

(ii) *Specially qualified representative.* A specially qualified representative is a representative (as defined in paragraph (b)(2)(i) of this section) possessing a distinctive knowledge or a unique and specialized skill that is necessary to adequately represent the taxpayer in the proceeding. Examples of a unique and specialized skill or distinctive knowledge would be an identifiable practice specialty such as patent law or knowledge of a foreign law or language where such specialty or knowledge is necessary to adequately represent the taxpayer in the proceeding. For purposes of this paragraph, neither knowledge of tax law nor experience in representing taxpayers before the Internal Revenue Service is considered distinctive knowledge or a unique and specialized skill. An extraordinary level of general representational knowledge and ability that is useful in all proceedings is not considered, in and of itself, distinctive knowledge or a unique and specialized skill. Specially qualified representatives also do not include those who have a distinctive knowledge of the underlying subject matter of the controversy in circumstances where such distinctive knowledge could reasonably be supplied through the use of an expert, or could readily be obtained through literature pertaining to the subject.

(3) *Limitation on fees for a representative*—(i) *In general.* Except as otherwise provided in this section, fees described in paragraph (b)(1)(iv) of this section that are recoverable under section 7430 and the regulations thereunder as reasonable administrative costs may not exceed $75 per hour increased by a cost of living adjustment (and if appropriate, a special factor adjustment).

(ii) *Cost of living adjustment*—(A) *In general.* The Internal Revenue Service will make a cost of living adjustment to the $75 per hour limit by using the Consumer Price Index of All-Urban Consumers (CPI–U) published by the Department of Labor, Bureau of Labor

Statistics and referenced in Internal Revenue Code section 1(f)(5). If the CPI–U is no longer published, a comparable index will be used, and any reference in this section to the CPI–U will be considered to refer to such comparable index.

(B) *Percentage adjustment.* For purposes of paragraph (b)(30)(ii)(A) of this section, the base year for determining the cost of living adjustment is the calendar year 1986. The cost of living adjustment for fees incurred in any calendar year subsequent to 1986 is the percentage (if any) by which the yearly average CPI–U for the calendar year immediately prior to the year in which the fees are incurred exceeds the January CPI–U for the calendar year 1986.

(iii) *Special factor adjustment*—(A) *In general.* If the presence of a special factor is demonstrated by the taxpayer, the amount reimbursable is the amount of reasonable fees paid or incurred by the taxpayer in connection with the proceeding for the services of a representative as defined in paragraph (b)(2)(i) of this section.

(B) *Special factor.* A special factor is a factor, other than an increase in the cost of living, which justifies an increase in the $75 per hour limitation of section 7430(c)(1)(B)(iii). The novelty and difficulty of the issues, the undesirability of the case, the work and the ability of counsel, the results obtained, and customary fees and awards in other cases, are factors applicable to a broad spectrum of litigation and do not constitute special factors for the purposes of increasing the $75 per hour limitation. The limited availability of a specially qualified representative for the proceeding does constitute a special factor justifying an increase in the $75 per hour limitation.

(C) *Limited availability.* Unless disputed by the Internal Revenue Service, limited availability of a specially qualified representative is established by demonstrating that a specially qualified representative for the proceeding is not available at the $75 per hour rate (as adjusted for the cost of living). Initially, this showing may be made by submission of an affidavit signed by the taxpayer or by the taxpayer's counsel that in a case similar to the taxpayer's, a specially qualified representative that practices within a reasonable distance from the taxpayer's principal residence or principal office would normally charge a client similar to the taxpayer at a rate in excess of this amount. If the Internal Revenue Service challenges this initial showing, the taxpayer may submit additional evidence to establish the limited availability of a specially qualified representative at the rate specified above.

(D) *Example.* The provisions of this section are illustrated by the following example:

Example. Taxpayer A is represented by B, a CPA and attorney with an LL.M. Degree in Taxation with Highest Honors and who regularly handles cases dealing with TEFRA partnership issues. B represents A in an administrative proceeding involving TEFRA partnership issues and subject to the provisions of this section. Assuming the taxpayer qualifies for an award of reasonable administrative costs by meeting the requirements of section 7430, the amount of the award attributable to the fees of B may not exceed the $75 per hour limitation (as adjusted for the cost of living), absent a special factor. Under these facts alone, B is not a specially qualified representative since even extraordinary knowledge of the tax laws does not constitute distinctive knowledge or a unique and specialized skill constituting a special factor.

(c) *Certain cost excluded*—(1) *Costs not incurred in an administrative proceeding.* Costs that are not reasonable administrative costs for purposes of section 7430 include any costs incurred in connection with a proceeding that is not an administrative proceeding within the meaning of § 301.7430–3.

(2) *Costs incurred in an administrative proceeding but not reasonable*—(i) *In general.* Costs incurred in an administrative proceeding that are incurred on or after the administrative proceeding date, and that are otherwise described in paragraph (b) of this section, are not recoverable unless they are reasonable in both nature and amount. For example, costs normally included in the hourly rate of the representative by the custom and usage of the representative's profession, when billed separately, are not recoverable separate and apart from the representative's hourly rate. Such costs typically include costs such as secretarial and overhead expenses. In contrast, costs which are normally billed separately may be reasonable administrative costs that may be recoverable in addition to the representative's hourly rate. Therefore, necessary costs incurred for travel, expedited mail delivery, messenger service, expenses while on travel, long distance telephone calls, and necessary copying fees imposed by the Internal Revenue Service, any court, bank or other third party, when normally billed separately from the representative's hourly rate, may be reasonable administrative costs.

(ii) *Special Rule for Expert Witness' Fees on Issue of Prevailing Market Rates.* Under paragraph (b)(3)(iii)(C) of this section, the taxpayer may initially establish a limited availability of specially qualified representatives for the proceeding by submission of an affidavit signed by the taxpayer or by the taxpayer's representative. The Internal Revenue Service may endeavor to rebut the affidavit submitted on this issue by demonstrating either that a specially qualified representative was not necessary to represent the taxpayer in the proceeding, that the taxpayer's representative is not a specially qualified representative or that the prevailing rate for specially qualified representatives does not exceed $75 per hour (as adjusted for inflation). Unless the Internal Revenue Service endeavors to demonstrate that the prevailing rate for specially qualified representatives does not exceed $75 per hour (as adjusted for inflation), fees for expert witnesses used to establish prevailing market rates are not included in the term "reasonable administrative costs."

(3) *Litigation costs.* Litigation costs are not reasonable administrative costs because they are not incurred in connection with an administrative proceeding. Litigation costs include—

(i) Costs incurred in connection with the preparation and filing of a petition with the United States Tax Court or in connection with the commencement of any other court proceeding; and

(ii) Costs incurred after the filing of a petition with the United States Tax Court or after the commencement of any other court proceeding.

(4) *Examples.* The provisions of this section are illustrated by the following examples:

Example 1. Taxpayer A receives a notice of proposed deficiency (30–day letter). A files a request for and is granted an Appeals office conference. At the conference no agreement is reached on the tax matters at issue. The Interal Revenue Service then issues a notice of deficiency. Upon receiving the notice of deficiency, A discontinues A's administrative efforts and files a petition with the Tax Court. A's costs incurred in connection with the preparation and filing of a petition with the Tax Court are litigation costs and not reasonable administrative costs. Furthermore, A's costs incurred before the administrative proceeding date (date of the notice of deficiency as set forth in § 301.7430–3(c)(3)), are not reasonable administrative costs.

Example 2. Assume the same facts as in *Example 1* except that after A receives the notice of deficiency, A recontacts Appeals. Again, A's costs incurred before the administrative proceeding date (the date of the notice of deficiency as set forth in § 301.7430–3(c)(3)), are not reasonable administrative costs. A's costs incurred in recontacting and working with Appeals after the issuance of the notice of deficiency, and up to and including the time of filing of the

petition, are reasonable administrative costs. A's costs incurred in connection with the filing of a petition with the Tax Court are not reasonable administrative costs because those costs are litigation costs. Similarly, A's costs incurred after the filing of the petition are not reasonable administrative costs, as those are litigation costs.

§ 301.7430–5 Prevailing party.

(a) *In general.* For purposes of an award of reasonable administrative costs under section 7430, a taxpayer is a prevailing party only if the taxpayer—

(1) Establishes that the position of the Internal Revenue Service was not substantially justified;

(2) Substantially prevails as to the amount in controversy or with respect to the most significant issue or set of issues presented; and

(3) Satisfies the net worth and size limitations referenced in paragraph (g) of this section.

(b) *Position of the Internal Revenue Service.* The position of the Internal Revenue Service in an administrative proceeding is the position taken by the Internal Revenue Service as of the administrative proceeding date (as defined in § 301.7430–3(c)) or thereafter.

(c) *Substantially justified*—(1) *In general.* The position of the Internal Revenue Service is substantially justified if it has a reasonable basis in both fact and law. A significant factor in determining whether the position of the Internal Revenue Service is substantially justified as of a given date is whether, on or before that date, the taxpayer has presented all relevant information under the taxpayer's control and relevant legal arguments supporting the taxpayer's position to the appropriate Internal Revenue Service personnel. The appropriate Internal Revenue Service personnel are personnel responsible for reviewing the information or arguments, or personnel who would transfer the information or arguments in the normal course of procedure and administration to the personnel who are responsible.

(2) *Exception.* If the position of the Internal Revenue Service was substantially justified with respect to some issues in the proceeding and not substantially justified with respect to the remaining issues, any award of reasonable administrative costs to the taxpayer may be limited to only reasonable administrative costs attributable to those issues with respect to which the position of the Internal Revenue Service was not substantially justified. If the position of the Internal Revenue Service was substantially justified for only a portion of the period of the proceeding and not substantially justified for the remaining portion of the proceeding, any award of reasonable administrative costs to the taxpayer may be limited to only reasonable administrative costs attributable to that portion during which the position of the Internal Revenue Service was not substantially justified. Where an award of reasonable administrative costs is limited to that portion of the administrative proceeding during which the position of the Internal Revenue Service was not substantially justified, whether the position of the Internal Revenue Service was substantially justified is determined as of the date any cost is incurred.

(d) *Amount in controversy.* The amount in controversy shall include the amount in issue as of the administrative proceeding date as increased by any amounts subsequently placed in issue by any party. The amount in controversy is determined without increasing or reducing the amount in controversy for amounts of loss, deduction, or credit carried over from years not in issue.

(e) *Most significant issue or set of issues presented.* Where the taxpayer has not substantially prevailed with respect to the amount in controversy the taxpayer may nonetheless be a prevailing party if the taxpayer substantially prevails with respect to the most significant issue or set of issues presented. The issues presented include those raised as of the administrative proceeding date and those raised subsequently. Only in a multiple issue proceeding can a most significant issue or set of issues presented exist. However, not all multiple issue proceedings contain a most significant issue or set of issues presented. An issue or set of issues constitute the most significant issue or set of issues presented if, despite involving a lesser dollar amount in the proceeding than the other issue or issues, if objectively represents the most significant issue or set of issues for the taxpayer or the Internal Revenue Service. This may occur because of the effect of the issue or set of issues on other transactions or other taxable years of the taxpayer or related parties.

(f) *Net worth and size limitations*—(1) *Individuals and estates.* An individual taxpayer or an estate meets the net worth and size limitations of this paragraph if, on the administrative proceeding date, the taxpayer's net worth does not exceed two million dollars. For this purpose, individuals filing a joint return shall be treated as 1 taxpayer, except in the case of a spouse relieved of liability under section 6013(e).

(2) *Others.* A taxpayer that is an owner of an unincorporated business, or any partnership, corporation, association, unit of local government, or organization (other than an organization described in paragraph (f)(3) of this section) meets the net worth and size limitations of this paragraph if, as of the administrative proceeding date—

(i) The taxpayer's net worth does not exceed seven million dollars; and

(ii) The taxpayer does not have more than 500 employees.

(3) *Special rule for charitable organizations and certain cooperatives.* An organization described in Internal Revenue Code section 501(c)(3) exempt from taxation under Internal Revenue Code section 501(a), or a cooperative association as defined in section 15(a) of the Agricultural Marketing Act, 12 U.S.C. 1141j(a) (as in effect on October 22, 1986), meets the net worth and size limitations of this paragraph if, as of the administrative proceeding date, the organization or cooperative association does not have more than 500 employees.

(g) *Determination of prevailing party.* If the final decision with respect to the tax, interest, or penalty is made at the administrative level, the determination of whether a taxpayer is a prevailing party shall be made by agreement of the parties, or absent such agreement, by the Internal Revenue Service. See § 301.7430–2(c)(7) regarding the right to appeal the decision by the Internal Revenue Service denying (in whole or in part) a request for reasonable administrative costs, to the Tax Court.

(h) *Example.* The provisions of this section are illustrated by the following examples:

Example 1. The Internal Revenue Service, in the conduct of a correspondence examination of taxpayer A's individual income tax return, requests substantiation from A of claimed medical expenses. A does not respond to the request and the Service Center issues a notice of deficiency. After receiving the notice of deficiency, A presents sufficient information and arguments to convince a revenue agent that the notice of deficiency is incorrect and that A owes no tax. The revenue agent then closes the case showing no deficiency. Although A incurred costs after the issuance of the notice of deficiency, A is unable to recover these costs because, as of the date these costs were incurred, A had not presented relevant information under A's control and relevant legal arguments supporting A's position to the appropriate Internal Revenue Service personnel. Accordingly, the position of the Internal Revenue Service was substantially justified at the time costs were incurred.

Example 2. In the purchase of an ongoing business, taxpayer B obtains from the previous owner of the business a covenant not to compete for a period of five years. On audit of B's individual income tax return for

the year in which the business is acquired the Internal Revenue Service challenges the basis assigned to the covenant not to compete and a deduction taken as a business expense for a seminar attended by B. Both parties agree that the covenant not to compete is amortizable over a period of five years. However, the Internal Revenue Service asserts that the proper basis of the covenant is $2X while the taxpayer asserts the basis is $4X. Thus, under the Internal Revenue Service's position, B is entitled to a deduction of two-fifths $X in the year under audit and for each of the subsequent four years. B's position, however, would result in a deduction of four-fifths $X for the year under audit and each of the subsequent four years. The deduction for the seminar attended by B was reported on the return in question in the amount of $X. The Internal Revenue Service's position is that the deduction for the seminar should be disallowed entirely. In the notice of deficiency, the Internal Revenue Service determines adjustments of two-fifths $X (the difference between the Internal Revenue Service's position of two-fifths $X and the reported four-fifths $X) regarding the basis of the covenant not to compete, and $X resulting from disallowance of the seminar expense. Thus, of the two adjustments determined for the year under audit, that attributable to the disallowance of the seminar is larger than that attributable to the covenant not to compete. However, due to the impact on the next succeeding four years the covenant not to compete adjustment is objectively the most significant issue to both B and the Internal Revenue Service.

Example 3. The Collection Branch of a service center of the Internal Revenue Service determines from the information provided by various Forms 1099 and W–2 that taxpayer C has not filed an individual income tax return. The Internal Revenue Service sends notices to C requesting that C file an income tax return. C does not file a return, so the service center's Collection Branch prepares a substitute return pursuant to section 6020(b). The calculation is sent to C requesting that C either sign the return pursuant to section 6020(a) or file a tax return prepared by C. C does not respond to the Internal Revenue Service's request and the service center's Collection Branch issues a notice of deficiency based on information in its possession. C does not file a petition with the Tax Court and does not pay the asserted deficiency. The Internal Revenue Service then assesses the tax shown on the notice of deficiency and issues a notice and demand for tax pursuant to section 6303. After receiving notice and demand, C contacts the Collection Branch and convinces Collection to stay the collection process because C does not owe any taxes. The Collection Branch recommends that the Examination Division examine the tax liability and make an adjustment to income. The Examination Division then redetermines the tax and abates the assessment due to information and arguments presented by C at that time. The costs C incurred before the Collection Branch are incurred in connection with an action taken by the Internal Revenue Service to collect a tax. Therefore, these costs are incurred with respect to a collection action and not an administrative proceeding. Accordingly, they are not recoverable as reasonable administrative costs. Costs incurred before the Examination Division are reasonable administrative costs; however, C may not recover any reasonable administrative costs with respect to the proceeding before the Examination Division because, as of the date the costs were incurred, C had not previously presented all relevant information under C's control and all relevant legal arguments supporting C's position to the Collection Branch or Examination Division personnel (the appropriate Internal Revenue Service personnel under § 301.7430–5(c), and thus, the position of the Internal Revenue Service was substantially justified based upon the information it had.

§ 301.7430–6 Effective date.

Sections 301.7430–0, and 301.7430–2 through 301.7430–6, other than § 301.7430–2(c)(5), apply to claims for reasonable administrative costs filed with the Internal Revenue Service after December 23, 1992 with respect to costs incurred in administrative proceedings commenced after November 10, 1988. Section 301.7430–2(c)(5) is effective March 23, 1993.

Shirley D. Peterson,

Commissioner of Internal Revenue.

[FR Doc. 92–30525 Filed 12–22–92; 8:45 am]

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26 CFR Part 301

[FI–55–91]

RIN 1545–AP98

Taxable Mortgage Pools

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to taxable mortgage pools. This action is necessary because of changes to the applicable tax law made by the Tax Reform Act of 1986. The proposed regulations provide guidance to entities for determining whether they are subject to the taxable mortgage pool rules

DATES: Written comments and requests to speak (with outlines of oral comments) must be received by March 22, 1993. A public hearing on these proposed regulations will be held on April 12, 1993, beginning at 10 a.m. See the notice of public hearing on these proposed regulations published elsewhere in this issue of the **Federal Register.**

ADDRESSES: Send comments, requests, and outlines of oral comments to be presented at the public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (FI–55–91), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Susan E. Overlander or Carol E. Schultze, (telephone 202–622–3960) (not a toll-free number), of the Office of Assistant Chief Counsel, Financial Institutions and Products, 1111 Constitution Avenue, NW., Washington, DC 20224. Attention: CC:FI&P (FI–55–91).

SUPPLEMENTARY INFORMATION:

Background

This document sets forth proposed income tax regulations (26 CFR part 301) under section 7701(i) of the Internal Revenue Code of 1986 (Code). Section 673 of the Tax Reform Act of 1986 (the 1986 Act), Public Law No. 99–514, 100 Stat. 2319, added to the Code new section 7701(i) to provide rules relating to taxable mortgage pools.

EXPLANATION OF PROVISIONS

I. Introduction

Section 7701(i) defines the term "taxable mortgage pool" and requires an arrangement classified as a taxable mortgage pool to be treated as a separate corporation that is not an includible corporation for purposes of section 1501. The statue is directed at the type of real estate mortgage pool that is used to collateralize and service multiple class securities. For tax purposes, the income accruing on the mortgages in this type of pool may initially exceed the deductions accruing on the securities, resulting in what is often referred to as "phantom income." Section 7701(i) was enacted to prevent this phantom income from being diverted to persons that can offset the income or otherwise avoid the tax attributable to the income.

The real estate mortgage investment conduit (REMIC) provisions address the problem of phantom income through the excess inclusion rules of section 860E(c). Section 7701(i), therefore, does not cover arrangements that elect to be treated as REMICs under section 860D(a). Nonetheless, the proposed regulations apply to any entity or portion of an entity that meets the definition of a taxable mortgage pool regardless of whether the entity or portion is eligible to elect REMIC treatment.

The proposed regulations provide rules that: (1) Define the elements of a taxable mortgage pool; (2) define the term "portion of an entity;" (3) create special rules for certain entities; and (4) determine whether a transfer made on

or after the effective date of the regulations will be treated as a "substantial transfer" for purposes of section 675(c) of the 1986 Act.

II. Definition of a Taxable Mortgage Pool

Under section 7701(i), an entity or portion of an entity (other than a REMIC) is a taxable mortgage pool if: (1) Substantially all of the entity's assets consist of debt obligations (or interests therein) and more than 50 percent of those obligations (or interests) consist of real estate mortgages; (2) the entity is the obligor of debt obligations with two or more maturities; and (3) payments on the debt obligations on which the entity is obligor bear a relationship to payments on the debt obligations that the entity holds as assets.

A. Asset Composition Tests

1. In General

To be classified as a taxable mortgage pool, substantially all of an entity's assets must consist of debt obligations and more than 50 percent of its debt obligations must consist of real estate mortgages (or interests therein). Under the proposed regulations, these tests are applied using the tax bases of the entity's assets.

2. Substantially All

Whether substantially all of an entity's assets consist of debt obligations generally depends on all the facts and circumstances. The proposed regulations, however, provide a safe harbor. If less than 80 percent of the assets of an entity or portion consist of debt obligations (or interests therein), the entity or portion is not classified as a taxable mortgage pool.

3. Real Estate Mortgages

The term "real estate mortgages (or interests therein)" includes: (1) Any obligation (including any participation or certificate of beneficial ownership in an obligation) that is principally secured by an interest in real property; (2) any regular or residual interest in a REMIC; and (3) any stripped bond or stripped coupon (as defined in section 1286(e) (2) and (3)) if the bond (as defined in section 1286 (e)(1)) from which such stripped bond or stripped coupon arose would have qualified as a real estate mortgage or interest therein.

The proposed regulations provide that an obligation is "principally secured by an interest in real property" only if either (1) the fair market value of the interest in real property securing the obligation was at least equal to 80 percent of the adjusted issue price of the obligation at the time the obligation was originated, or (2) substantially all of the proceeds of the obligation were used to acquire, improve or protect an interest in real property that, at the origination date, was the only security for the obligation. For purposes of the first test, the fair market value of the real property interest is to be determined after taking into account other liens encumbering the property.

Under the proposed regulations, obligations secured by other obligations are principally secured by interests in real property if the underlying obligations are principally secured by interests in real property. Thus, a collateralized mortgage obligation may qualify as a real estate mortgage (or interest therein). However, this rule is applicable only to obligations issued after December 31, 1991.

4. Credit Enhancement Arrangements Not Treated as Assets

For purposes of the asset composition tests, credit enhancement arrangements are generally treated as incidents of the pooled debt obligations and not as separate assets of the entity. Thus, the proposed regulations treat payments received under credit enhancement arrangements as payments on the debt obligations.

5. Certain Assets Not Treated as Debt Obligations

For purposes of the asset composition tests, real estate mortgages that are seriously impaired are not treated as debt obligations. Whether real estate mortgages are seriously impaired generally depends on all the facts and circumstances. The proposed regulations, however, provide two safe harbors. Under those provisions, whether mortgages are seriously impaired depends only on the number of days the payments on the mortgages are delinquent. The safe harbors are not available if an entity is receiving or anticipates receiving certain payments on the mortgages such as payments of principal and interest that are substantial and relatively certain as to amount.

B. Two or More Maturities

To be classified as a taxable mortgage pool, an entity must be an obligor on debt obligations having two or more maturities. Under the proposed regulations, debt obligations have two or more maturities if they have different stated maturities or if the holders of the obligations possess different rights concerning the acceleration of or delay in the maturities of the obligations. Allocating credit risk unequally to debt obligations does not, of itself, cause the obligations to have two or more maturities.

C. Relationship

1. In General

For an entity to be classified as a taxable mortgage pool, payments on the debt obligations on which the entity is the obligor (liability obligations) must bear a relationship to payments on the debt obligations that the entity holds as assets (asset obligations). The proposed regulations provide that such a relationship exists if, under the terms of the liability obligations (or underlying arrangement), the timing and amount of payments on the liability obligations are in large part determined by the timing and amount of payments or projected payments on the asset obligations. Thus, a one-to-one relationship of amounts received to amounts paid is not necessary. An indirect relationship, such as one based on a pool of assets with a payment experience similar to that of the asset obligations, satisfies the relationship test.

Under the proposed regulations the term "payments on the asset obligations" generally includes: Payments of principal and interest; pre-payments of principal; and payments under credit enhancement arrangements. Other debt-related receipts are included, but under limited circumstances.

2. Safe Harbor for Liquidating Entities

Entities formed to liquidate assets produce greater cash flows from sales of assets than from regular payments of principal and interest on real estate mortgages. Thus, the proposed regulations provide that payments on liability obligations do not bear a relationship to payments on asset obligations if an entity is liquidating the asset obligations. However, an entity must meet all four requirements set forth in the proposed regulations to be considered a liquidating entity.

D. Anti-Avoidance Rule

An anti-avoidance rule in the proposed regulations authorizes the Commissioner to disregard or make other adjustments to any transaction if the transaction is entered into with a view of achieving the same economic effect as that of an arrangement subject to section 7701(i) while avoiding the application of that section. The anti-avoidance authority includes treating equity interests issued by a non-REMIC as debt if the entity issues equity interests that correspond to maturity classes of debt. However, notwithstanding this authority,

ownership interests in entities that are classified as trusts under § 301.7701–4(c) are not treated as debt.

III. Portion of an Entity

Section 7701(i)(2)(B) treats as a taxable mortgage pool any portion of an entity that satisfies the definition of a taxable mortgage pool. This rule was intended to apply the taxable mortgage pool rules to any arrangement under which mortgages are segregated from a debtor's business activities (if any) for the benefit of creditors whose loans are of varying maturities. H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II–240. Consistent with this intent, the proposed regulations define a portion of an entity as including all the assets that support one or more of the same issues of debt obligations. For this purpose, an asset supports a debt obligation if, under terms of the debt obligation (or underlying arrangement), the timing and amount of payments on the debt obligation are in large part determined, either directly or indirectly, by the timing and amount of payments or projected payments on the asset or a group of assets that includes the asset. As used in this context, the term "payments" includes all proceeds and receipts from an asset. Once a portion is identified, the rules of § 301.7701(i)–1 apply to determine whether the portion is classified as a taxable mortgage pool. Each portion of an entity that is classified as a taxable mortgage pool is treated as a separate corporation.

IV. Proposed Effective Dates and Transitional Rules

The proposed regulations will be effective thirty days after they are published as final regulations. Section 675(c)(2) of the 1986 Act provides that section 7701(i) applies to an entity in existence on December 31, 1991, if a substantial transfer is made to the entity after December 31, 1991. After December 31, 1991, and before the effective date, the meaning of the term "substantial transfer" is based on the statutory language and legislative history of section 675(c)(2). Beginning on the effective date, the term "substantial transfer" means a transfer that is significant in amount and connected to the entity's issuance of related debt obligations with different maturities. The proposed regulations define a related debt obligation as one whose payments "bear a relationship" (as defined in the proposed regulations) to debt obligations that the entity holds as assets.

V. Special Rules for Certain Entities

The proposed regulations provide rules for exempting certain entities from the application of the regulations. Specifically, an entity is not classified as a taxable mortgage pool if: (1) The entity issuing the debt obligations is a State, the District of Columbia or a political subdivision within the meaning of § 1.103–1(b), or is empowered to issue obligations on behalf of one of the foregoing; (2) the entity issues the debt obligations in the performance of a governmental purpose; and (3) the entity holds the remaining interest in any asset that supports the outstanding debt obligations until those obligations are satisfied.

The proposed regulations also provide that a taxable mortgage pool may not elect S corporation status nor maintain S corporation status. This section prevents taxpayers from circumventing the taxable mortgage pool rules by using a pass-through corporation.

Special Analyses

It has been determined 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 Administrative Procedures Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these proposed regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before the adoption of these proposed regulations, consideration will be given to any written comments that are timely submitted (preferably a signed original and eight copies) to the Internal Revenue Service. A hearing with respect to these proposed regulations will be held on April 12, 1993, beginning at 10 a.m. Written comments and requests to speak (with outlines of oral comments) must be received by March 22, 1993. See the notice of hearing published elsewhere in this issue of the Federal Register.

Comments are specifically requested as to whether a de minimis exception to the rule regarding the treatment of equity interests in pass-through arrangements is needed.

All written comments will be available for public inspection and copying in their entirety.

Drafting Information

The principal authors of these proposed regulations are Susan E. Overlander, Carol E. Schultze, and Marshall D. Feiring, Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, other personnel from the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child Support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

Proposed Amendments to the Regulations

Accordingly, 26 CRR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding the following citations:

Authority: 26 U.S.C. 7805 * * * Section 301.7701(i)–1(g)(1) also issued under 26 U.S.C. 7701(i)(2)(D). Section 301.7701(i)–4(b) also issued under 26 U.S.C. 7701(i)(3).

Par. 2. Sections 301.7701(i)–0 through 301.7701(i)–4 are added to read as follows.

§ 301.7701(i)–0 Outline of taxable mortgage pool provisions.

This section lists the major paragraphs contained in §§ 301.7701(i)–1 through 301.7701(i)–4.

§ 301.7701(i)–1 Definition of a taxable mortgage pool.

(a) Purpose.
(b) In general.
(c) Asset composition tests.
(1) Determination of amount of assets.
(2) Substantially all.
(i) In general.
(ii) Safe harbor.
(3) Equity interests in pass-through arrangements.
(4) Treatment of certain credit enhancement contracts.
(i) In general.
(ii) Credit enhancement contract defined.
(5) Certain assets not treated as debt obligations.
(i) In general.
(ii) Safe harbors.
(d) Real estate mortgages or interests therein defined.
(1) In general.

(2) Interests in real property and real property defined.
(i) In general.
(ii) Manufactured housing.
(3) Principally secured by an interest in real property.
(i) Tests for determining whether an obligation is principally secured.
(A) The 80 percent test.
(B) Alternative test.
(ii) Obligations secured by other obligations.
(e) Two or more maturities.
(1) In general.
(2) Obligations that are allocated credit risk unequally.
(3) Examples.
(f) Relationship test.
(1) In general.
(2) Payments on asset obligations defined.
(3) Safe harbor for entities formed to liquidate assets.
(g) Anti-avoidance rules.
(1) In general.
(2) Certain investment trusts.
(3) Examples.

§ 301.7701(i)–2 Special rules for portions of entities.

(a) Portion defined.
(b) Certain assets and rights to assets disregarded.
(1) Credit enhancement assets.
(2) Assets unlikely to service obligations.
(3) Recourse.
(c) Portion as obligor.
(d) Example.

§ 301.7701(i)–3 Effective dates and duration of taxable mortgage pool classification.

(a) Effective dates.
(b) Entities in existence on December 31, 1991.
(1) In general.
(2) Special rule for certain transfers.
(3) Related debt obligation.
(4) Example.
(c) Duration of taxable mortgage pool classification.
(1) Commencement.
(2) Termination.
(d) Section 708(b)(1)(B) terminations.

§ 301.7701(i)–4 Special rules for certain entities.

(a) States and Municipalities.
(1) In general.
(2) Governmental purpose.
(3) Determinations by the Commissioner.
(b) REITs. [Reserved]
(c) Subchapter S corporations.
(1) In general.
(2) Portion of an S corporation treated as a separate corporation.

§ 301.7701(i)–1 Definition of a taxable mortgage pool.

(a) *Purpose.* This section provides rules for applying section 7701(i), which defines taxable mortgage pools. The purpose of section 7701(i) is to prevent income generated by a pool of real estate mortgages from escaping Federal income taxation when the pool is used to issue multiple class mortgage-backed securities. The regulations in this section and in §§ 301.7701(i)–2 through 301.7701(i)–4 are to be applied in accordance with this purpose. The taxable mortgage pool provisions apply to entities that qualify for REMIC status but do not elect to be taxed as REMICs as well as to certain entities or portions of entities that do not qualify for REMIC status.

(b) *In general*—(1) A taxable mortgage pool is any entity or portion of an entity (as defined in § 301.7701(i)–2) that satisfies the requirements of section 7701(i)(2)(A) and this section as of any testing day, as defined in § 301.7701(i)–3(c)(1). An entity or portion of an entity satisfies the requirements of section 7701(i)(2)(A) and this section if substantially all of its assets are debt obligations, more than 50 percent of those debt obligations are real estate mortgages, the entity is the obligor under debt obligations with two or more maturities, and payments on the debt obligations under which the entity is obligor bear a relationship to payments on the debt obligations the entity holds as assets.

(2) Paragraph (c) of this section provides the tests for determining whether substantially all of an entity's assets are debt obligations and for determining whether more than 50 percent of its debt obligations are real estate mortgages. Paragraph (d) of this section defines real estate mortgages for purposes of the 50 percent test. Paragraph (e) of this section defines "two or more maturities" and paragraph (f) of this section provides rules for determining when debt obligations "bear a relationship" to the assets held by an entity. Paragraph (g) of this section provides anti-avoidance rules. Section 301.7701(i)–2 provides rules for applying section 7701(i) to portions of entities and § 301.7701(i)–3 provides effective dates. Section 301.7701(i)–4 provides special rules for certain entities. For purposes of the regulations under section 7701(i), any reference to "entity" includes a reference to "portion of an entity" within the meaning of section 7701(i)(2)(B), unless the context clearly indicates otherwise.

(c) *Asset composition tests*—(1) *Determination of amount of assets.* An entity must use the Federal income tax basis of an asset for purposes of determining whether substantially all of its assets consist of debt obligations (or interests therein) and whether more than 50 percent of those debt obligations (or interests) consist of real estate mortgages (or interests therein).

(2) *Substantially all*—(i) *In general.* Whether substantially all of the assets of an entity consist of debt obligations (or interests therein) is based on all the facts and circumstances.

(ii) *Safe harbor.* Notwithstanding paragraph (c)(2)(i) of this section, if less than 80 percent of the assets of an entity consist of debt obligations (or interests therein), then less than substantially all of the assets of the entity consist of debt obligations (or interests therein).

(3) *Equity interests in pass-through arrangements.* The equity interest of an entity in a partnership, S corporation, trust, REIT, or other pass-through arrangement is deemed to have the same composition as the entity's share of the assets of the pass-through arrangement. For example, if an entity's stock interest in a REIT has an adjusted basis of $20,000, and the assets of the REIT consist of equal portions of real estate mortgages and other real estate assets, then the entity is treated as holding $10,000 of real estate mortgages and $10,000 of other real estate assets.

(4) *Treatment of certain credit enhancement contracts*—(i) *In general.* A credit enhancement contract (as defined in paragraph (c)(4)(ii) of this section) is not treated as a separate asset of an entity for purposes of the asset composition tests set forth in section 7701(i)(2)(A)(i), but instead is treated as part of the asset to which it relates. Furthermore, any collateral supporting a credit enhancement contract is not treated as an asset of an entity solely because it supports the guarantee represented by that contract.

(ii) *Credit enhancement contract defined.* For purposes of this section, a credit enhancement contract is any arrangement whereby a person agrees to guarantee full or partial payment of the principal or interest payable on a debt obligation (or interest therein) or on a pool of such obligations (or interests), or full or partial payment on one or more classes of debt obligations under which an entity is the obligor, in the event of defaults or delinquencies on debt obligations, unanticipated losses or expenses incurred by the entity, or lower than expected returns on investments. Types of credit enhancement contracts may include, but are not limited to, pool insurance contracts, certificate guarantee insurance contracts, letters of credit, guarantees, or agreements whereby an entity, a mortgage servicer, or other third party agrees to make advances (regardless of whether, under the terms of the agreement, the payor is obligated, or merely permitted, to make those advances). An agreement by a debt servicer to advance to an entity out of its own funds an amount to make up for delinquent payments on debt obligations is a credit enhancement

contract. An agreement by a debt servicer to pay taxes and hazard insurance premiums on property securing a debt obligation, or other expenses incurred to protect an entity's security interests in the collateral in the event that the debtor fails to pay such taxes, insurance premium, or other expenses, is a credit enhancement contract.

(5) *Certain assets not treated as debt obligations*—(i) *In general.* For purposes of section 7701(i)(2)(A), real estate mortgages that are seriously impaired are not treated as debt obligations. Whether a mortgage is seriously impaired is based on all the facts and circumstances.

(ii) *Safe harbors.* Single family residential real estate mortgages are seriously impaired if payments on the mortgages are more than 89 days delinquent. Multi-family residential and commercial real estate mortgages are seriously impaired if payments on the mortgages are more than 59 days delinquent. However, this paragraph (c)(5)(ii) does not apply if an entity is receiving, or anticipates receiving—

(A) Any payments on the obligation as defined in paragraph (f)(2)(i) of this section if those payments are substantial and relatively certain as to amount; or

(B) Any payments on the obligation as defined in paragraph (f)(2) (ii) or (iii) of this section.

(d) *Real estate mortgages or interests therein defined*—(1) *In general.* For purposes of section 7701(i)(2)(A)(i), the term "real estate mortgages (or interests therein)" includes all—

(i) Obligations (including participations or certificates of beneficial ownership therein) that are principally secured by an interest in real property (as defined in paragraph (d)(3) of this section);

(ii) Regular and residual interests in a REMIC; and

(iii) Stripped bonds and stripped coupons (as defined in section 1286(e) (2) and (3)) if the bonds (as defined in section 1286(e)(1)) from which such stripped bonds or stripped coupons arose would have qualified as real estate mortgages or interests therein.

(2) *Interests in real property and real property defined*—(i) *In general.* The definition of "interests in real property" set forth in § 1.856–3(c) and the definition of "real property" set forth in § 1.856–3(d) apply to define those terms for purposes of paragraph (d) of this section.

(ii) *Manufactured housing.* For purposes of this section, the definition of "real property" includes manufactured housing, provided the properties qualify as single family residences under section 25(e)(10) and without regard to the treatment of the properties under state law.

(3) *Principally secured by an interest in real property*—(i) *Tests for determining whether an obligation is principally secured.* For purposes of paragraph (d)(1) of this section, an obligation is principally secured by an interest in real property only if it satisfies either the test set in paragraph (d)(3)(i)(A) of this section or the test set out in paragraph (d)(3)(i)(B) of this section.

(A) *The 80 percent test.* An obligation is principally secured by an interest in real property if the fair market value of the interest in real property (as defined in paragraph (d)(2) of this section) securing the obligation was at least equal to 80 percent of the adjusted issue price of the obligation at the time the obligation was originated. For purposes of this test, the fair market value of the real property interest is first reduced by the amount of any lien on the real property interest that is senior to the obligation being tested, and is reduced further by a proportionate amount of any lien that is in parity with the obligation being tested.

(B) *Alternative test.* An obligation is principally secured by an interest in real property if substantially all of the proceeds of the obligation were used to acquire, improve, or protect an interest in real property that, at the origination date, is the only security for the obligation. For purposes of this test, loan guarantees made by Federal, state, local governments or agencies, or other third party credit enhancement, are not viewed as additional security for a loan. An obligation is not considered to be secured by property other than real property solely because the obligor is personally liable on the obligation.

(ii) *Obligations secured by other obligations.* Obligations secured by other obligations are treated as principally secured by interests in real property if the underlying obligations are principally secured by interests in real property. Thus, for example, a collateralized mortgage obligation may be an obligation principally secured by an interest in real property. This section is applicable only to obligations issued after December 31, 1991.

(e) *Two or more maturities*—(1) *In general.* For purposes of section 7701(i)(2)(A)(ii), debt obligations have two or more maturities if they have different stated maturities or if the holders of the obligations possess different rights concerning the acceleration of or delay in the maturities of the obligations.

(2) *Obligations that are allocated credit risk unequally.* Debt obligations that are allocated credit risk unequally do not have, by that reason alone, two or more maturities. Credit risk is the risk that payments of principal or interest will be reduced or delayed because of a default on an asset that supports the debt obligations.

(3) *Examples.* The following examples illustrate the principles of this paragraph (e).

Example 1. (i) Corporation M transfers a pool of real estate mortgages to a trustee in exchange for Class A bonds and a certificate representing the residual beneficial ownership of the pool. All Class A bonds have a stated maturity of March 1, 2002, but if cash flows from the real estate mortgages and investments are sufficient, the trustee may select one or more bonds at random and redeem them earlier.

(ii) The Class A bonds do not have different maturities. Each outstanding Class A bond has an equal chance of being redeemed because the selection process is random. The holders of the Class A bonds, therefore, have identical rights concerning the maturities of their obligations.

Example 2. (i) Corporation N transfers a pool of real estate mortgages to a trustee in exchange for Class C bonds, Class D bonds, and a certificate representing the residual beneficial ownership of the pool. The Class D bonds are subordinate to the Class C bonds so that cash flow shortfalls due to defaults or delinquencies on the real estate mortgages are borne first by the Class D bond holders. The terms of the bonds are otherwise identical in all relevant aspects except that the Class D bonds carry a higher coupon rate because of the subordination feature.

(ii) The Class C bonds and the Class D bonds share credit risk unequally because of the subordination feature. However, neither this difference, nor the difference in interest rates, causes the bonds to have different maturities. The result is the same if, in addition to the other terms described in paragraph (i) of this *Example 1*, the Class C bonds are accelerated as a result of the issuer becoming unable to make payments on the Class C bonds as they become due.

(f) *Relationship test*—(1) *In general.* For purposes of section 7701(i)(2)(A)(iii), payments on debt obligations under which an entity is the obligor (liability obligations) "bear a relationship" to payments (as defined in paragraph (f)(2) of this section) on debt obligations an entity holds as assets (asset obligations) if under the terms of the liability obligations (or underlying arrangement) the timing and amount of payments on the liability obligations are in large part determined by the timing and amount of payments or projected payments on the asset obligations. For purposes of the relationship test, any payment arrangement that achieves a substantially similar result is treated as satisfying the test. For example, any

arrangement where the timing and amount of payments on liability obligations are determined by reference to a group of assets (or an index or other type of model) that has an expected payment experience similar to that of the asset obligations is treated as satisfying the relationship test.

(2) *Payments on asset obligations defined.* For purposes of section 7701(i)(2)(A)(iii) and this section, payments on asset obligations include—

(i) Payments of principal and interest on asset obligations, including prepayments of principal and payments under credit enhancement contracts (as defined in § 301.7701(i)–1(c)(4)(ii)), but excluding settlements at a substantial discount;

(ii) Payments from settlements at a substantial discount and foreclosures on asset obligations if the settlement or foreclosure was arranged, whether in writing or otherwise, prior to the issuance of the liability obligations; and

(iii) Proceeds from sales of asset obligations, if the sales were arranged, whether in writing or otherwise, prior to the issuance of the liability obligations.

(3) *Safe harbor for entities formed to liquidate assets.* Payments on liability obligations of an entity do not bear a relationship to payments on asset obligations of the entity if—

(i) the entity's organizational documents manifest clearly that the entity is formed for the primary purpose of liquidating its assets and distributing proceeds of liquidation;

(ii) The entity's activities are all reasonably necessary to and consistent with the accomplishment of liquidating assets;

(iii) The entity plans to satisfy at least 50 percent of the total issue price of each of its liability obligations having a different maturity with proceeds from liquidation and not with scheduled payments on its asset obligations; and

(iv) The terms of the entity's liability obligations or other arrangement provide that either the entity liquidates within three years of the time it first acquires assets to be liquidated or, if the entity does not liquidate within that time, the payments the entity receives on its asset obligations after that time are paid through to the holders of its liability obligations in proportion to their adjusted issue prices.

(g) *Anti-avoidance rules*—(1) *In general.* For purposes of determining whether an entity meets the definition of a taxable mortgage pool, the Commissioner may disregard or make other adjustments to a transaction (or series of transactions) if the transaction (or series) is entered into with a view to achieving the same economic effect as that of an arrangement subject to section 7701(i) while avoiding the application of that section. The Commissioner's authority includes treating equity interests issued by a non-REMIC as debt if the entity issues equity interests that correspond to maturity classes of debt.

(2) *Certain investment trusts.* Notwithstanding paragraph (g)(1) of this section, an ownership interest in an entity that is classified as a trust under § 301.7701–4(c) will not be treated as a debt obligation of the trust.

(3) *Examples.* The following examples illustrate the principles of this paragraph (g).

Example 1. (i) Partnership P, in addition to its other investments, owns $10,000,000 of mortgage pass-through certificates guaranteed by FNMA (FNMA Certificates). On May 15, 1997, Partnership P transfers the FNMA Certificates to Trust 1 in exchange for 100 Class A bonds and Certificate 1. The Class A bonds, under which Trust 1 is the obligor, have a stated principal amount of $5,000,000 and bear a relationship to the FNMA Certificates (within the meaning of § 301.7701(i)–1(f)). Certificate 1 represents the residual beneficial ownership of the FNMA Certificates.

(ii) On July 5, 1997, with a view to avoiding the application of section 7701(i), Partnership P transfers Certificate 1 to Trust 2 in exchange for 100 Class B bonds and Certificate 2. The Class B bonds, under which Trust 2 is the obligor, have a stated principal amount of $5,000,000, bear a relationship to the FNMA Certificates (within the meaning of § 301.7701(i)–1(f)), and have a different maturity than the Class A bonds (within the meaning of § 301.7701(i)–1(e)). Certificate 2 represents the residual beneficial ownership of Certificate 1.

(iii) For purposes of determining whether Trust 1 is classified as a taxable mortgage pool, the Commissioner may disregard the separate existence of Trust 2 and treat Trust 1 and Trust 2 as a single trust.

Example 2. (i) Corporation Q files a consolidated return with its two wholly-owned subsidiaries, Corporation R and Corporation S. Corporation R is in the business of building and selling single family homes. Corporation S is in the business of financing sales of those homes.

(ii) On August 10, 1998, Corporation S transfers a pool of its real estate mortgages to Trust 3, taking back Certificate 3 which represents beneficial ownership of the pool. On September 25, 1998, with a view to avoiding the application of section 7701(i), Corporation R issues bonds that have different maturities (within the meaning of § 301.7701(i)–1(e)) and that bear a relationship (within the meaning of § 301.7701(i)–1(f)) to the real estate mortgages in Trust 3. The holders of the bonds have an interest in a credit enhancement contract that is written by Corporation S and collateralized with Certificate 3.

(iii) For purposes of determining whether Trust 3 is classified as a taxable mortgage pool, the Commissioner may treat Trust 3 as the obligor of the bonds issued by Corporation R.

Example 3. (i) Corporation X, in addition to its other assets, owns $110,000,000 in Treasury securities. From time to time, Corporation X acquires pools of real estate mortgages, which it immediately uses to issue multiple-class debt obligations.

(ii) On October 1, 1996, Corporation X transfers $11,000,000 in Treasury securities to Trust 4 in exchange for Class C bonds, Class D bonds, Class E bonds, and Certificate 4. Trust 4 is the obligor of the bonds. The different classes of bonds have the same stated maturity date, but if cash flows from the Trust 4 assets exceed the amounts needed to make interest payments, the trustee uses the excess to retire the classes of bonds in alphabetical order. Certificate 4 represents the residual beneficial ownership of the Treasury securities.

(iii) With a view to avoiding the application of section 7701(i), Corporation X reserves the right to replace any Trust 4 asset with real estate mortgages or guaranteed mortgage pass-through certificates. In the event the right is exercised, cash flows on the real estate mortgages and guaranteed pass-through certificates will be used in the same manner as cash flows on the Treasury securities. Corporation X exercises this right of replacement on February 1, 1997.

(iv) For purposes of determining whether Trust 4 is classified as a taxable mortgage pool, the Commissioner may treat February 1, 1997, as a testing day (within the meaning of § 301.7701(i)–3(c)(1)). The result is the same if Corporation X has an obligation, rather than a right, to replace the Trust 4 assets with real estate mortgages and guaranteed pass-through certificates.

§ 301.7701(i)–2 Special rules for portions of entities.

(a) *Portion defined.* Except as provided in paragraph (b) of this section and § 301.7701(i)–1, a portion of an entity includes all assets that support one or more of the same issues of debt obligations. For this purpose, an asset supports a debt obligation if, under the terms of the debt obligation (or underlying arrangement), the timing and amount of payments on the debt obligation are in large part determined, either directly or indirectly, by the timing and amount of payments or projected payments on the asset or a group of assets that includes the asset. Indirect payment arrangements include, for example, arrangements where the timing and amount of payments on the debt obligations are determined by reference to an index that has an expected payment experience similar to that of the assets. For purposes of this paragraph, the term "payments" includes all proceeds and receipts from an asset.

(b) *Certain assets and rights to assets disregarded—(1) Credit enhancement assets.* A portion does not include assets that primarily serve the same function as credit enhancement contracts.

(2) *Assets unlikely to service obligations.* A portion does not include assets that are unlikely to produce any significant cash flows for the holders of the debt obligations. This paragraph applies even if the holders of the debt obligations are legally entitled to cash flows from the assets. Thus, for example, even if the sale of a building causes a series of debt obligations to be redeemed, the building is not included in a portion if it is not likely to be sold.

(3) *Recourse.* An asset is not included in a portion solely because the holders of the debt obligations have recourse to the holder of that asset.

(c) *Portion as obligor.* For purposes of section 7701(i)(2)(A)(ii), a portion of an entity is treated as the obligor of all debt obligations supported by the assets in that portion.

(d) *Example.* The following example illustrates the principles of this section.

Example. (i) Corporation Z owns $1,000,000,000 in assets including an office complex and $90,000,000 of real estate mortgages.

(ii) On November 30, 1998, Corporation Z issues eight classes of bonds, Class A through Class H. Each class is secured by a separate letter of credit and by a lien on the office complex. One group of the real estate mortgages supports Class A through Class D, another group supports Class E through Class G, and a third group supports Class H. It is anticipated that the cash flows from each group of mortgages will service its related bonds.

(iii) Each of the following constitutes a separate portion of Corporation Z: the group of mortgages supporting Class A through Class D; the group of mortgages supporting Class E through Class G; and the group of mortgages supporting Class H. No other asset is included in any of the three portions notwithstanding the lien of the bonds on the office complex and the fact that Corporation Z is the issuer of the bonds. The letters of credit are treated as incidents of the mortgages to which they relate.

(iv) For purposes of section 7701(i)(2)(A)(ii), each portion described above is treated as the obligor of the bonds of that portion, notwithstanding the fact that Corporation Z is the legal obligor with respect to the bonds.

§ 301.7701(i)–3 Effective dates and duration of taxable mortgage pool classification.

(a) *Effective dates.* Except as otherwise provided, the regulations under section 7701(i) are effective and applicable [insert date that is thirty days after this regulation is published as a Final Regulation].

(b) *Entities in existence on December 31, 1991*—(1) *In general.* For transitional rules concerning the application of section 7701(i) to entities in existence on December 31, 1991, see section 675(c) of the Tax Reform Act of 1986.

(2) *Special rule for certain transfers.* A transfer made to an entity on or after [insert date that is thirty days after this regulation is published as a Final Regulation] is a substantial transfer for purposes of section 675(c)(2) of the Tax Reform Act of 1986 only if—

(i) The transfer is significant in amount; and

(ii) The transfer is connected to the entity's issuance of related debt obligations (as defined in paragraph (b)(3) of this section) that have different maturities (within the meaning of § 301.7701–1(e)).

(3) *Related debt obligation.* A related debt obligation is one whose payments bear a relationship (within the meaning of § 301.7701–1(f)) to payments on debt obligations that the entity holds as assets.

(4) *Example.* The following example illustrates the principles of this paragraph (b).

Example. On December 31, 1991, Partnership Q holds a pool of real estate mortgages that it acquired through retail sales of single family homes. Partnership Q raises $10,000,000 on October 25, 1996, by using this pool to issue related debt obligations with multiple maturities. The transfer of the $10,000,000 to Partnership Q is a substantial transfer within the meaning of § 301.7701(i)–3(b)(2).

(c) *Duration of taxable mortgage pool classification*—(1) *Commencement.* An entity is classified as a taxable mortgage pool on the first testing day that it meets the definition of a taxable mortgage pool. A "testing day" is any day on or after [insert date that is thirty days after this regulation is published as a Final Regulation], on which an entity issues a related debt obligation (as defined in paragraph (b)(3) of this section) that is significant in amount.

(2) *Termination.* Once an entity is classified as a taxable mortgage pool, that classification continues through the day the entity retires its last related debt obligation.

(d) *Section 708(b)(1)(B) terminations.* An entity is not treated as issuing a related debt obligation solely because the entity is terminated pursuant to section 708(b)(1)(B).

§ 301.7701(i)–4 Special rules for certain entities.

(a) *States and Municipalities*—(1) *In general.* Regardless of whether an entity satisfies any of the requirements of section 7701(i)(2)(A), an entity is not classified as a taxable mortgage pool if—

(i) The entity is a State, the District of Columbia, or a political subdivision within the meaning of § 1.103–1(b), or is empowered to issue obligations on behalf of one of the foregoing;

(ii) The entity issues the debt obligations in the performance of a governmental purpose; and

(iii) Until the debt obligations issued by the entity are satisfied, the entity holds the remaining interest in any asset that supports those debt obligations.

(2) *Governmental purpose.* The term "governmental purpose" means an essential governmental function within the meaning of section 115. A governmental purpose does not include the mere packaging of debt obligations for re-sale on the secondary market even if any profits from the sale are used in the performance of an essential governmental function.

(3) *Determinations by the Commissioner.* If an entity is not described in paragraph (a)(1) of this section, but has a similar purpose, then the Commissioner may determine that the entity is not classified as a taxable mortgage pool.

(b) *REITs.* [Reserved]

(c) *Subchapter S corporations*—(1) *In general.* An entity that is classified as a taxable mortgage pool may not elect to be an S corporation under section 1362(a) or maintain S corporation status.

(2) *Portion of an S corporation treated as a separate corporation.* An S corporation is not treated as a member of an affiliated group under section 1361(b)(2)(A) solely because a portion of the S corporation is treated as a separate corporation under section 7701(i).

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 92–31060 Filed 12–22–92; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 301

[FI–55–91]

RIN 1545–AP98

Taxable Mortgage Pools; 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 Income Tax Regulations relating to taxable mortgage pools.

DATES: The public hearing will be held on Monday, April 12, 1993, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Monday, March 22, 1993.

ADDRESSES: The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, 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 [FI–55–91], room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–622–7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 7701(i) of the Internal Revenue Code of 1986.

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 Monday, March 22, 1993, 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. 92–31061 Filed 12–22–92; 8:45 am]

BILLING CODE 4830–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI24–1–5587; FRL–4547–9]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: USEPA is proposing to disapprove rule packages AM–2–88 and AM–22–88 as revisions to Wisconsin's State Implementation Plan (SIP) for Particulate Matter (PM). USEPA's action is based upon a revision request submitted by the State to satisfy the requirements of the Clean Air Act. The SIP revisions were submitted March 13, 1989, and May 10, 1990.

DATES: Comments on this proposed revision and on the proposed USEPA action must be received by January 22, 1993.

ADDRESSES: Copies of the SIP revision request and USEPA's analysis are available for inspection at the following address: (It is recommended that you telephone Daniel Meyer at (312) 886–9401, before visiting the Region 5 Office.)

U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Written comments should be sent to:

Carlton Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Daniel Meyer, Air Toxics and Radiation Branch, Regulation Development Section (AT–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–9401.

SUPPLEMENTARY INFORMATION:

I. Summary of State Submittal

On July 1, 1987, USEPA adopted regulations revising the national ambient air quality standard for PM. In its revision, USEPA replaced total suspended particulates (TSP) as an indicator for the PM standard with a new indicator that only includes those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers. To implement the revised ambient standards, USEPA requires that states revise their SIPs in accordance with the revised Federal regulations.

On March 13, 1989, Wisconsin Department of Natural Resources (WDNR) submitted rule package AM–2–88. AM–2–88 pertains to changes in definitions for the establishment of an ambient air quality standard for PM. The rule package also includes a modification to the criteria which are used to exempt sources from a Prevention of Significant Deterioration review. The rule package is being submitted as a revision to the SIP.

Similarly on May 10, 1990, WDNR submitted rule package AM–22–88. AM–22–88 pertains to particulate matter standards, including the addition of ambient air quality standards for PM, and the deletion of TSP as an indicator of particulate matter. These rules are also being submitted as a revision to the SIP. USEPA has prepared two technical support documents (TSDs) dated November 21, 1990, and August 11, 1992, to support this proposed rulemaking action. These documents provide a detailed evaluation of the proposed Wisconsin PM SIP revision. Copies of these TSDs are available from the contact person identified above.

II. Analysis of State Submittal

The two packages or revisions are being considered for disapproval as interrelated revisions to the SIP. AM–2–88 modifies Chapter NR, sections 400.02, 404.02, 405.02, 406.04, and 484.06 of the Wisconsin Administrative Code (WAC); AM–22–88 modifies Chapter NR, sections 404.04 and 484.03 of the WAC. Essentially, AM–2–88 defines PM, while AM–22–88 establishes standards for PM. Many of the definitions presented in AM–2–88 incorporate determinations to be made in the future by the exercise of WDNR discretion, without allowing for USEPA review and approval of any resulting determination. Specifically, AM–2–88 allows for the PM attainment status to be determined not only by monitoring methodology approved by USEPA, but also by the use of monitoring methodology established by WDNR, but not approved by USEPA. In order for a SIP revision addressing PM to be approvable, any monitoring methodology allowed for the purpose of determining PM attainment status must be approved by USEPA. Without USEPA approval of this monitoring methodology, USEPA is unable to assure this SIP revision will provide for the State of Wisconsin to meet Clean Air Act requirements such as attainment and maintenance of the NAAQS for PM. Therefore, USEPA is unable to approve Wisconsin's revisions to the SIP.

III. Proposed Rulemaking Action

Based upon USEPA's evaluation of Wisconsin's March 13, 1989, and March 10, 1990, submittals, USEPA is proposing to disapprove AM–2–88 and AM–22–88 as revisions to Wisconsin's SIP.

IV. Administrative Requirements

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each

request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table Two action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989, (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table Two and Three SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table Two and Three SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

Under 5 U.S.C. 605(b), I certify that disapproving this submittal will not have a significant economic impact on a number of small entities because it imposes no new requirements on anyone. (See 46 FR 8709).

Public comments are solicited on the requested SIP revision and on USEPA's proposal to disapprove. Public comments received by January 22, 1993) will be considered in the development of USEPA's final rulemaking action.

The Agency has reviewed this request for revision of the federally approved State Implementation Plan for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this proposed action confirms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

List of Subjects in 40 CFR Part 52

Air Pollution control, Environmental protection, Intergovernmental relations, Particulate matter.

Authority: 42 U.S.C. 7401–7671(q).

Dated: December 8, 1992.

Robert Springer,

Acting Regional Administrator.

[FR Doc. 92–31155 Filed 12–22–92; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92–292, RM–8135]

Radio Broadcasting Services; Milton-Freewater, Oregon

AGENCY: Federal Communication Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Alexandra Communications seeking the substitution of Channel 250C2 for Channel 250C3 at Milton-Freewater, Oregon, and the modification of Station KLKY (FM)'s construction permit to specify operation on the higher class channel. Channel 250C2 can be allotted to Milton-Freewater in compliance with the Commission's minimum distance separation requirements with a site restriction of 17.8 kilometers (11 miles) northeast to accommodate petitioner's desired transmitter site, at coordinates North Latitude 45–59–04 and West Longitude 118–10–08. In accordance with Section 1.420(g) of the Commission's rules, we will not accept competing expressions of interest in use of the channel at Milton-Freewater or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before February 4, 1993, and reply comments on or before February 19, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Peter W. Lechman, Lechman & Johnson, Inc., 16201 Trade Zone Avenue, suite 108, Upper Marlboro Maryland 20772 (Consultant to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–292, adopted November 30, 1992, and released December 14, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 92–31047 Filed 12–22–92; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 92–290, RM–8127]

Radio Broadcasting Services; Colfax, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Livingston County Broadcasters, Inc. requesting the allotment of Channel 299A as that community's first local FM service. The proposed coordinates are North Latitude 40–33–54 and West Longitude 88–36–54.

DATES: Comments must be filed on or before February 4, 1993, and reply comments on or before February 19, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David D. Oxenford, Matthew P. Zinn, Fisher, Wayland, Cooper and Leader, 1255 23rd Street, NW., suite 800, Washington, DC 20037–1125 (Counsel for Livingston County Broadcasters, Inc.).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–290, adopted November 24, 1992, and released December 14, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 92-31048 Filed 12-22-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 76

[MM Docket No. 92-263; FCC No. 92-541]

Cable Television Services; Cable Television Consumer Protection and Competition Act of 1992—Cable Consumer Protection and Customer Service Provisions

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission, through this action, is taking the first step toward implementing section 8 of the Cable Television Consumer Protection and Competition Act of 1992 (1992 Cable Act). This Notice of Proposed Rule Making (NPRM), solicits comment concerning implementation of the cable protection and customer service provisions of the 1992 Cable Act. Section 8 of the new Cable Act amends section 632 of the Communications Act of 1934, to require the Commission to establish Federal customer service standards 180 days after enactment, by April 3, 1993. Such standards must address, at a minimum, cable system office hours, telephone availability, installations service calls, billing and refunds. The Act permits a franchising authority or State to enact and enforce either the Commission's standards or more extensive customer service requirements. This action is taken in order to bring the Commission's rules in statutory compliance with the 1992 Cable Act.

DATES: Comments must be filed on or before January 11, 1993, and reply comments must be filed on or before January 26, 1993.

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

FOR FURTHER INFORMATION CONTACT: Ellen Schned, Office of Legislative Affairs, (202) 632-6405, or Alan Aronowitz, Mass Media Bureau, (202) 632-7092.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Notice of Proposed Rule Making in MM Docket No. 92-263, adopted December 10, 1992, and released December 11, 1992. The full text of this document is available for inspection and copying, Monday through Friday, 9 a.m. to 4:30 p.m. in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC 20554, and may be purchased from the Commission's copy contractor, Downtown Copy Center, 202-452-1422, 1990 M Street, NW., room 640, Washington, DC 20554.

Synopsis of the Notice of Proposed Rule Making

1. On October 5, 1992, Congress enacted the "Cable Television Consumer Protection and Competition Act of 1992," Public Law 102-385, 106 Stat. 1469 (1992). Section 8 of the new Cable Act amends section 632 of the Communications Act of 1934, by requiring the Commission to establish Federal cable consumer protection and customer service standards. Such standards must address, at a minimum, cable system office hours, telephone availability, installations, outages, service calls, and communications between the cable operator and subscriber, including billing and refund policies. The Act allows a franchising authority to enact and enforce either the Commission's standards or other customer service requirements. Further, the Act permits a franchising authority and cable operator to negotiate and to agree to customer service requirements that exceed the Commission's standards. It also permits a State or franchising authority to enact any consumer protection laws that exceed the Federal standards, that are not otherwise preempted by the Act.

2. *Implementation and Enforcement:* The Commission, in this NPRM, seeks comment on a series of questions regarding the implementation and enforcement of customer service standards. As a threshold matter, we seek comment on how and when customer service standards shall take effect. Since it is not addressed in the Act or clear in the legislative history, we seek comment on whether the Federal standards are self-executing, becoming effective automatically, or whether they take effect only if State or local authorities act to implement them. If the standards are not self-executing, we seek comment on what action a franchising authority should be required to take in order to enact either the Commission's standards or other standards. For instance, should the franchising authority be required to, at a minimum, provide adequate notice to cable operators and subscribers prior to customer service standards being enforceable?

3. The Commission also requests comment on how the new rules will affect existing franchise agreements. We ask whether such agreements can or should be grandfathered or whether a franchising authority may modify existing agreements prior to renewal in order to impose new customer service requirements. To the extent the Act permits a franchising authority to modify existing franchise agreements, we seek comment on when new customer service standards can be imposed, i.e., when the self-executing provisions of the Act take effect, on December 3, 1992 (60 days after the date of enactment), or after the Commission's standards are adopted?

4. While the statute explicitly allows local or State regulations that "exceed" the Federal Standards, we seek comment on whether the Act should be read to preempt franchise authorities from adopting standards that fall below the Federal Standards. Further, we question whether exemptions or waivers could or should be provided for small systems, and if so, on what basis should waivers be permitted and how should "small systems" be defined for the purpose of this proceeding.

5. The Act appears to provide enforcement authority to State and local governments, not the FCC. Accordingly, we solicit comment on what role, if any, the FCC should have with regard to customer service obligations once it has established Federal standards. Further, the NPRM asks whether it is appropriate for local governments to establish such enforcement matters as: (1) Time frames for compliance; (2) standards for measuring compliance; (3) specific billing and refund procedures, and (4) penalties and remedies for violations of the standards, or, whether guidance should be provided in the Federal standards concerning these matters.

6. *Alternative Approaches for Federal Standards:* Congress, in the legislative history, stated "the Commission's standards should be flexible in nature and should allow a local franchising authority to tailor the requirements to

meet the needs of the local community." Accordingly, the Commission seeks comment on what particular standards it should adopt. The NPRM does not propose specific customer service standards, but uses the voluntary standards established by the National Cable Television Association ("NCTA") in February 1990 as a basis for comment. The NCTA standards were referenced in the legislative history and address each of the major customer service issues which the Act requires be included in the Federal standards, including cable system office hours, telephone responsiveness, installations, outages, service calls, and billing and refunds.

7. In addition to seeking comment on the NCTA standards, or some modification thereof, we also ask whether other standards that have been established by various cable, government, or consumer groups should be used in some fashion. Additionally, we solicit information on State or local customer service requirements of more general applicability that apply to all businesses in the competitive market, in order to determine whether such general laws can be used as guidance in setting Federal cable customer service standards.

8. With respect to the NCTA standards, the first area addressed relates to office and telephone availability. These standards place a limit on the duration of busy signals, and generally require that under "normal operating conditions" the telephone must be answered by a customer service representative within 30 seconds or by an automated answering service within four rings. While these standards address the difficulties that subcribers have in communicating with their local cable operators, they are directed toward communications during "normal operating hours" and "normal operating conditions". Because a majority of television viewing is outside of these hours, we seek comment on how communications outside of normal operating hours should be addressed. We also ask parties to define these and other terms that may warrant clarification in order that the standards be clearly understood and uniformly measurable. Since many terms may vary based on the size of the cable systems or by factors either within the operators' control (such as peak promotional demand periods) or outside of the operators' control (such as weather conditions or power outages), we question whether the standards could or should reflect such varying factors or conditions.

9. The second area under the NCTA standards relates to installations, outages, and service calls. The NCTA standards that service interruptions, (95 percent of the time measured on an annual basis) be responded to within 24 hours, and that other service problems be responded to within 36 hours during the normal work week. Cable service operators are directed to set service appointments during specific times of the day, and, if running late, shall attempt to contact the customer to reschedule at a time convenient to the customer. Finally, the NCTA standards require cable bills to be "clear, concise, and understandable", and they require that a minimum of 30 days advance notice be provided for any rate or channel change.

10. While the aforementioned standards address issues of considerable importance to customers, it is important that the Commission's standards not be so stringent that they result in dramatic increases in rates or a reduction of other services, which may be contrary to Congressional intent or consumer desire. Thus, the right balance here is of considerable importance—system operators should not be imposing undue costs and inconveniences on individual subscribers but undue costs should not be imposed on system operators.

11. Further, it is particularly important that the substance of the Commission's standards be appropriate for a broad range of communities and economic conditions. Accordingly, the NPRM suggests a series of approaches for Federal standards on which we seek comment. In particular, we seek comment on whether the Commission should adopt (1) a single set of standards, (2) a series of standards based upon size or other characteristics of the cable system and community, or (3) a range in which a franchising authority and cable operator can negotiate. For example, a range of 30 seconds to one minute could be established for cable operators to respond to telephone calls. A cable operator and franchising authority may mutually agree upon a duration within that range which is appropriate for a particular franchise area. In the absence of a mutual agreement, we seek comment on what the Federal standard should be, e.g., the midpoint (45 seconds), the more stringent standard in the range (30 seconds), or the less stringent standard (1 minute). This approach would be aimed at affording local authorities and cable operators flexibility to customize appropriate standards.

Administrative Matters

12. *Ex Parte Rules—Non-Restricted Proceeding:* This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. *See generally* 47 CFR §§ 1.1202, 1.1203 and 1.1206(a).

13. *Comment Information:* Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before January 11, 1993, and reply comments on or before January 26, 1993. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send your comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC 20554.

14. *Initial Regulatory Flexibility Analysis—Reason for action:* This proceeding is being implemented in order to seek comment on the best way to implement section 8 of the Cable Television Consumer Protection and Competition Act of 1992, Public Law No. 102–385, relating to cable consumer protection and customer service.

Objectives: The Commission's goal is to provide notice and opportunity to comment to members of the public regarding implementation of section 8 of the new Act, which concerns Federal standards of customer service for cable system operators.

Legal Basis: Authority for this proposed rule making is contained in sections 4(i), 4(j) and 303(r) of the Communications Act of 1934, and section 8 of the Cable Television Consumer Protection and Competition Act of 1992, Public Law 102–385 (1992).

Reporting, Recordkeeping and Other Compliance Requirements: The Commission is asking for comment concerning what Federal standards to adopt to govern cable consumer protection and customer service.

Federal Rules that Overlap, Duplicate or Conflict with Proposed Rule: None.

Description, Potential Impact, and Number of Small Entities Involved: The rules proposed in this proceeding could impose new burdens on cable operators, including small systems, if the Federal

customer service standards proposed in this rule or other, more extensive standards, are enacted and enforced by State or local governments.

Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives: Undetermined at this time. Comment is specifically sought on this matter.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–31046 Filed 12 ·22–92; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 57, No. 247
Wednesday, December 23, 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

Alternative Agricultural Research & Commercialization (AARC) Center; Request for Proposals to Host Regional Centers

AGENCY: Alternative Agricultural Research & Commercialization (AARC) Center, USDA.

ACTION: Request for proposals to host regional centers.

SUMMARY: The AARC Center seeks proposals from organizations interested in hosting a regional center for the AARC Center. An application under this request must be submitted in order to be considered as a host institution for a regional center. Awards will be made on a competitive basis.

BACKGROUND: Subtitle G of the Food, Agriculture, Conservation, and Trade Act of 1990 created the alternative Agricultural Research & Commercialization (AARC) Center as an independent entity within the U.S. Department of Agriculture. The AARC Center's activities are guided by a nine member board of directors that establishes policy and program direction.

The mission of the AARC Center is to generate widespread interest and profitable investment in developing and commercializing new industrial and consumer products that use farm and forestry materials. Preference is given to projects that benefit rural communities and that are environmentally friendly. The AARC Center is authorized to provide financial assistance, through a competitive process, to projects that will help achieve the AARC Center's mission.

Subtitle G also provides for the establishment of up to six regional centers around the country to help the Center carry out its mission and to provide grass roots interaction within regions. The AARC Center Board envisions these regional centers as extensions of the national AARC Center. The regional centers will help identify promising projects and build networks involving government, industry, and universities to support and encourage new products from agricultural materials.

Regional centers will be headed by a full-time director selected by the Board. A regional center director must have experience in the development and commercialization of new products or processes in the public or private sector and have a strong business and/or technical background. Regional directors will be expected to work closely within a region to develop partnerships and to monitor projects.

The AARC Center program is basically a pre-commercialization endeavor to help move new products into the marketplace and this may require targeted development or research. The regional centers also will provide ongoing technical and business support to the AARC Center funded projects in their region.

Selection Process

The location of regional centers will be selected through a competitive process. At least two regional centers will be established. Applications to host a regional center may be submitted by a single organization or by a group of organizations. The statute requires that host institutions be able and willing to match any federal funds with funds or in-kind services of its own.

In selecting host institutions and locations for regional centers, the AARC Board will consider the following along with other related factors:

—Ability of the applicants(s) to carry out the responsibilities of a regional center as described in section 1663(e) of the enabling AARC Center legislation; note that the AARC Center program is skewed much more in the direction of processing and product development than in production of agricultural materials.

—Experince and skills of the applicant(s) in moving technology and products from the research stage through development and into the marketplace.

—Geographical area that the applicant proposes to serve.

—Level of private sector support and participation in the proposed regional center.

—Willingness and ability to contribute funds and in-kind services to regional center activities—preference will be given to proposals where the ratio of AARC Center funds to host institution funds are lowest.

Proposal Submission

The original and three copies of the proposal must be received by 3 p.m. on February 19, 1993. One of the following addresses should be used, as applicable:

Regular U.S. Mail USDA AARC Center, 14th & Independence Ave, SW., 342 Aerospace Center, Washington, DC. 20250–2200.

Overnight Delivery USDA AARC Center, 901 D. St., SW., 342 Aerospace Center, Washington, DC 20250–2200.

To obtain an application form and to get additional information, please contact Patricia Dunn of the AARC Center staff at (202) 401–4860.

Activities of Regional Centers Required by Section 1663(c) of Subtitle G

Each regional center shall:

—Closely coordinate the activities of the regional center with the AARC Center staff to meet the overall mission of the AARC Center.

—Reflect different climatic conditions and rural economic stress.

—Encourage interaction among private and Federal laboratories, National Science Foundation centers, Department of Agriculture research programs, other Federal resources, State and local regional economic development programs, universities, colleges, the private sector, and the financial community for the purpose of evaluating and commercializing new nonfood, nonfeed uses of agricultural commodities.

—Identify broad areas where commercialization of new nonfood, nonfeed, products and processes can contribute to economic growth in rural areas of the United States, through the development of new nonfood, nonfeed uses for agricultural commodities by private firms and businesses.

—Provide technical assistance and related business and financial counseling for small domestic businesses to commercialize new nonfood, nonfeed uses of agricultural commodities.

—Identify and evaluate new nonfood, nonfeed products and processes that are worthy of financial assistance.
—Make use of existing programs in scientific, engineering, technical, business, and management education that will support the accelerated commercialization of new nonfood, nonfeed products and processes using agricultural materials.
—Advise the AARC Center Board on the viability of specific applications submitted for financial assistance and on the type of assistance, if any, to be provided.
—Coordinate the activities of the regional center with the Small Business Development Centers.

Done at Washington, DC on December 18, 1992.

Paul F. O'Connell,

Director, Alternative Agricultural Research & Commercialization Center.

[FR Doc. 92–31141 Filed 12–22–92; 8:45 am]

BILLING CODE 3410–22–M

Forest Service

Winding Stair Tourism and Recreation Advisory Council Meeting

AGENCY: Ouachita National Forest, USDA.

ACTION: Winding Stair Tourism and Recreation Advisory Council meeting.

SUMMARY: January 14, 1993, field trip for council members. Meet 1 p.m. at the Choctaw Ranger District Office, 2 mi. south of Heavener, OK, on Hwy. 59. Transportation for the trip will be provided for council members. The tour will conclude at 5 p.m. The meeting will reconvene that evening at 7 p.m. at the Heavener School Administration Building in Heavener. Please call Choctaw District Ranger Thomas Horner, (918) 653–2991, to reserve your attendance.

EFFECTIVE DATE: December 14, 1992.

Cheryl G. Chatham,

Staff Officer, Public Affairs (501) 321–5202.

[FR Doc. 92–31050 Filed 12–22–92; 8:45 am]

BILLING CODE 3410–11–M

Rural Electrification Administration

Brazos Electric Power 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) has prepared an environmental assessment (EA) and has made a finding of no significant impact (FONSI) with respect to the potential environmental impact resulting from a proposal by Brazos Electric Power Cooperative, Inc. (Brazos) to construct and operate a combustion turbine generation facility at a site within Brazos' service territory. This action has been taken in accordance with REA Environmental Policies and Procedures, 7 CFR 1794.34. The preferred site is the Randle Miller Generating Plant on Palo Pinto Lake in Palo Pinto County, Texas.

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.

SUPPLEMENTARY INFORMATION: As part of its environmental review process, REA held an interagency meeting and two public scoping meetings in August 1991. Brazos was required by REA to develop an environmental analysis (EVAL) and other documentation to support its proposal. The documentation provided by Brazos, input from the three meetings, and input from certain Federal and state agencies have been used by REA to develop its EA. REA has concluded that the EA represents an accurate assessment of the environmental impacts of the proposed project and that the impacts are acceptable.

The Randle Miller Plant site (75.7 acres) is located approximately 9.0 miles northeast of Gordon, approximately 7.0 miles northwest of Santo and 10.0 miles south of Palo Pinto, in Palo Pinto County. The site contains three existing gas-fired steam turbines with a total output of 391 MW. The proposed project would impact approximately 7 acres of land within the site. It consists of two simple cycle gas turbine generating units with a total net capacity of 200 megawatts and associated facilities. The units would have dual fuel capability. Natural gas would be obtained from existing pipelines that serve the plant. Fuel oil, the secondary fuel, would be delivered by tanker truck and stored in an above ground tank. Water would be obtained from Lake Palo Pinto through existing intake facilities and treated wastewater would be returned to the lake through existing discharge facilities. The electrical output of the facility would be routed through existing transmission lines serving the plant. These lines would be upgraded to carry the capacity.

Alternatives considered to the project as proposed were no action, conservation and load management options and purchased capacity from both utility and non-utility generators. Alternative generation technologies and alternative sites were also evaluated. REA has considered these alternatives and concludes that the development of a combustion turbine generation project at the Miller site is the preferred alternative for Brazos to meet peak load capacity requirements beginning in 1994.

Based upon an independent analysis of the EVAL and other information available, as defined in the EA, REA has concluded that the construction and operation of the proposed combustion turbine generation facility utilizing the Miller site will have no significant impact on air quality, water quality, noise, wetlands, the 100-year floodplain, existing land uses, prime farmland, cultural resources, or flora and fauna. In addition, REA has determined that the construction and operation of the proposed project should have no effect on federally-listed proposed threatened and endangered species, designated critical habitat, or candidate species.

No other potential significant impacts resulting from the construction and operation of the proposed project have been identified.

Copies of the environmental analysis, environmental assessment and finding of no significant impact are available for review at, or can be obtained from, REA at the address provided herein or from Mr. Richard E. McCaskill, Executive Vice President and General Manager, Brazos Electric Power Cooperative, Inc., 2404 La Salle Avenue, Waco, Texas 76706, during normal business hours. Copies of the documents have also been sent to various Federal, state and local agencies and will also be available for review at local libraries in Palo Pinto and Parker Counties, Texas.

REA will take no final action with respect to approval for the proposed project for at least thirty (30) days after publication of this notice in the **Federal Register** and in newspapers of general circulation in the counties previously identified.

Any comments should be sent to REA at the address given previously. All comments received will be considered.

Dated: December 16, 1992.

George E. Pratt,

Deputy Administrator—Program Operations.

[FR Doc 92–31067 Filed 12–22–92; 8:45 am]

BILLING CODE 3410–15–F

Soil Conservation Service

Lower Little River and South Yadkin River Watershed; Alexander County, NC

AGENCIES: North Carolina Department of Environment, Health, and Natural Resources and the United States Department of Agriculture, Soil Conservation Service.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council of Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Division of Soil and Water Conservation, North Carolina Department of Environment, Health, and Natural Resources and the Soil Conservation Service, United States Department of Agriculture, give notice that an environmental impact statement is not being prepared for the Lower Little River and South Yadkin River Watershed, Alexander County, North Carolina.

FOR FURTHER INFORMATION CONTACT: David W. Sides, Director, Division of Soil and Water Conservation, North Carolina Department of Environment, Health, and Natural Resources, P.O. Box 27687, Raleigh, North Carolina 27611, Telephone (919) 733–2302 or Coy Garrett, State Conservationist, Soil Conservation Service, 4405 Bland Road, Suite 205, Raleigh, North Carolina 27609, Telephone (919) 790–2888.

SUPPLEMENTARY INFORMATION: The Environmental Assessment of this federally assisted action indicates that the project will not cause significant adverse local, regional, or national impacts on the environment. As a result of these findings, Coy Garrett, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection. The planned works of improvement include accelerated technical and financial assistance to apply land treatment measures on 3,100 acres of cropland and install 21 animal waste management systems.

The Notice of A Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting David W. Sides.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

("This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.")

Dated: December 15, 1992.

Coy Garrett,

State Conservationist.

[FR Doc. 92–31081 Filed 12–22–92; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Extension of Public Comment Period for National Security Investigation of Imports of Integrated Circuit Ceramic Packages

AGENCY: Office of Industrial Resource Administration, Bureau of Export Administration, U.S. Department of Commerce.

ACTION: Notice of extension of public comment period for investigation under section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862).

SUMMARY: This notice is to advise the public that the Department of Commerce will extend until February 1, 1993 the formal public comment period for its investigation of the effects on the national security of imports of integrated circuit ceramic packages being conducted under section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862).

ADDRESSES: Send all comments to Brad I. Botwin; Director, Strategic Analysis Division; Office of Industrial Resource Administration; Attention: Section 232 Comments; room 3878; U.S. Department of Commerce; 14th Street and Constitution Avenue, NW.; Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Edward Levy, Section 232 Program Manager, Strategic Analysis Division, Office of Industrial Resource Administration, room 3878, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, (202) 482–3795.

SUPPLEMENTARY INFORMATION: In the November 25, 1992 **Federal Register** (Vol. 57, No. 228, p. 55507), the Department of Commerce announced its initiation of a Section 232 investigation of the effects on the national security of imports of integrated circuit ceramic packages under section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862). This case was initiated November 18, 1992 in response to a petition jointly submitted by Coors Electronic Package Company and Ceramic Process Systems Corporation. The Department has decided to extend the formal public comment period until February 1, 1993 in order to allow interested parties a sufficient time to prepare their comments while ensuring that the investigation proceeds expeditiously.

Interested parties are invited to submit written comments, opinions, data, information, or advice relevant to this investigation. The Department is particularly interested in comments and information directed to the criteria listed in § 705.4 of the regulations (15 CFR 705.4) as they affect national security, including the following:

(a) Quantity of and circumstances related to the importation of the articles subject to the investigation;

(b) Domestic production and productive capacity needed for these articles to meet projected national security requirements;

(c) Existing and anticipated availability of human resources, products, raw materials, production equipment, and facilities to produce these items;

(d) Growth requirements of domestic industries to meet national security requirements and/or requirements to assure such growth;

(e) The impact of foreign competition on the economic welfare of the domestic industry; and

(f) The displacement of any domestic products causing substantial unemployment, decrease in the revenues of government, loss of investment or specialized skills and productive capacity, or other serious effects.

All materials should be submitted with 10 copies. Public information will be made available at the Department of Commerce for public inspection and copying. Material that is national security classified information or business confidential information will be exempted from public disclosure as provided for by § 705.6 of the regulations (15 CFR 705.6). Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a non-confidential submission which can be placed in the public file.

Communications from agencies of the United States Government will not be made available for public inspection.

The public record concerning this investigation will be maintained in the Bureau of Export Administration's Records Inspection Facility, room 4525, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone (202) 482–5653. The records in this facility may be inspected and copied in accordance with the regulations published in part 4 of title 15 of the Code of Federal Regulations (15 CFR 4.1 *et seq.*). Information about the inspection and copying of records at the facility may be obtained from Ms. Margaret Cornejo, the Bureau of Export Administration's Freedom of Information Officer, at the above address and telephone number.

Dated: December 17, 1992.

John A. Richards,

Deputy Assistant Secretary for Industrial Resource Administration.

[FR Doc. 92–31113 Filed 12–22–92; 8:45 am]

BILLING CODE 3510–DT–M

Foreign-Trade Zones Board

[Order No. 612]

Resolution and Order Approving the Application of the Indianapolis Airport Authority for Special-Purpose Subzone Status; Endress + Hauser, Inc. (Process Control Instruments) Greenwood, IN

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Indianapolis Airport Authority, grantee of FTZ 72, filed with the Foreign-Trade Zones (FTZ) Board (the Board) on October 15, 1991, and amended on October 5, 1992 (to indicate steel mill products will not be admitted to the proposed subzone in foreign status), requesting special-purpose subzone status for the industrial control instrumentation manufacturing facility of Endress + Hauser, Inc., in Greenwood, Indiana, the Board, finding that the requirements of the Foreign-Trade Zones Act and the Board's regulations are satisfied, and that the proposal, as amended, is in the public interest, approves the application, as amended.

The approval is subject to the FTZ Act and the FTZ Board's regulations (as revised 56 FR 50790–50808, 10–8–91), including § 400.28. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority for Subzone Status

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Indianapolis Airport Authority, Grantee of Foreign-Trade Zone No. 72, for authority to establish a special-purpose subzone at the industrial control instrumentation manufacturing facility of Endress + Hauser, Inc., in Greenwood, Indiana, was filed by the Board on October 15, 1991, and notice inviting public comment was given in the **Federal Register** on October 31, 1991 (FTZ Docket 60–91, 56 FR 56053, 10–31–91);

Whereas, the application was amended on October 5, 1992, to indicate that steel mill products will not be admitted to the proposed subzone in foreign status; and

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied and that approval of the application, as amended, is in the public interest;

Now, Therefore, the Board hereby authorizes the establishment of a subzone (Subzone 72J) at the Endress + Hauser, Inc., plant in Greenwood, Indiana, at the location described in the application, subject to the FTZ Act and the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including § 400.28.

Signed at Washington, DC, this 11th day of December, 1992, pursuant to Order of the Board.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92–31169 Filed 12–22–92; 8:45 am]

BILLING CODE 3510–DS–M

[Order No. 614]

Expansion of Foreign-Trade Zone 22, Chicago, IL

Pursuant to its authority under the Foreign-Trade Zones (FTZ) Act of June 18, 1934, as amended (19 U.S.C. 81a–81u) (the Act), and the FTZ Board Regulations (15 CFR part 400), the FTZ Board (the Board) adopts the following Resolution and Order:

Whereas, an application from the Illinois International Port District, Grantee of Foreign-Trade Zone No. 22, for authority to expand its general-purpose zone in the Chicago, Illinois, area, within the Chicago Customs port of entry, was filed by the Board on September 16, 1991, and notice inviting public comment was given in the **Federal Register** on September 24, 1991 (Docket 53–91, 56 FR 48157);

Whereas, the application was amended on September 14, 1992 to request a time extension of authority (to 12/31/94) for FTZ 22-Site 4 (57 FR 43693, 9/22/92);

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, the expansion is necessary to improve and expand zone services in the Chicago area; and

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied, and that approval is in the public interest;

Now, Therefore, the Board hereby orders:

That the grantee is authorized to expand its zone in accordance with the application filed on September 16, 1991 and amended on September 14, 1992, subject to the Act and the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including § 400.28.

Signed at Washington, DC, this 11th day of December, 1992.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92–31167 Filed 12–22–92; 8:45 am]

BILLING CODE 3510–DS–M

[Order No. 611]

Resolution and Order Approving the Application of the Illinois International Port District for Special-Purpose Subzone Status; Abbott Laboratories, Inc. (Pharmaceutical and Medical Products) North Chicago, IL, Area

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Illinois International Port District, grantee of FTZ 22, filed with the Foreign-Trade Zones (FTZ) Board (the Board) on October 22, 1991, and amended on April 10, 1992 (to delete 2 proposed sites), requesting special-purpose subzone status at the pharmaceutical and medical products manufacturing plant of Abbott Laboratories, Inc., in the North Chicago, Illinois, area, the Board, finding that the requirements of the Foreign-Trade Zones Act and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application, as amended.

The approval is subject to the FTZ Act and the FTZ Board's regulations (as revised, 56 FR 50790–50808, 10/8/91), including § 400.28. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority for Subzone Status

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Illinois International Port District, grantee of Foreign-Trade Zone 22, for authority to establish a special-purpose subzone for the pharmaceutical and medical products manufacturing plant (six sites) of Abbott Laboratories, Inc., in the North Chicago, Illinois, area, was filed by the Board on October 22, 1991, and notice inviting public comment was given in the **Federal Register** on October 31, 1991 (FTZ Docket 62–91, 56 FR 56052);

Whereas, the application was amended on April 10, 1992, to delete proposed Sites 4 and 6; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied and that the proposal, as amended, is in the public interest;

Now, Therefore, the Board hereby authorizes the establishment of a subzone (Subzone 22F) for the manufacture of pharmaceuticals and medical products at the Abbott Industries, Inc., facilities in the North Chicago, Illinois, area, at the locations described in the amended application, subject to the FTZ Act and the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including § 400.28.

Signed at Washington, DC, this 14th day of December, 1992, pursuant to Order of the Board.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92–31168 Filed 12–22–92; 8:45 am]

BILLING CODE 3510–DS–M

[Order No. 615]

Extension of Authority With Restrictions Subzone 23B; CPS Corp. (Formerly, Greater Buffalo Press) (Printing Ink) Chautauqua County, NY

Pursuant to its authority under the Foreign-Trade Zones (FTZ) Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the FTZ Board Regulations (15 CFR Part 400), the FTZ Board (the Board) adopts the following Resolution and Order:

Whereas, in 1986, the Board (the Board) granted authority to the County of Erie, New York, to establish Foreign-Trade Subzone 23B at the ink manufacturing facilities of the CPS division of Greater Buffalo Press, Inc. (GBP), Chautauqua County, New York, for a period of 5 years (ending 8/25/91) subject to extension, and subject to restrictions requiring the election of privileged foreign status (19 CFR 146.41) on pigments used in the production of ink sold to domestic printing plants not affiliated with GBP and on ink produced in excess of 21 million pounds annually (Board Order 332, FR 18468, 5/20/86);

Whereas, the ink manufacturing facilities of GBP were sold, and are now owned and operated as CPS Corporation, a subsidiary of INX International, Inc.;

Whereas, on July 2, 1991, the County of Erie made application to the Board for an indefinite extension of authority for Subzone 23B;

Whereas, notice of said application was given in the **Federal Register** and public comment was invited (56 FR 34171, 7/26/91), and a hearing was held on April 16, 1992;

Whereas, subzone status for SZ 23B was temporarily extended to December 31, 1992, because of the time needed to complete a review (56 FR 42309, 8/27/91 and 57 FR 7367, 3/2/92);

Whereas, the applicant amended the application on June 10, 1992, to limit its request to an extension for a five year period subject to all other existing restrictions;

Whereas, the Board has completed its review, taking into account the views of all interested parties;

Whereas, the Board has found that the requirements of the FTZ Act and the Board's regulations would be satisfied, and that the proposal would be in the public interest if the extension approval were limited to five years beyond the original period and subject to existing restrictions;

Now, therefore, the Board hereby orders that the authority for Subzone 23B is extended, subject to the FTZ Act and the Board's regulations (as revised, 56 FR 50790–50808, 10/8/91), including § 400.28, and subject to the following restrictions:

(1) Subzone status shall terminate on August 25, 1996.

(2) CPS shall elect privileged foreign (19 CFR 146.41) or domestic status, as appropriate, with respect to pigment prior to its use in the production of ink to be sold in commercial quantities in the domestic market for use at any plant other than by the six domestic Sullivan Graphics, Inc. plants, identified in appendix D of the Examiners Committee report.

(3) CPS shall elect privileged foreign or domestic status, as appropriate, with respect to pigment prior to its use in the production of ink, once shipments of ink containing foreign pigment to Sullivan Graphics, Inc. exceed 21 million pounds on an annual basis.

(4) CPS will make available to the Customs Service on request its records, or the records of any of its subsidiaries that relate to the production, shipment, and sale of ink;

(5) Because of the special circumstances of this case, this action will not be considered a precedent for other FTZ Board actions involving printing ink or pigments.

Signed at Washington, DC, this 11th of December, 1992, pursuant to Order of the Board.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92–31170 Filed 12–22–92; 8:45 am]

BILLING CODE 3510–DS–M

[Order No. 617]

Resolution and Order Approving the Application of the Puerto Rico Commercial and Farm Credit and Development Corp. for Special-Purpose Subzone Status; Searle & Co. (Pharmaceuticals) Caguas, Puerto Rico

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority under the Foreign-Trade Zones (FTZ) Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the FTZ Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Puerto Rico Commercial and Farm Credit and Development Corporation, grantee of FTZ 61, filed with the Foreign-Trade Zones (FTZ) Board (the Board) on October 22, 1991, and amended on August 3, 1992, requesting special-purpose subzone status at the pharmaceutical manufacturing plant of Searle & Company, in Caguas, Puerto Rico, the Board, finding that the requirements of the Foreign-Trade Zones Act and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application, as amended.

Approval is subject to the FTZ Act and the FTZ Board's regulations (as revised, 56 FR 50790–50808, 10/8/91), including § 400.28. The Secretary of Commerce, as Chairman and Executive Office of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority for Subzone Status

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Puerto Rico Commercial and Farm Credit and Development Corporation, grantee of Foreign-Trade Zone 61, for authority to establish a special-purpose subzone at the pharmaceutical manufacturing plant of Searle & Company in Caguas, Puerto Rico, was filed by the Board on October 22, 1991, and notice inviting public comment was given in the **Federal Register** on November 1, 1991 (FTZ Docket 63– 91, 56 FR 56187);

Whereas, the application was amended on August 3, 1992 (57 FR 38667, 8/26/92 and 57 FR 43695, 9/22/92) to expand the range of manufacturing to be conducted under zone procedures; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied and that the proposal, as amended, is in the public interest;

Now, Therefore, the Board hereby authorizes the establishment of a subzone (Subzone 61A) for the manufacture of pharmaceuticals at the Searle & Company facility in Caguas, Puerto Rico, at the location described in the application, subject to the FTZ Act and the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including § 400.28.

Signed at Washington, DC, this 11th day of December, 1992, pursuant to Order of the Board.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92–31171 Filed 12–22–92; 8:45 am]

BILLING CODE 3510–DS–M

[Order No. 613]

Expansion of Foreign-Trade Zone 39, Dallas/Fort Worth, TX

Pursuant to its authority under the Foreign-Trade Zones (FTZ) Act of June 18, 1934, as amended (19 U.S.C. 81a–81u) (the Act), and the FTZ Board Regulations (15 CFR part 400), the FTZ Board (the Board) adopts the following Resolution and Order:

Whereas, an application from the Dallas/Fort Worth International Airport Board, grantee of Foreign-Trade Zone No. 39, for authority to expand its general-purpose zone at the Dallas/Fort Worth International Airport, within the Dallas/Fort Worth Customs port of entry, was filed by the Board on November 6, 1991, and notice inviting public comment was given in the **Federal Register** on November 27, 1991 (Docket 76–91, 56 FR 60087);

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, the expansion is necessary to improve and expand zone services in the Dallas/Fort Worth area; and

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied, and that approval is in the public interest;

Now Therefore, the Board hereby orders:

That the grantee is authorized to expand its zone in accordance with the application filed on November 6, 1991, subject to the Act and the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including § 400.28.

Signed at Washington, DC, this 11th day of December, 1992.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92–31172 Filed 12–22–92; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–122–701]

Potassium Chloride From Canada; Intent To Terminate Suspended Investigation

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

ACTION: Notice of intent to terminate suspended investigation.

SUMMARY: The Department of Commerce is notifying the public of its intent to terminate the suspended antidumping investigation on potassium chloride from Canada. Interested parties who object to this termination must submit their comments in writing not later than February 1, 1993.

EFFECTIVE DATE: December 23, 1992.

FOR FURTHER INFORMATION CONTACT: James Dolye or Wendy Frankel, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Background

On January 19, 1988, the Department of Commerce (the Department) published a notice suspending the investigation on potassium chloride (potash) from Canada (53 FR 1393). The Department has not received a request to conduct an administrative review of the suspended investigation for four consecutive anniversary months.

The Department may interminate a suspended investigation if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by the Commerce Department's regulations (19 CFR 353.25(d)(4)), the Department is notifying the public of its intent to terminate this suspended investigation.

Opportunity To Object

No later than February 1, 1993, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to terminate this suspended investigation.

Seven copies of any such objections should be submitted to the following address: U.S. Department of Commerce, Import Administration, Central Records Unit, room B–099, Washington, DC 20230, Attn: Office of Agreements Compliance.

If interested parties do not request an administrative review by February 1, 1993, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to terminate by February 1, 1993, we shall conclude that the suspended investigation is no longer of interest to interested parties and shall proceed with the termination.

This notice is in accordance with section 19 CFR 353.25(d) of the Department's regulations.

Dated: December 12, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92–31173 Filed 12–22–92; 8:45 am]

BILLING CODE 3510–DS–M

[A–583–816]

Preliminary Determination of Sales at Less Than Fair Value: Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan

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

EFFECTIVE DATE: December 23, 1992.

FOR FURTHER INFORMATION CONTACT: John Gloninger or Raphiel Hampton, Office of Antidumping Investigations, Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2778 or (202) 482–0176.

Preliminary Determination

We preliminarily determine that certain stainless steel butt-weld pipe fittings from Taiwan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of initiation on June 9, 1992 (57 FR 26645, June 15, 1992), the following events have occurred.

On July 7, 1992, the International Trade Commission (ITC) issued an affirmative preliminary determination.

On June 18, 1992, Tru-Flow Industrial Co., Ltd. (Tru-Flow) stated that it wished to participate in the investigation as a voluntary respondent if not selected as a mandatory respondent. On June 30, 1992, Tru-Flow provided the volume and value of its U.S. sales during the period of investigation (POI), December 1, 1991, through May 31, 1992. On July 18 and 21, 1992, Tru-Flow revised its POI volume and value figures. Based on the data reported in those submissions, on July 27, 1992, the Department issued an antidumping questionnaire to Tru-Flow. However, at that time, we informed Tru-Flow that the Department would conduct an early verification of its reported volume and value figures. The Department stated that if it found significant errors, we would no longer investigate Tru-Flow, but instead use best information available (BIA) in our determinations. In August 1992, the Department conducted a verification of Tru-Flow's volume and value data. Tru-Flow was unable to tie its sales to its books. (See Tru-Flow volume and value verification report dated September 2, 1992.)

On August 20, 1992, Tru-Flow filed its response to Section A which contained different volume and value numbers than observed at vertification. The Department then informed Tru-Flow on August 28, 1992, that, because it was unable to tie the reported volume and value data to its books, it was to suspend compilation and reporting of its sections B and C responses until we decided whether to continue investigating Tru-Flow. On August 28, Tru-Flow filed a submission requesting that the Department reconsider its decision. On September 1, 1992, petitioner also submitted comments questioning the veracity of Tru-Flow's volume and value reporting. On September 25, 1992, based on Tru-Flow's inability to link volume and value data with its accounting books, we discontinued the investigation of Tru-Flow, and recommended using BIA, as provided for in section 776(c) of the Act. Moreover, we recommended applying to Tru-Flow, as BIA at the preliminary determination, the higher of (1) the margins in the petition or (2) the highest calculated margin of any respondent within that country that supplied adequate and verified responses. (See "Continuation of Investigation of Tru-Flow" memorandum to Alan M. Dunn, dated September 25, 1992.) On December 11, 1992, Tru-Flow submitted its comments with respect to the Department discontinuing its participation in this investigation.

On July 1, 1992, the Department issued antidumping questionnaires to Ta Chen Stainless Pipe Company, Ltd. (Ta Chen) and Tachia Yung Ho Machine Co., Ltd. (TYH), requesting additional information on their volume and value of sales during the POI. On July 16, 1992, the Department presented its antidumping questionnaire to Ta Chen and TYH, as they accounted for at least 60 percent of known sales to the United States during the POI, in accordance with 19 CFR 353.42(b).

Ta Chen and TYH submitted responses to the sales questionnaire in August and September 1992. We issued supplemental sales questionnaires in September and October 1992, and received the responses in October 1992.

On September 11, 1992, petitioner alleged that Ta Chen and TYH were selling the subject merchandise in the home market at prices below the cost of production (COP). On October 5, 1992, the Department initiated COP investigations with respect to these two companies.

On October 5, 1992, petitioner requested that the Department postpone the preliminary determination in this investigation for 50 days in accordance with 19 CFR 353.15(c). Accordingly, on October 7, 1992, we postponed the preliminary determination until December 16, 1992 (57 FR 47324, October 15, 1992).

The Department issued Section D of our questionnaire to Ta Chen and TYH on October 9, 1992, and received responses on November 9 and 13, 1992, respectively. On December 3 and 7, 1992, petitioner submitted comments to the section D responses from both Ta Chen and TYH. The Department issued deficiency letters to these companies on

December 15, 1992, requesting clarification of certain areas in the responses. Since these responses were deficient, we were unable to use the responses for purposes of this preliminary determination. However, we will analyze and verify the COP deficiency responses, if properly completed, for use in the Department's final determination.

Scope of Investigation

The products subject to this investigation are certain stainless steel butt-weld pipe fittings, whether finished or unfinished, under 14 inches inside diameter.

Certain stainless steel butt-weld pipe fittings (pipe fittings) are used to connect pipe sections in piping systems where conditions require welded connections. The subject merchandise is used where one or more of the following conditions is a factor in designing the piping system:

(1) Corrosion of the piping system will occur if material other than stainless steel is used;

(2) Contamination of the material in the system by the system itself must be prevented;

(3) High temperatures are present;

(4) Extreme low temperatures are present;

(5) High pressures are contained within the system.

Pipe fittings come in a variety of shapes, with the following five shapes being the most basic: "elbows", "tees", "reducers", "stub ends", and "caps". The edges of finished fittings are beveled. Threaded, grooved, and bolted fittings are excluded from these investigations. The pipe fittings subject to these investigations are classifiable under subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States (HTSUS).

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation is December 1, 1991, through May 31, 1992.

Such or Similar Comparisons

We have determined for purposes of the preliminary determination that the products covered by this investigation comprise a single category of "such or similar" merchandise.

Such or Similar Comparisons

We have determined for purposes of the preliminary determination that the products covered by this investigation comprise a single category of "such or similar" merchandise.

Fair Value Comparisons

Since the Section D responses for both Ta Chen and TYH were not complete and accurate, we were unable to determine whether home market sales were above or below COP, nor were we able to calculate FMV pursuant to section 773 of the Act. For these reasons, we have based this preliminary determination on BIA. As BIA we assigned the simple average of the margins reported in the petition, 48.05 percent. (See Best information Available section of this notice.)

Best Information Available

After a complete analysis of TYH's and Ta Chen's section D cost responses, we concluded that we could not use these responses for our preliminary determination. Both Ta Chen and TYH requested numerous extensions throughout this investigation for responses to sections A, B, C, and D of the Department's questionnaire. In our responses to these requests, we informed respondents that in the case of inadequate or incomplete responses, we may have to use BIA. The section D responses of Ta Chen and TYH contain major deficiencies. Since the section D responses are both incomplete and inaccurate, we cannot reasonably test the home market sales databases to determine whether sales were made above or below cost. The deficiencies requiring the Department to preliminarily use BIA include the following: (1) Ta Chen reported its cost data on an aggregate basis only; therefore, we could not determine whether its costs were fully reported; (2) Ta Chen reported only one input unit for weight-average price; there is no cost information on caps anywhere in its response, also an input unit; and, (3) Both TYH and Ta Chen did not properly address the Department's questions concerning its related party transactions. (For a full discussion of our decision, see December 14, 1992, Cost Deficiency Memorandum to Richard W. Moreland). In addition, we are unable to use the cost data provided by the petitioner in this investigation as BIA because petitioner reported cost data only on one type of fitting.

As stated above, for BIA we are applying the average of the margins reported in the petition for both TYH and Ta Chen (*i.e.*, 48.05 percent). We are not applying the highest dumping margin reported in the petition because, even though TYH's and Ta Chen's cost responses were too deficient for us to use for the preliminary determination, the respondents appear to have been cooperative during the investigation. A deficiency questionnaire was sent on December 15, 1992, to Ta Chen and TYH and the information will be due prior to verification. If the information in the revised questionnaire response is accurate and verifiable, it will be used for the final determination. As noted in the Case History section of this notice, we are also using BIA with respect to Tru-Flow. As BIA, we are applying the highest margin contained in the petition, which is 76.2 percent.

Critical Circumstances

Petitioner alleges that "critical circumstances" exist, within the meaning of section 733(e) of the Act, with respect to imports of pipe fittings from Taiwan. Section 733(e)(1) of the Act provides that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

It has been the Department's practice to consider estimated margins of 25 percent or greater on sales to unrelated parties and estimated margins of 15 percent or greater on sales to related parties as sufficient proof to impute knowledge of dumping. (See, e.g., Final Determination of Sales at Less than Fair Value: Extruded Rubber Thread from Malaysia, 57 FR 38465 August 25, 1992).

Therefore, since the margins assigned to Ta Chen and TYH are greater than 25 percent, we find that there is sufficient proof to impute knowledge of dumping.

In order to determine whether there have been massive imports of fittings from Taiwan, we examined the company specific shipment data submitted by Ta Chen and TYH. Pursuant to 19 CFR 353.16(f) of the Department's regulations, we analyzed shipments during the three months after the month on which the petition was filed, compared to shipments in the three months prior to this period. Based on this analysis, we found that there were massive imports over a relatively short period of time. Therefore, we preliminarily determine that there is a

reasonable basis to believe or suspect that critical circumstances exist with respect to imports from Ta Chen and TYH.

With respect to Tru-Flow, because its margin is greater than 25 percent, we find that there is sufficient proof to impute knowledge of dumping. We could not determine if massive imports exist using company-specific shipment data, since the investigation of Tru-Flow was discontinued. (See the Case History section of this notice). Therefore, as BIA, we have determined that imports from Tru-Flow have been massive over a relatively short period. Accordingly, we preliminarily determine that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports from Tru-Flow.

We have used U.S. Department of Commerce import statistics to determine whether massive imports exist with respect to those firms covered by the "All Other" rate. Based on our analysis, we preliminarily determine that imports of pipe fittings have been massive over a relatively short period of time. We are using a simple average of the BIA margins for Ta Chen, TYH, and Tru-Flow for determining the "All Other" rate. Because this rate is 57.43 percent, we find that there is sufficient proof to impute knowledge of dumping. Therefore, we preliminarily determine that there is a reasonable basis to believe or suspect that critical circumstances do exist for firms covered by the "All Other" rate.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of pipe fittings from Taiwan, that are entered, or withdrawn from warehouse, for consumption 90 days prior to the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins, as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Ta Chen Stainless Pipe Co., Ltd.	48.05
Tachia Yung Ho Machine Industry Co., Ltd.	48.05
Tru-Flow Industrial Co., Ltd.	76.20
All Others	57.43

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination.

If our final determination is affirmative, the ITC will determine whether these imports are materially injuring or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than February 12, 1993, and rebuttal briefs no later than February 19, 1993. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to give interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on February 26, 1993, at 9:30 a.m. at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice in the **Federal Register**. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f) and 19 CFR 353.15(a)(4).

Dated: December 16, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92–31174 Filed 12–22–92; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Notice of Solicitation for Sea Grant Review Panelists

SUMMARY: This notice responds to section 209(c) of the National Sea Grant College Program Act, 33 U.S.C. 1128, which requires the Secretary of Commerce to solicit nominations for membership on the Sea Grant Review Panel at least once a year. This advisory committee provides advice on the implementation of the National Sea Grant College Program.

DATES: Resumes should be sent to the address specified and must be received by January 22, 1993.

ADDRESSES: Dr. David B. Duane, Director, National Sea Grant College Program, 1335 East-West Highway, Room 5459, (DS), Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Dr. David B. Duane of the National Sea Grant College Program at the address given above; telephone (301) 713–2448.

SUPPLEMENTARY INFORMATION: Section 209 of the Act establishes a sea grant review panel to advise the Secretary of Commerce, the Under Secretary for Oceans and Atmosphere, and the Director of the National Sea Grant College Program on the implementation of the Sea Grant Program. The panel provides advice on such matters as:

(a) The Sea Grant Fellowship program;

(b) Applications or proposals for, and performance under, grants and contracts awarded under section 205, and section 3 of the Sea Grant Program Improvement Act of 1976;

(c) The designation and operation of sea grant colleges and sea grant regional consortia; and the operation of the sea grant program;

(d) The formulation and application of the planning guidelines and priorities under section 204 (a) and (c)(1); and,

(e) Such other matters as the Secretary refers to the panel for review and advice.

The Panel is to consist of 15 voting members composed as follows: Not less than eight of the voting members of the panel should be individuals who, by reason of knowledge, experience, or training, are especially qualified in one or more of the disciplines and fields included in marine science. The other voting members shall be individuals who by reason of knowledge, experience, or training, are especially qualified in, or representative of, education, extension services, state government, industry, economics, planning, or any other activity which is appropriate to, and important for, any effort to enhance the understanding, assessment, development, utilization, or conservation of ocean and coastal resources. No individual is eligible to be a voting member of the panel if the individual is (a) the director of a sea grant college, sea grant regional consortium, or sea grant program, (b) an

applicant for or beneficiary (as determined by the Secretary) of, any grant or contract under section 205, or (c) a full-time officer or employee of the United States. The Director of the National Sea Grant College Program and one Director of a Sea Grant Program also serve as non-voting members. Two positions on the panel will become vacant during 1993. Candidates who are selected to fill these vacancies will be appointed for a 3-year term.

Dated: December 17, 1992.

Alan R. Thomas,

Deputy Assistant Administrator, OAR.

[FR Doc. 92–31128 Filed 12–22–92; 8:45 am]

BILLING CODE 3510–12–M

Fishery Management Plan; Gulf of Alaska

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

ACTION: Notice of approval.

SUMMARY: NMFS announces the approval of Amendment 22 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands and Amendment 27 to the FMP for Groundfish of the Gulf of Alaska. The amendments authorize the establishment of trawl test areas for the testing of trawl gear in preparation for the opening of fishing seasons. The action is intended to promote the efficiency of trawl fishing for groundfish and further the goals and objectives of the FMPs that govern these fisheries.

ADDRESSES: Copies of the environmental assessment may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510 (907–271–2809).

SUPPLEMENTARY INFORMATION: During its January 13–18, 1992, meeting the North Pacific Fishery Management Council (Council) recommended Amendment 22 to the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands and Amendment 27 to the FMP for Groundfish of the Gulf of Alaska. The amendments authorize the establishment of areas for the testing of trawl gear, subject to certain conditions. A notice of availability of the amendments was published in the **Federal Register** on September 25, 1992 (57 FR 44355).

The Council also recommended the establishment of three specific trawl test areas. The justification for these areas and their locations are described in a proposed rule that was published in the **Federal Register** on December 14, 1992 (57 FR 59072).

The Secretary has determined that Amendments 22 and 27 are consistent with the Magnuson Fishery Conservation and Management Act (Magnuson Act) and other applicable laws as authorized under section 304 of the Magnuson Act.

Dated: December 17, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 92–31126 Filed 12–22–92; 8:45 am]

BILLING CODE 3510–22–M

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will hold a public meeting of its Shrimp Advisory Panel (Panel) on January 12, 1993, from 8:30 a.m. until 3 p.m., at the Ramada Airport Hotel and Conference Center, 5303 West Kennedy Boulevard, Tampa, FL; telephone: (813) 877–0534.

The Panel will discuss a Status Report on Shrimp Amendment #6; review the 1992 Texas Shrimp Closure and develop its recommendations to the Council; and discuss Options to Enhance White Shrimp Production.

For more information contact Terrance R. Leary, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL; telephone: (813) 228–2815.

Dated: December 16, 1992.

David S. Crestin,

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

[FR Doc. 92–31070 Filed 12–22–92; 8:45 am]

BILLING CODE 3510–22–M

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will hold a public meeting of its Reef Fish Management Committee (Committee) on January 13–15, 1993, at the Ramada Airport Hotel and Conference Center, 5303 West Kennedy Boulevard, Tampa, FL; telephone: (813) 877–0534, The meeting will be held on January 13 from 1 p.m. until 5 p.m., on January 14 from 8 a.m. until 5 p.m., and January 15 from 8 a.m. until 3 p.m.

The Committee will meet to develop its recommendations to the Council on Reef Fish Amendment #6; Longline/Buoy Area Changes; and the Red Snapper Effort Management Options Paper.

For more information contact Wayne E. Swingle, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL; telephone: (813) 228–2815.

Dated: December 16, 1992.

David S. Crestin,

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

[FR Doc. 92–31071 Filed 12–22–92; 8:45 am]

BILLING CODE 3510–22–M

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice.

The Gulf of Mexico Fishery Management Council (Council) and its Committees will meet on January 18–22, 1993, at the Corpus Christi Marriott Bayfront Hotel, 900 North Shoreline Boulevard, Corpus Christi, TX; telephone: (512) 887–1600. The agenda is as follows:

Council

The Council will convene on January 19 at 8:30 a.m. and recess at 5 p.m. Council agenda items and the times allocated for discussion are as follows:

From 8:45 a.m. to 9:15 a.m.: Consider Committee Membership Appointments.

From 9:15 a.m. to 12 p.m.: Hear public testimony on the Texas Shrimp Closure for 1993; Reef Fish Amendment #6; and Grouper Longline/Buoy Areas. (**Note:** Testimony cards must be turned in to staff before the start of public testimony.)

From 1:30 p.m. to 2 p.m.: Receive the Shrimp Management Committee report.

From 2 p.m. to 2:30 p.m.: Discuss Final Action on Reef Fish Amendment #6.

From 2:30 p.m. to 3 p.m.: Discuss Final Action on Longline/Buoy Area Changes; and

From 3 p.m. to 5 p.m.: Discuss the Red Snapper Effort Management Options Paper.

The Council will reconvene at 8:30 a.m. on January 20 with adjournment at 5 p.m.

From 8:30 a.m. to 5 p.m.: Continue discussion on the Red Snapper Effort Management Options Paper.

The Council will reconvene at 8:30 a.m. on January 21 with adjournment at 5 p.m.

From 8:30 a.m. to 5 p.m.: Complete discussion on the Red Snapper Effort Management Options Paper.

The Council will reconvene at 8:30 a.m. on January 22 to review the following reports:

1. U.S. Coast Guard's Fishery Enforcement Study (8:30 a.m. to 9 a.m.);
2. Habitat Protection Committee (9 a.m. to 9:30 a.m.);
3. Budget Committee (9:30 a.m. to 9:45 a.m.);
4. International Commission for the Conservation of Atlantic Tunas Advisory

Committee (9:45 a.m. to 10 a.m.) on the meeting held in Silver Spring, Maryland, on October 19, 1992; and

5. Enforcement reports and the Director's reports and adjournment at 11:15 a.m.

Committees

The Budget Committee, the Habitat Protection Committee, and the Shrimp Management Committee, will meet on January 18 from 12 p.m. with adjournment at 5:30 p.m.

For more information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, FL; telephone: (813) 228–2815.

Dated: December 17, 1992.

David S. Crestin,

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

[FR Doc. 92–31072 Filed 12–22–92; 8:45 am]

BILLING CODE 3510–22–M

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice.

The Mid-Atlantic Fishery Management Council's Squid, Mackerel, and Butterfish Committee (Committee) will hold a meeting on January 7, 1993, at the Ramada Inn, 76 Industrial Highway, Essington, PA. The meeting will begin at 10 a.m.

The purpose of the meeting is to discuss entry limitation into the Atlantic Mackerel Fishery and to discuss the Council's policy on directed foreign fishing for Atlantic mackerel. There will be a Scoping meeting for Amendment #5 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan at 1 p.m. The Committee may reconvene after the Scoping meeting to make recommendations to the Council on the Scoping Document.

For more information, contact John Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674–2331.

Dated: December 17, 1992.

David S. Crestin,

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

[FR Doc. 92–31073 Filed 12–22–92; 8:45 am]

BILLING CODE 3510–22–M

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice.

The North Pacific Fishery Management Council's (NPFMC) Pacific Northwest Crab Industry Advisory Committee (Committee) will meet on January 5, 1993, at the National Marine Fisheries Service (NMFS) Alaska Fisheries Science Center, Building 4, room 2079, 7600 Sand Point Way, NE., Seattle, WA. The meeting will begin at 8:30 a.m. and is to conclude at 5 p.m. The meeting is open to the public and notice of this meeting has been given through the December issue of the North Pacific Fishery Management Council's newsletter.

The Committee will review Alaska Board of Fisheries proposals for shellfish; review recommendations on revised pot limits; and receive staff reports on Tanner crab size limits and identification, exclusive and superexclusive registration proposals, crab observer program proposals, and 14-day pre- and post-season use of groundfish pots in the Bering Sea crab registration areas.

For more information contact Brent Paine, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (970) 271–2809.

Dated: December 17, 1992.

David S. Crestin,

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

[FR Doc. 92–31074 Filed 12–22–92; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Settlement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Lesotho

December 17, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: DECEMBER 28, 1992.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated December 9, 1992, the Governments of the United States and the Kingdom of Lesotho agreed to establish import limits for cotton and man-made fiber textile products in Categories 338/339/638/639 and 347/348/647/648 for two one-year periods beginning on December 1, 1992 and extending through November 30, 1994.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991; and 57 FR 54976, published on November 23, 1992). Also see 57 FR 54059, published on November 16, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 17, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Effective on December 28, 1992, you are directed to cancel the directive dated November 9, 1992, which directed you to count imports of cotton and man-made fiber textile products in Categories 338/339/638/639 and 347/348/647/648, produced or manufactured in Lesotho and exported during the period beginning on October 28, 1992 and extending through October 27, 1993.

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Memorandum of Understanding (MOU) dated December 9, 1992 between the Governments of the United States and the Kingdom of Lesotho; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on December 28, 1992, entry into the United States for consumption and withdrawal from

warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Lesotho and exported during the twelve-month period beginning on December 1, 1992 and extending through November 30, 1993, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
338/339/638/639	810,225 dozen.
347/348/647/648	300,000 dozen.

Imports charges will be provided at a later date.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the MOU dated December 9, 1992 between the Governments of the United States and the Kingdom of Lesotho.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92–31080 Filed 12–22–92; 8:45 am]

BILLING CODE 3510–DR–F

COMMISSION ON IMMIGRATION REFORM[1]

Meeting

AGENCY: Commission on Immigration Reform.

ACTION: Announcement of meeting.

SUMMARY: This notice announces the second formal meeting of the Commission. The Commission was established by the Immigration Act of 1990 under section 141. The public meeting is being held to discuss issue priorities with a panel of immigration policy experts.

DATE: 10 a.m.–3 p.m., January 5, 1993.

ADDRESS: Dupont Plaza Hotel, 1500 New Hampshire Ave., NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Susan Forbes Martin, Telephone: (202) 673–5348.

Dated: December 17, 1992.

Susan Forbes Martin,

Executive Director.

[FR Doc. 92–31116 Filed 12–22–92; 8:45 am]

BILLING CODE 6820–97–M

[1] The name of Commission on Legal Immigration Reform was changed by Pub. L. 102–232, December 12, 1991.

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before January 22, 1993.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Cary Green (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: December 18, 1992.

Cary Green,

Director, Information Resources Management Service.

Office of Elementary and Secondary Education

Type of Review: Extension.
Title: Application under the School Dropout Demonstration Assistance Program.
Frequency: One time.
Affected Public: State or local governments, business or other for profit, non-profit institutions.
Reporting Burden:
Responses: 500.
Burden Hours: 10,000.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: The information will be used by local educational agencies, educational partnership, and community-based organizations. The information will be used to make awards and to insure that statutory and regulatory requirements are met.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: Revision.
Title: Study of Content for English as a Second Language.
Frequency: One time.
Affected Public: Non-profit institutions.
Reporting Burden:
Responses: 940.
Burden Hours: 470.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This study will gather information about programs in public schools that provide instruction in English as a second language (ESL) simultaneously integrated with other school subjects.

Office of Educational Research and Improvement

Type of Review: New.
Title: Fast Response Survey System—Survey on Teacher Performance Evaluations.
Frequency: One time only.
Affected Public: Individuals or households.
Reporting Burden:
Responses: 1500.
Burden Hours: 625.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This survey of public elementary teachers is being conducted for the Office of Research as part of the Department's efforts to improve measurement criteria,

instruments, and procedures used for evaluating the performance of teachers. The purpose is to collect information on current practices in the schools, and information on teachers' view about the purposes and uses of the evaluations. The data will be used to promote evaluation standards.

Office of Educational Research and Improvement

Type of Review: New.
Title: Application for Grants under the Dwight D. Eisenhower National Program for Mathematics and Science Education—Regional Mathematics and Science Education Consortiums.
Frequency: Annually.
Affected Public: State or local governments; non-profit institutions.
Reporting Burden:
Responses: 60.
Burden Hours: 4,320.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used by State Educational Agencies to apply for funding under the Dwight D. Eisenhower National Program for Mathematics and Science Education. The Department will use the information to make grant awards.

[FR Doc. 92–31165 Filed 12–22–92; 8:45 am]
BILLING CODE 4000–1–M

President's Board of Advisors on Historically Black Colleges and Universities; Meeting

AGENCY: President's Board of Advisors on Historically Black Colleges and Universities, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the proposed agenda for a forthcoming meeting of the President's Board of Advisors on Historically Black Colleges and Universities. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE AND TIME: January 7, 1993, 9 a.m. until 5 p.m. Place: Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008.

FOR FURTHER INFORMATION CONTACT: Hazel Mingo, Acting Executive Director, White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 400 Maryland Avenue, SW., room 3682, ROB–3, Washington, DC 20202. Telephone # (202) 708–8667.

SUPPLEMENTARY INFORMATION: The President's Board of Advisors on Historically Black Colleges and Universities is established in accordance with Executive Order 12677, signed April 28, 1989. The Board is established to provide advice and make recommendations on developing an annual plan to increase the participation by historically black colleges and universities in federally sponsored programs and on how to increase the private sector's role in strengthening historically black colleges and universities. The Board is also responsible for developing alternative sources of faculty talent, particularly in the fields of science and technology; and for providing advice on how historically black colleges and universities can achieve greater financial security through the use of improved business, accounting, management, and development techniques.

The full Board will convene to address its mandate of providing advice to the President regarding historically black colleges and universities. The President's Board of Advisors will continue its discussion of recommendations to be made to the President on the varied issues raised in the recent *United States* versus *Fordice* Supreme Court case. These issues include funding, admission standards, and academic mission for historically black colleges and universities. Other topics to be discussed include the new Historically Black Colleges and Universities Capital Financing Act of 1992 and the Office of Personnel Management's implementation of section 11 of Executive Order 12677. The agenda will also include time for a discussion of efforts to lessen the impact of the current student loan default legislation on historically black colleges and universities. Advisory board members will vote on the final language for inclusion in the annual report to the President. Interested parties will be given time to comment on issues discussed during the Board meeting.

Records are kept of all Board meetings and are available for public inspection at the White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, ROB–3, room 3682, Washington, DC from the hours of 8:30 a.m. to 5 p.m., Monday through Friday.

Carolynn Reid-Wallace,
Assistant Secretary for Postsecondary Education.

[FR Doc. 92–31166 Filed 12–22–92; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Notice Extending the Public Review and Comment Period on the Draft Environmental Impact Statement for the Proposed Healy (Alaska) Clean Coal Project (HCCP)

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice to extend the public review and comment period on the Draft Environmental Impact Statement (DEIS) to assess the environmental effects of the construction and operation of the proposed Healy Clean Coal Project (HCCP), a new 50 Megawatt-electric (MWe) coal-fired power generating facility at Healy, Alaska.

SUMMARY: The Department of Energy (DOE) announced the availability of the HCCP DEIS (DOE/EIS–0186) in the **Federal Register** of November 20, 1992 (57 FR 54775). On this same date, the Environmental Protection Agency (EPA) also published in the **Federal Register** (57 FR 54789) a Notice of Availability for this DEIS, thereby initiating the public comment period. The HCCP would demonstrate the combined removal of sulfur dioxide, oxides of nitrogen, and particulate matter from a 50-MWe power plant using innovative integration of advanced combustion and flue gas cleanup technologies. As stated in the foregoing DOE and EPA Notices, the end of the period for public review and comment was defined as January 5, 1993. DOE hereby extends this comment period to January 20, 1993.

INVITATION TO COMMENT AND DATES: DOE will continue to solicit comments on the DEIS from all interested parties. Written comments or suggestions regarding the adequacy, accuracy, and completeness of the DEIS will be considered in preparing the final EIS and should be postmarked by January 20, 1993. Written comments postmarked after that date will be considered to the degree practicable.

ADDRESSES: Written comments on the DEIS should be postmarked by January 20, 1993, with the envelopes labeled "HCCP Draft EIS." Written comments or questions concerning the HCCP, should be directed to: Dr. Earl W. Evans, Environmental Coordinator, HCCP, Mail Stop 920L, Pittsburgh Energy

Technology Center, U.S. Department of Energy, P.O. Box 10940, Pittsburgh, PA 15236, Telephone: (412) 892–5709. Facsimile: (412) 892–4775.

FOR FURTHER INFORMATION CONTACT: For general information on the EIS process and other matters related to the National Environmental Policy Act (NEPA), please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight (EH–25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: In addition to announcing the availability of the DEIS, DOE published in the aforementioned **Federal Register** (57 FR 54775) its intention to hold public hearings in Healy, Fairbanks, and Anchorage, Alaska. A letter to interested parties was prepared, notices were sent to local news media, and DOE held public hearings as scheduled on December 7, 1992, in Healy, December 9, 1992, in Fairbanks, and December 10, 1992, in Anchorage, Alaska, as part of the NEPA review process. At the Anchorage hearing, two commenters requested additional time to review and comment on the DEIS. Additionally, one written comment has been received to date expressing the desire for more time to review and comment. Accordingly, the comment period will now close on January 20, 1993. All comments and suggestions submitted during the extended period will be considered in preparing the final EIS. Written comments received after that date will be considered to the degree practicable.

Signed in Washington, DC, this 17th day of December 1992, for the United States Department of Energy.

Paul L. Ziemer,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 92–31130 Filed 12–22–92; 8:45 am]

BILLING CODE 6450–01–M

Grant Award to Solar Energy Research and Education Foundation

AGENCY: Department of Energy.

ACTION: Notice of Financial Assistance Award in Response to an Unsolicited Financial Assistance Application.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.14, is announcing its intention to award a grant to Solar Energy Research and Education Foundation (SEREF) to accelerate the adoption and commercialization of photovoltaics in the U.S. electric utility industry which will be accomplished by creating sustainable market growth in utility applications having high market potential.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, NREL Area Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: Mr. John W. Meeker, Contract Specialist. The Contracting Officer for this action is Paul K. Kearns.

SUPPLEMENTARY INFORMATION: Under the grant, SEREF will facilitate the formation of stakeholder state working groups consisting of local stakeholder representatives from the utility/PV industrial, state regulatory/consumer advocate, and state energy office sectors and form a PV4U steering committee consisting of representatives of nine national organizations sponsoring the Tucson Project. This committee will facilitate interaction between the Utility Photovoltaic Group (UPVG), the state working groups and other PV4U activities.

The DOE evaluation of the unsolicited application determined that the applicant offers an exclusive domestic capability to perform the project successfully, and that the application offers an innovative approach to a DOE program. Additionally, the activity is considered to be an appropriate use of public funds.

Funding in the amount of an estimated $260,000 is to be provided by DOE and the term of the proposed agreement will be twelve (12) months.

Issued in Chicago, Illinois on December 10, 1992.

Timothy S. Crawford,

Assistant Manager for Administration.

[FR Doc. 92–31131 Filed 12–22–92; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; University of North Dakota

AGENCY: U.S. Department of Energy (DOE), Morgantown Energy Technology Center.

ACTION: Notice of Noncompetitive Financial Assistance Application for a Cooperative Agreement.

SUMMARY: Based upon a determination pursuant to 10 CFR 600.7(b)(2), the DOE Morgantown Energy Technology Center gives notice of its plans to award a five year Cooperative Agreement to the University of North Dakota, Energy and Environmental Research Center, in Grand Forks, North Dakota in the approximate amount of $10,000,000.

FOR FURTHER INFORMATION CONTACT: Diane L. Roth, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, WV 26507–0880, Telephone: (304) 291–4090, Cooperative Agreement No.: DE–FC21–93MC30097.

SUPPLEMENTARY INFORMATION: The DOE will fund the allowable costs of the Cooperative Agreement. The pending award is based on an application for renewal of a portion of work begun under a Cooperative Agreement presently being funded by DOE. The work to be continued under this renewal will address: Oil and gas research to advance technologies of petroleum and gas production processes and to develop methods for cleanup of wastes. Advanced systems applications to develop and evaluate process systems for utilization of fossil fuels. Environmental technologies needed for remediation and waste management related to fossil energy utilization. Applied energy science to understand and evaluate applied energy technologies. The work is necessary to ensure continuity of the work currently being performed.

Issued: December 15, 1992.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 92–31132 Filed 12–22–92; 8:45 am]

BILLING CODE 6450–01–M

Cooperative Agreement Award to Utility Photovoltaic Group

AGENCY: Department of Energy.

ACTION: Notice of Financial Assistance Award in Response to an Unsolicited Financial Assistance Application.

SUMMARY: The U.S. Department of Energy (DOE), Pursuant to the DOE Financial Assistance Rules, 10 CFR 600.14, is announcing its intention to award a cost sharing Cooperative Agreement to Utility Photovoltaic Group (UPVG) for acceleration of the adoption and commercialization of photovoltaics in the U.S. electric utility industry. The purpose of the Cooperative Agreement is to provide a mechanism for collective utility action to facilitate the deployment of current cost-effective and emerging high-value utility applications of photovoltaics for the benefit of electric utilities and their customers.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, NREL Area Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: Mr. John W. Meeker, Contract Specialist. The Contracting Officer for this action is Paul K. Kearns.

SUPPLEMENTARY INFORMATION: The UPVG will interact with PV manufacturers and the development of hardware programs by: (i) Establishing appropriate selection criteria for projects, (ii) developing cost-sharing formulas between utilities and co-funders, (iii) developing standardized specification and procurement documents and procedures, and (iv) providing a clearinghouse for information reporting and exchange. The education plan also attacks a key barrier to market development by providing access to information to a broad cross-section of the utility industry, from field engineers to system planners, all of whom play a role in making technology decisions.

Information which will be developed includes: (i) Market potential and applications, (ii) total PV system costs, (iii) criteria for integration of PV systems into the existing power system, (iv) utility grade PV performance criteria, and (v) knowledge of PV suppliers and their capabilities.

The DOE evaluation determined that the applicant offers an exclusive domestic capability to perform the project, and that the application offers an innovative approach to a DOE program. Additionally, the activity is considered to be an appropriate use of public funds. The estimated value of the agreement is $993,880. Funding in the amount of $800,000 is to be provided by DOE with the remainder being provided by UVPG. The term of the proposed agreement will be eighteen (18) months.

Issued in Chicago, Illinois on December 16, 1992.

Johnnie D. Greenwood,

Director, Contracts Division.

[FR Doc. 92–31133 Filed 12–22–92; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket No. 92–82–NG]

Prairielands Energy Marketing, Inc.; Blanket Authorization To Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting blanket authorization to Prairielands Energy Marketing, Inc. to import from and export to Canada up to an aggregate total of 100 Bcf of natural gas over a two-year period beginning on the date of first import or export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 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 December 15, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–31134 Filed 12–22–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 92–149–NG]

Renaissance Energy Inc.; Order Granting Blanket Authorization To Import and Export Natural Gas

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 granting Renaissance Energy (U.S.) Inc. (Renaissance), authorization to import from and export to Canada a combined total of 200 Bcf of natural gas over a two-year term beginning on January 19, 1993, or upon the date of first delivery.

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, December 16, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs Office of Fossil Energy.

[FR Doc. 92–31135 Filed 12–22–92; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. RM87–5–011; CP87–238–002]

Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines

December 18, 1992.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of request for expedited Office of Management and Budget (OMB) review of data request.

SUMMARY: Pursuant to § 1320.15 and § 1320.18 of OMB's regulations, the Federal Energy Regulatory Commission (Commission) is submitting to OMB a request for expedited review of an information collection requirement concerning the transactions between interstate pipelines and their affiliated pipelines (FERC Form 592, OMB Control No. 1902–0157). The Commission requires this information in order to administer regulatory programs that implement mandates of the Natural Gas Policy Act of 1978 (NGPA) and the Natural Gas Act (NGA) of 1938. The information is used by the Commission to monitor the transportation transactions of interstate pipelines and their marketing affiliates or brokering companies to deter undue discrimination by pipeline companies in favor of their marketing affiliates.

DATES: Comments are due to OMB by December 28, 1992. The Commission is requesting OMB clearance of the data collection by no later than 5 p.m., December 31, 1992.

ADDRESSES: Send Comments to:

Michael Miller, Federal Energy Regulatory Commission, Information Policy and Standards Branch, 941 North Capitol St., NE., Washington, DC 20426.

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Energy Regulatory Commission, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David Faerberg, (202) 208–1275, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

SUPPLEMENTARY INFORMATION: Pursuant to §§ 1320.15 and 1320.18 of OMB's regulations, the Commission is seeking expedited OMB approval of an information collection requirement concerning the transactions involving interstate pipelines and their affiliate pipelines (FERC Form 592). These reporting requirements were extended by the Commission in Order 497–D from December 31, 1992 to December 31, 1993. Order 497–D issued on December 4, 1992 responds to the U.S. Court of Appeals of the District of Columbia remand of the Commission's orders which upheld in substantial part Order Nos. 497 and 497–A, the Commission's final rule governing the relationship between interstate natural gas pipelines and their marketing or brokering affiliates. The court also remanded for further consideration the Commission's extension of the rule's contemporaneous disclosure requirement to gas sales and marketing information and whether a joint-venture, project-financed, pipeline company should be considered "affiliated" with marketing affiliates of

parent pipeline companies and therefore subject to the rule. The Commission's order narrows the scope of the contemporaneous disclosure requirement with respect to sales and marketing information. The order also recognizes the fundamental restructuring of the interstate natural gas industry mandated by the Commission's Order 636 and provides for the gradual phase out of FERC Form 592 as individual pipelines come into full compliance with Order No. 636. Further, Order 636's Electronic Bulletin Board's requirements will ensure certain minimum standards for maintaining and communicating information about a pipeline's available capacity, current capacity release offers, and affiliate marketing-related information.

The respondents are 61 interstate natural gas pipeline companies. The current annual reporting burden is estimated to be 7,882 hours for FERC Form No. 592. This burden is based on an estimated average of 9.94 hours per filing for the respondents to complete 793 filings of FERC Form 592. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and obtaining 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 to Mr. Michael Miller, Information Policy and Standards Branch, Federal Energy Regulatory Commission, 941 N. Capitol Street, NE., Washington, DC 20426 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Energy Regulatory Commission, Washington, DC 20503. The telephone number for the OMB Desk Officer is (202) 395–3084, the facsimile number is (202) 395–5167. Comments to OMB should be submitted on or before December 28, 1992 in order to provide adequate time for OMB to review the comments on the data request.

Lois D. Cashell,

Secretary.

[FR Doc. 92–31194 Filed 12–22–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ST93–001–000 Through ST93–476–000]

Williston Basin Interstate Pipeline Co.; Self-Implementing Transactions

December 17, 1992.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA), section 7 of the NGA and section 5 of the Outer Continental Shelf Lands Act.[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction.

A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's regulations and section 311(a)(2) of the NGPA.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G–I" indicates transportation by an intrastate pipeline company pursuant to a blanket certificate issued under § 284.227 of the Commission's regulations.

A "G–S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to § 284.223 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G–LT" or "G–LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "G–HT" or "G–HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.303 of the Commission's regulations.

A "K–S" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of shippers other than interstate pipelines pursuant to § 284.303 of the Commission's regulations.

Lois D. Cashell,

Secretary.

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

Docket No.[1]	Transporter/Seller	Recipient	Date filed	Part 284 subpart	Estimated maximum daily quantity[2]	Affiliation Y/A/N[3]	Rate schedule	Date commenced	Projected termination date
ST93-001	Williston Basin Inter. P/L Co	South Dakota State Cement Plant.	10-01-92	G-S	438	A	F	09-01-92	08-31-93
ST93-002	Williston Basin Inter. P/L Co	Amerada Hess Corp	10-01-92	G-S	25,000	N	F	09-01-92	10-31-92
ST93-003	Williston Basin Inter. P/L Co	Chevron USA, Inc	10-01-92	G-S	2,750	A	I	09-01-92	08-31-94
ST93-004	Transco-Louisiana Intra. P/L Co.	Texas Gas Transmission Corp	10-01-92	C	15,000	N	I	06-01-92	Indef.
ST93-005	Transco-Louisiana Intra. P/L Co.	Texas Gas Transmission Corp	10-01-92	C	30,000	N	I	06-01-92	Indef.
ST93-006	Kern River Gas Transmission Co.	Meridian Oil Trading Inc	10-01-92	G-S	50,000	N	I	08-31-92	Indef.
ST93-007	Channel Industries Gas Co	Tennessee Gas Pipeline Co	10-01-92	C	10,000	Y	I	09-01-92	Indef.
ST93-008	Seagull Shoreline System	O&R Energy, Inc	10-01-92	C	15,000	N	I	07-01-92	Indef.
ST93-009	Louisiana Resources Pipeline Co.	Florida Gas Transmission Co ..	10-01-92	C	75,000	N	I	08-30-92	01-31-93
ST93-010	Rotherwood Eastex Gas Storage.	Central Illinois Public Service Co.	10-01-92	G-ST	10,000	N	I	09-01-92	03-31-94
ST93-011	Northern Natural Gas Co	Nebraska Public Gas Agency ..	10-01-92	G-S	10,000	N	F/I	09-01-92	Indef.
ST93-012	Northern Natural Gas Co	Enron Gas Marketing, Inc	10-01-92	G-S	23,000	A	F/I	09-01-92	Indef.
ST93-013	Northern Natural Gas Co	Associated Natural Gas, Inc	10-01-92	G-S	50,000	N	F/I	08-01-92	Indef.
ST93-014	Rotherwood Eastex Gas Storage.	Northern Indiana Public Service Co.	10-01-92	G-ST	20,000	N	I	04-01-92	03-31-02
ST93-015	Enogex Inc	Phillips Gas Pipeline Co	10-02-92	C	50,000	N	I	09-04-92	Indef.
ST93-016	North Penn Gas Co	New York State Elect. & Gas Co.	10-02-92	G-HS	100	N	I	08-05-92	03-31-02
ST93-017	Channel Industries Gas Co	Transcontinental Gas Pipeline Corp.	10-02-92	C	100,000	N	I	09-16-92	08-15-93
ST93-018	Kern River Gas Transmission Co.	Mobil Natural Gas Inc	10-02-92	B	85,000	N	I	09-03-92	04-22-07
ST93-019	Trunkline Gas Co	American Central Gas Cos., Inc.	10-02-92	G-S	100,000	N	I	08-18-92	Indef.
ST93-020	Trunkline Gas Co	Panhandle Trading Co	10-02-92	G-S	25,000	Y	I	08-19-92	Indef.
ST93-021	Trunkline Gas Co	Triumph Gas Marketing Co	10-02-92	G-S	10,000	N	I	08-17-92	Indef.
ST93-022	Natural Gas P/L Co. of America.	Woodward Marketing, Inc	10-02-92	G-S	20,000	N	I	03-16-92	Indef.
ST93-023	United Gas Pipe Line Co	Aquila Energy Marketing Corp .	10-02-92	G-S	52,400	N	I	09-21-92	01-19-93
ST93-024	United Gas Pipe Line Co	Polaris Pipeline Corp	10-02-92	G-S	20,960	N	I	09-24-92	01-22-93
ST93-025	United Gas Pipe Line Co	NGC Transportation, Inc	10-02-92	G-S	157,200	N	I	09-24-92	01-22-93
ST93-026	United Gas Pipe Line Co	CNG Trading Co	10-02-92	G-S	31,440	N	I	09-21-92	01-19-93
ST93-027	United Gas Pipe Line Co	Chevron U.S.A. Inc	10-02-92	G-S	104,800	N	I	09-21-92	01-19-93
ST93-028	United Gas Pipe Line Co	Western Gas Resources, Inc ...	10-02-92	G-S	75,000	N	I	09-24-92	01-22-93
ST93-029	United Gas Pipe Line Co	Entrade Corp	10-02-92	G-S	104,800	N	I	09-23-92	01-21-93
ST93-030	Columbia Gas Transmission Corp.	Border Resources, Inc	10-02-92	G-S	30,000	N	I	09-22-92	Indef.
ST93-031	Transcontinental Gas P/L Corp	NGC Transportation, Inc	10-02-92	G-S	1,950,000	N	I	06-01-89	Indef.
ST93-032	Transcontinental Gas P/L Corp	Mississippi Fuel Co	10-02-92	B	3,942,420	N	I	11-26-91	Indef.
ST93-033	CNG Transmission Corp	Centran Corp	10-02-92	G-S	1,500	N	I	08-22-92	Indef.
ST93-034	CNG Transmission Corp	Clinton Gas Marketing	10-02-92	G-S	15,000	N	I	08-07-92	Indef.
ST93-035	CNG Transmission Corp	Centran Corp	10-02-92	G-S	1,500	N	I	07-31-92	Indef.
ST93-036	CNG Transmission Corp	Riley Natural Gas Co	10-02-92	G-S	1,000	N	I	08-02-92	Indef.
ST93-037	Gas Co. of New Mexico	Transwestern Pipeline Co	10-05-92	G-HT	1,000	N	I	09-02-92	08-31-93
ST93-038	Gas Co. of New Mexico	El Paso Natural Gas Co	10-05-92	G-HT	3,000	N	I	09-01-92	07-31-93
ST93-039	U-T Offshore System	Transcontinental Gas P/L Corp	10-05-92	K	319,320	N	I	09-05-92	08-20-93
ST93-040	Lone Star Gas Co	Transcontinental Gas P/L Corp	10-05-92	C	75,000	N	I	09-16-92	Indef.
ST93-041	Black Marlin Pipeline Co	Marathon Oil Co	10-05-92	G-S	40,000	A	I	09-23-92	Indef.
ST93-042	Black Marlin Pipeline Co	Oryx Gas Marketing L.P	10-05-92	G-S	50,000	A	I	09-05-92	Indef.
ST93-043	Northern Natural Gas Co	Unigas Energy Inc	10-05-92	G-S	50,000	N	F/I	08-15-92	Indef.
ST93-044	Northern Natural Gas Co	Natural Gas, Inc	10-05-92	B	400	N	F	09-01-92	09-01-97
ST93-045	High Island Offshore System ...	Citrus Marketing, Inc	10-05-92	K-S	305,000	N	I	09-26-92	Indef.
ST93-046	High Island Offshore System ...	Nomeco Oil and Gas Co	10-05-92	K-S	120,000	N	I	09-10-92	Indef.
ST93-047	High Island Offshore System ...	Transcontinental Gas P/L Corp	10-05-92	K	106,440	N	I	09-05-92	Indef.
ST93-048	Kern River Gas Transmission Co.	Pacific Gas and Electric Co	10-07-92	B	75,000	N	I	09-01-92	Indef.
ST93-049	Florida Gas Transmission Co ..	City of Tallahassee	10-07-92	G-S	10,625	N	F	09-08-92	Indef.
ST93-050	Florida Gas Transmission Co. .	City of Tallahassee	10-07-92	G-S	7,088	N	F	09-07-92	Indef.
ST93-051	Northern Natural Gas Co	Wilson Foods Corp	10-07-92	G-S	200	N	F	09-24-92	Indef.
ST93-052	Northern Natural Gas Co	David M. Munson, Inc	10-07-92	G-S	50	N	F/I	09-16-92	Indef.
ST93-053	CNG Transmission Corp	Anheuser-Busch Co	10-07-92	G-S	7,500	N	I	09-04-92	Indef.
ST93-054	CNG Transmission Corp	AGF Direct Gas Sales, Inc	10-07-92	G-S	5,000	N	I	09-01-92	Indef.
ST93-055	CNG Transmission Corp	Equitable Resources Marketing	10-07-92	G-S	100,000	N	I	09-04-92	Indef.
ST93-056	CNG Transmission Corp	Equitable Resources Marketing	10-07-92	G-S	20,000	N	I	09-01-92	Indef.
ST93-057	CNG Transmission Corp	Equitable Resources Marketing	10-07-92	G-S	100,000	N	I	09-02-92	Indef.
ST93-058	El Paso Natural Gas Co	Continental Natural Gas, Inc ...	10-08-92	G-S	30,900	N	I	09-20-92	Indef.
ST93-059	Tennessee Gas Pipeline Co	Nerco Oil & Gas, Inc	10-08-92	G-S	200,000	N	I	09-09-92	Indef.
ST93-060	Arkla Energy Resources	Aquila Energy Marketing Corp .	10-08-92	G-S	100,000	N	I	05-01-92	Indef.
ST93-061	Arkla Energy Resources	Waskom Gas Marketing	10-08-92	G-S	20,000	N	I	05-01-92	Indef.
ST93-062	Arkla Energy Resources	Ward Gas Marketing	10-08-92	G-S	50,000	N	I	04-02-92	Indef.
ST93-063	Transok, Inc	Williams Natural Gas Co	10-08-92	C	50,000	N	I	09-19-92	Indef.
ST93-064	Algonquin Gas Transmission Co.	Texas Ohio Gas, Inc	10-08-92	G-S	120,000	N	I	09-01-92	Indef.
ST93-065	Algonquin Gas Transmission Co.	Santana Natural Gas	10-08-92	G-S	100,000	N	I	09-18-92	Indef.

Docket No.[1]	Transporter/Seller	Recipient	Date filed	Part 284 subpart	Estimated maximum daily quantity[2]	Affiliation Y/A/N[3]	Rate schedule	Date commenced	Projected termination date
ST93-066	Algonquin Gas Transmission Co.	Colonial Gas Co	10-08-92	G-S	52	N	I	08-26-92	Indef.
ST93-067	Algonquin Gas Transmission Co.	Tenngasco Corp	10-08-92	G-S	3,750,000	N	I	08-08-92	Indef.
ST93-068	Algonquin Gas Transmission Co.	Tenngasco Corp	10-08-92	G-S	960,000	N	I	09-26-92	Indef.
ST93-069	Colorado Interstate Gas Co	Montana Power Co	10-09-92	B	25,000	N	I	09-01-92	Indef.
ST93-070	Colorado Interstate Gas Co	Associated Intrastate Pipeline Co.	10-09-92	G-S	10,000	N	I	09-01-92	Indef.
ST93-071	Kern River Gas Transmission Co.	Pacific Gas and Electric Co	10-09-92	B	14,000	N	F	09-11-92	Indef.
ST93-072	Tennessee Gas Pipeline Co	Tenngasco Corp	10-09-92	G-S	2,000,000	A	I	09-10-92	Indef.
ST93-073	Tennessee Gas Pipeline Co	Nashvill Gas Co	10-09-92	B	24,000	N	F	09-25-92	Indef.
ST93-074	ANR Pipeline Co	Niagara Mohawk Power Corp	10-09-92	B	17,800	N	F	09-01-92	Indef.
ST93-075	ANR Pipeline Co	Universal Resources Corp	10-09-92	G-S	5,000	Y	I	09-09-92	Indef.
ST93-076	ANR Pipeline Co	Onondga Cogeneration, L.P	10-09-92	G-S	18,275	N	F	08-01-92	Indef.
ST93-077	ANR Pipeline Co	Tejas Power Corp	10-09-92	G-S	50,000	N	I	09-15-92	Indef.
ST93-078	ANR Pipeline Co	Michigan Consolidated Gas Co	10-09-92	B	30,000	N	I	09-15-92	Indef.
ST93-079	ANR Pipeline Co	Acadian Gas Pipeline System	10-09-92	B	100,000	N	I	09-16-92	Indef.
ST93-080	K N Energy, Inc	Nebraska Public Gas Agency	10-09-92	G-S	188	N	F	09-10-92	11-01-93
ST93-081	Transcontinental Gas P/L Corp	Consolidated Edison Co	10-09-92	B	7,880,000	N	I	09-11-92	Indef.
ST93-082	Southern Natural Gas Co	Panhandle Trading Co	10-09-92	G-S	100,000	N	I	09-17-92	Indef.
ST93-083	Southern Natural Gas Co	Williams Gas Marekting	10-09-92	G-S	50,000	N	I	10-01-92	Indef.
ST93-084	Southern Natural Cas Co	City of Trussville	10-09-92	G-S	9,250	N	I	09-26-92	08-01-50
ST93-085	Sea Robin Pipeline Co	Murphy Oil U.S.A. Inc	10-09-92	G-S	60,000	N	I	10-01-92	Indef.
ST93-086	Sea Robin Pipeline Co	Energy Development Corp	10-09-92	G-S	50,000	N	I	10-01-92	Indef.
ST93-087	Sea Robin Pipeline Co	Arco Natural Gas Marketing	10-09-92	G-S	10,000	N	I	10-01-92	06-30-93
ST93-088	Sea Robin Pipeline Co	Sonat Marketing Co	10-09-92	G-S	11,985	A	F	10-01-92	10-31-92
ST93-089	Great Lakes Gas Transmission Co.	Western Gas Marketing Inc	10-09-92	G-S	500,000	Y	I	09-01-92	Indef.
ST93-090	Westar Transmission Co	El Paso Natural Gas Co	10-13-92	C	42,000	N	I	07-01-92	Indef.
ST93-091	Webb/Duval Gatherers	Tennessee Gas Transmission	10-13-92	C	10,000	N	I	07-01-92	Indef.
ST93-092	Northern Natural Gas Co	Midwest Natural Gas, Inc	10-13-92	B	3,439	N	F	09-01-92	Indef.
ST93-093	Northern Natural Gas Co	Martin Exploration Management Co.	10-13-92	G-S	5,000	N	F/I	09-11-92	Indef.
ST93-094	Florida Gas Transmission Co	Rinker Materials Corp	10-13-92	G-S	4,315	N	I	09-28-92	Indef.
ST93-095	Colorado Interstate Gas Co	Associated Intrastate Pipeline Co.	10-13-92	G-S	4,000	N	F	09-01-92	08-31-93
ST93-096	El Paso Natural Gas Co	Southern California Edison Co	10-13-92	G-S	200,000	N	I	09-28-92	Indef.
ST93-097	Trunkline Gas Co	Enron Gas Marketing, Inc	10-13-92	G-S	100,000	N	I	09-23-92	Indef.
ST93-098	Trunkline Gas Co	Entrade Corp	10-13-92	G-S	500,000	N	I	09-23-92	Indef.
ST93-099	Delhi Gas Pipeline Corp	Texas Eastern Transmission Corp.	10-13-92	C	45,000	N	I	09-10-92	Indef.
ST93-100	Enogex Inc	Arkla Energy Resources	10-13-92	C	5,300	N	I	10-01-92	Indef.
ST93-101	Enogex Inc	Ozark Gas Transmission System.	10-13-92	C	15,000	N	I	10-01-92	Indef.
ST93-102	Enogex Inc	Northern Natural Gas Co	10-13-92	C	50,000	N	I	09-17-92	Indef.
ST93-103	Enogex Inc	Arkla Energy Resources	10-13-92	C	10,000	N	I	10-01-92	Indef.
ST93-104	Egnogex Inc	ANR Pipeline Co	10-13-92	C	5,000	N	I	09-15-92	Indef.
ST93-105	Natural Gas P/L Co. of America.	Conco, Inc	10-13-92	G-S	3,000	N	I	10-01-92	Indef.
ST93-106	Natural Gas P/L Co. of America.	American Central Gas Cos., Inc.	10-13-92	G-S	200,000	N	I	11-04-91	Indef.
ST93-107	Natural Gas P/L Co. of America.	Chevron U.S.A., Inc	10-13-92	G-S	50,000	N	I	11-04-91	Indef.
ST93-108	Natural Gas P/L Co. of America.	Midcon Marketing Corp	10-13-92	G-S	50,000	A	F	11-04-91	03-31-93
ST93-109	Natural Gas P/L Co. of America.	Access Energy Corp	10-13-92	G-S	1,100	N	F	11-04-91	09-30-92
ST93-110	Natural Gas P/L Co. of America.	Centennial Natural Gas Corp	10-13-92	G-S	100,000	N	I	11-04-91	Indef.
ST93-111	Natural Gas P/L Co. of America.	Vesta Energy Co	10-13-92	G-S	50,000	N	I	11-04-91	Indef.
ST93-112	Natural Gas P/L Co. of America.	Peoples Gas Light and Coke Co.	10-13-92	G-S	102,600	N	F	11-04-91	11-30-95
ST93-113	Natural Gas P/L Co. of America.	Tennessee Gas Pipeline Co	10-13-92	G	48,000	N	F	11-04-91	06-29-98
ST93-114	Natural Gas P/L Co. of America.	Inland Steel Co	10-13-92	G-S	10,000	N	F	11-04-91	05-31-93
ST93-115	Natural Gas P/L Co. of America.	Enron Gas Marketing, Inc	10-13-92	G-S	60,000	N	F	11-04-91	10-31-93
ST93-116	Natural Gas P/L Co. of America.	Highland Energy Co	10-13-92	G-S	5,000	N	I	11-04-91	Indef.
ST93-117	Natural Gas P/L Co. of America.	Tex/Con Gas Marketing Co	10-13-92	G-S	25,487	N	F	11-04-91	Indef.
ST93-118	Natural Gas P/L Co. of America.	Boyd Rosene and Associates, Inc.	10-13-92	G-S	25,000	N	I	11-04-91	Indef.
ST93-119	Natural Gas P/L Co. of America.	Enron Gas Marketing, Inc	10-13-92	G-S	20,000	N	F	11-04-91	Indef.
ST93-120	Natural Gas P/L Co. of America.	Equitable Resources Marketing Co.	10-13-92	G-S	50,000	N	I	11-04-91	Indef.

Docket No.[1]	Transporter/Seller	Recipient	Date filed	Part 284 subpart	Estimated maximum daily quantity[2]	Affiliation Y/A/N[3]	Rate schedule	Date commenced	Projected termination date
ST93–121	Natural Gas P/L Co. of America.	Arco Natural Gas Marketing, Inc.	10–13–92	G–S	500,000	N	I	11–04–91	Indef.
ST93–122	Natural Gas P/L Co. of America.	Bridgegas U.S.A., Inc	10–13–92	G–S	100,000	N	I	11–04–91	Indef.
ST93–123	Natural Gas P/L Co. of America.	Columbia Gas Development Corp.	10–13–92	G–S	50,000	N	I	11–04–91	Indef.
ST93–124	Natural Gas P/L Co. of America.	Access Energy Corp	10–13–92	G–S	100,000	N	I	11–04–91	Indef.
ST93–125	Natural Gas P/L Co. of America.	M G Natural Gas Corp	10–13–92	G–S	50,000	N	I	11–04–91	Indef.
ST93–126	Natural Gas P/L Co. of America.	Energy Marketing Exchange, Inc.	10–13–92	G–S	20,000	N	I	11–04–91	Indef.
ST93–127	Natural Gas P/L Co. of America.	Polaris Corp	10–13–92	G–S	500,000	N	I	11–04–91	Indef.
ST93–128	Natural Gas P/L Co. of America.	Quantum Chemical Corp	10–13–92	G–S	15,076	N	F	11–04–91	09–30–94
ST93–129	Natural Gas P/L Co. of America.	Aquila Energy Marketing Corp .	10–13–92	G–S	100,000	N	I	11–04–91	Indef.
ST93–130	Natural Gas P/L Co. of America.	Midcon Marketing Corp	10–13–92	G–S	100,000	A	I	11–04–91	Indef.
ST93–131	Natural Gas P/L Co. of America.	Midcon Marketing Corp	10–13–92	G–S	20,000	A	I	11–04–91	Indef.
ST93–132	Natural Gas P/L Co. of America.	Access Energy Corp	10–13–92	G–S	100,000	N	I	11–04–91	Indef.
ST93–133	Natural Gas P/L Co. of America.	Anthem Energy Co	10–13–92	G–S	50,000	N	I	11–04–91	Indef.
ST93–134	Natural Gas P/L Co. of America.	Reynolds Pipeline Systems, Inc..	10–13–92	G–S	4,000	N	F	11–04–91	08–31–94
ST93–135	Natural Gas P/L Co. of America.	Arcadian Corp	10–13–92	G–S	45,000	N	F	11–04–91	08–31–94
ST93–136	Natural Gas P/L Co. of America.	Nipsco Energy Trading Co	10–13–92	G–S	25,000	N	I	11–04–91	Indef.
ST93–137	Natural Gas P/L Co. of America.	Inland Steel Co	10–13–92	G–S	10,000	N	F	11–04–91	05–31–93
ST93–138	Natural Gas P/L Co. of America.	K N Gas Marketing, Inc	10–13–92	G–S	50,000	N	I	11–04–91	Indef.
ST93–139	Natural Gas P/L Co. of America.	Centennial Natural Gas Corp ..	10–13–92	G–S	300,000	N	I	11–04–91	Indef.
ST93–140	Natural Gas P/L Co. of America.	Arkla Energy Marketing Co	10–13–92	G–S	100,000	N	I	11–04–91	Indef.
ST93–141	Natural Gas P/L Co. of America.	Texaco Gas Marketing	10–13–92	G–S	200,000	N	I	11–04–91	Indef.
ST93–142	Natural Gas P/L Co. of America.	Colorado Interstate Gas Co	10–13–92	G	100,000	N	I	11–04–91	Indef.
ST93–143	Natural Gas P/L Co. of America.	Grain Processing Corp	10–13–92	G–S	4,000	N	F	11–04–91	09–30–96
ST93–144	Natural Gas P/L Co. of America.	North Canadian Marketing Corp.	10–13–92	G–S	150,000	N	I	11–04–91	Indef.
ST93–145	Natural Gas P/L Co. of America.	Vesta Energy Co	10–13–92	G–S	10,000	N	I	11–04–91	Indef.
ST93–146	Natural Gas P/L Co. of America.	Hadson Gas System, Inc	10–13–92	G–S	150,000	N	I	11–04–91	Indef.
ST93–147	Natural Gas P/L Co. of America.	Shell Gas Trading Co	10–13–92	G–S	300,000	N	I	11–04–91	Indef.
ST93–148	Natural Gas P/L Co. of America.	Oryx Gas Marketing L.P	10–13–92	G–S	150,000	N	I	11–04–91	Indef.
ST93–149	Natural Gas P/L Co. of America.	Aquila Energy Marketing Corp .	10–13–92	G–S	100,000	N	I	11–04–91	Indef.
ST93–150	Natural Gas P/L Co. of America.	Access Energy Corp	10–13–92	G–S	20,000	A	F	11–04–91	Indef.
ST93–151	Natural Gas P/L Co. of America.	Tejas Power Corp	10–13–92	G–S	50,000	N	I	11–04–91	Indef.
ST93–152	Natural Gas P/L Co. of America.	Arcadian Corp	10–13–92	G–S	50,000	N	I	11–04–91	Indef.
ST93–153	Natural Gas P/L Co. of America.	Arkla Energy Marketing Co	10–13–92	G–S	10,000	A	F	11–04–91	05–31–97
ST93–154	Natural Gas P/L Co. of America.	Archer-Power-Midland Co	10–13–92	G–S	55,050	N	F	11–04–91	11–30–96
ST93–155	Natural Gas P/L Co. of America.	Power Gas Ventures Corp	10–13–92	G–S	100,000	N	I	11–04–91	Indef.
ST93–156	Natural Gas P/L Co. of America.	Chevron U.S.A., Inc	10–13–92	G–S	20,000	N	I	11–04–91	Indef.
ST93–157	Natural Gas P/L Co. of America.	Shell Gas Trading Co	10–13–92	G–S	10,000	N	F	11–04–91	12–31–96
ST93–158	Natural Gas P/L Co. of America.	Midcon Marketing Corp	10–13–92	G–S	1,000	A	F	11–04–91	Indef.
ST93–159	Panhandle Eastern Pipe Line Co.	Panhandle Trading Co	10–13–92	G–S	100,000	N	I	09–13–92	Indef.
ST93–160	Columbia Gulf Transmission Co.	Coastal Gas Marketing Co	10–13–92	G–S	100,000	N	I	09–11–92	Indef.
ST93–161	Transcontinental Gas P/L Corp	UGI Corp	10–13–92	B	610,000	A	I	09–10–92	Indef.

Docket No.[1]	Transporter/Seller	Recipient	Date filed	Part 284 subpart	Estimated maximum daily quantity[2]	Affiliation Y/A/N[3]	Rate schedule	Date commenced	Projected termination date
ST93-162	Tennessee Gas Pipeline Co	Berkshire Gas Co	10-13-92	B	11,010	N	F	10-01-92	Indef.
ST93-163	Kern River Gas Transmission Co.	Pacific Gas and Electric Co	10-13-92	B	100,000	N	I	09-17-92	Indef.
ST93-164	Kern River Gas Transmission Co.	Pacific Gas and Electric Co	10-13-92	B	150,000	N	I	09-17-92	Indef.
ST93-165	Kern River Gas Transmission Co.	Pacific Gas and Electric Co	10-13-92	B	100,000	N	I	09-16-92	Indef.
ST93-166	Kern River Gas Transmission Co.	Pacific Gas and Electric Co	10-13-92	B	300,000	N	I	09-12-92	Indef.
ST93-167	Columbia Gas Transmission Corp.	Lindsey & Elliott	10-13-92	G-S	4,036	N	F	10-01-92	Indef.
ST93-168	Columbia Gas Transmission Corp.	Mead Corp	10-13-92	G-S	2,150	Y	F	10-01-92	Indef.
ST93-169	Columbia Gas Transmission Corp.	Entrade Corp	10-13-92	G-S	500	Y	F	10-01-92	Indef.
ST93-170	Columbia Gas Transmission Corp.	Chevron U.S.A., Inc	10-13-92	G-S	60,000	Y	I	10-01-92	Indef.
ST93-171	Ong Transmission Co	Panhandle Eastern Pipe Line Co.	10-14-92	C	50,000	N	I	09-15-92	Indef.
ST93-172	Transcontinental Gas P/L Corp	Sun Co., Inc	10-14-92	G-S	30,000	N	I	09-21-92	Indef.
ST93-173	Transcontinental Gas P/L Corp	Piedmont Natural Gas Co., Inc	10-14-92	G-S	45,000	N	I	09-21-92	Indef.
ST93-174	Tennessee Gas Pipeline Co	Tennessee River Intrastate Gas Co.	10-14-92	B	100,000	N	I	09-19-92	Indef.
ST93-175	Florida Gas Transmission Co	Gold Bond Building Products	10-14-92	G-S	1,918	N	I	09-18-92	Indef.
ST93-176	Columbia Gulf Transmission Co.	Diamond Shamrock Offshore L.P.	10-14-92	G-S	100,000	N	I	09-19-92	Indef.
ST93-177	Natural Gas P/L Co. of America.	Gasmark, Inc	10-14-92	G-S	100,000	N	I	06-02-92	Indef.
ST93-181	Tennessee Gas Pipeline Co	O&R Energy Inc	10-15-92	G-S	300,000	N	I	10-01-92	Indef.
ST93-182	Lone Star Gas Co	United Gas Pipe Co	10-15-92	C	15,000	N	I	09-16-92	Indef.
ST93-183	Transwestern Pipeline Co	New Mexico Natural Gas, Inc	10-15-92	G-S	1,000	N	I	10-01-92	Indef.
ST93-184	Transwestern Pipeline Co	New Mexico Natural Gas, Inc	10-15-92	G-S	1,000	N	I	09-21-92	Indef.
ST93-185	Transwestern Pipeline Co	Meridian Oil Trading, Inc	10-15-92	G-S	200,000	N	I	09-28-92	Indef.
ST93-186	Transwestern Pipeline Co	Enron Gas Marketing, Inc	10-15-92	G-S	100,000	A	I	10-01-92	Indef.
ST93-187	Pacific Gas Transmission Co	Kimball Energy Corp	10-16-92	G-S	25,000	N	I	09-22-92	Indef.
ST93-188	United Gas Pipe Line Co	O&R Energy, Inc	10-16-92	G-S	20,960	N	I	10-06-92	02-03-93
ST93-189	United Gas Pipe Line Co	Shell Gas Trading Co	10-16-92	G-S	209,600	N	I	09-25-92	01-23-93
ST93-190	Panhandle Eastern Pipe Line Co.	Delhi Gas Pipeline Corp	10-16-92	B	10,000	N	I	08-12-92	Indef.
ST93-191	Panhandle Eastern Pipe Line Co.	Amgas, Inc	10-16-92	G-S	100	N	I	08-22-92	Indef.
ST93-192	Panhandle Eastern Pipe Line Co.	Amgas, Inc	10-16-92	G-S	130	N	I	08-01-92	Indef.
ST93-193	Florida Gas Transmission Co	Florida Public Utilities Co	10-16-92	G-S	14,452	N	F	10-01-92	Indef.
ST93-194	Florida Gas Transmission Co	Fort Pierce Utilities Authority	10-16-92	G-S	2,750	N	F	10-01-92	Indef.
ST93-195	Florida Gas Transmission Co	Fort Pierce Utilities Authority	10-16-92	G-S	6,572	N	F	10-01-92	Indef.
ST93-196	Ong Transmission Co	Panhandle Eastern Pipe Line Co.	10-16-92	C	50,000	N	I	09-18-92	Indef.
ST93-197	Ong Transmission Co	Arkla Energy Resources	10-16-92	C	50,000	N	I	09-16-92	Indef.
ST93-198	Ong Transmission Co	Arkla Energy Resources	10-16-92	C	75,000	N	I	09-25-92	Indef.
ST93-199	Valero Transmission, L.P	Transcontinental Gas P/L Corp	10-16-92	C	25,000	N	I	09-17-92	Indef.
ST93-200	Columbia Gas Transmission Corp.	United States Gypsum Co	10-16-92	G-S	50,000	Y	I	10-01-92	Indef.
ST93-201	Columbia Gas Transmission Corp.	Stand Energy Corp	10-16-92	G-S	150	Y	F	10-01-92	03-31-93
ST93-202	Columbia Gas Transmission Corp.	O & R Energy, Inc	10-16-92	G-S	2,000	N	F/I	10-01-92	10-31-93
ST93-203	Columbia Gas Transmission Corp.	O & R Energy, Inc	10-16-92	G-S	2,467	N	F/I	10-01-92	10-31-93
ST93-204	Columbia Gas Transmission Corp.	O & R Energy, Inc	10-16-92	G-S	3,000	N	F/I	10-01-92	10-31-93
ST93-205	Columbia Gas Transmission Corp.	R. Gene Brasel	10-16-92	G-S	1,000	N	I	09-17-92	Indef.
ST93-206	Columbia Gas Transmission Corp.	Triangle Resource Group	10-16-92	G-S	1,878	N	I	10-01-92	Indef.
ST93-207	CNG Transmission Corp	KCS Energy Mkty (EME)	10-16-92	G-S	20,000	N	I	10-01-92	Indef.
ST93-208	CNG Transmission Corp	Transport Gas, Inc	10-16-92	G-S	1,100	N	I	09-30-92	Indef.
ST93-209	CNG Transmission Corp	Transport Gas, Inc	10-16-92	G-S	1,100	N	I	09-30-92	Indef.
ST93-210	CNG Transmission Corp	O & R Energy, Inc	10-16-92	G-S	1,600	N	I	09-24-92	Indef.
ST93-211	CNG Transmission Corp	O & R Energy, Inc	10-16-92	G-S	1,600	N	I	09-24-92	Indef.
ST93-212	Tennessee Gas Pipeline Co	Commonwealth Gas Co	10-16-92	G-S	10,000	N	F	09-23-92	Indef.
ST93-213	Tennessee Gas Pipeline Co	Chevron U.S.A., Inc	10-16-92	G-S	450,000	N	I	10-01-92	Indef.
ST93-214	Tennessee Gas Pipeline Co	Texaco Gas Marketing, Inc	10-16-92	G-S	10,000	N	F	10-01-92	10-01-93
ST93-215	Tennessee Gas Pipeline Co	Alabama-Tennessee Natural Gas Co.	10-16-92	B	21,400	N	F	09-16-92	Indef.
ST93-216	Tennessee Gas Pipeline Co	West Virginia Power Gas Service.	10-16-92	B	9,455	N	I	09-16-92	Indef.
ST93-217	Exxon Gas System, Inc	United Gas Pipe Line Co	10-07-92	C	50,000	A	I	08-25-92	Indef.
ST93-218	Arkla Energy Resources	Delhi Gas Pipe Line Corp	10-16-92	B	25,000	N	I	08-28-92	Indef.
ST93-219	Arkla Energy Resources	Apache Corp	10-16-92	G-S	20,000	N	I	08-01-92	Indef.
ST93-220	Arkla Energy Resources	Transok Gas Co	10-16-92	G-S	50,000	N	I	08-13-92	Indef.

Docket No.[1]	Transporter/Seller	Recipient	Date filed	Part 284 suppart	Estimated maximum daily quantity[2]	Affiliation Y/A/N[3]	Rate schedule	Date commenced	Projected termination date
ST93-221	Arkla Energy Resources	International Paper Co	10-16-92	G-S	50,000	N	I	08-03-92	Indef.
ST93-222	Texas Gas Transmission Corp	Western Kentucky Gas Co	10-16-92	B	625	N	I	09-30-92	Indef.
ST93-223	Texas Gas Transmission Corp	Western Kentucky Gas Co	10-16-92	B	6,150	N	I	09-30-92	Indef.
ST93-224	Texas Gas Transmission Corp	Chevron U.S.A. Inc	10-16-92	G-S	150,000	Y	I	09-30-92	Indef.
ST93-225	Natural Gas P/L Co. of America.	ONG Transmission Co	10-16-92	B	1,350	N	F	10-01-92	09-30-93
ST93-226	United Gas Pipe Line Co	Conoco, Inc	10-19-92	G-S	20,000	N	I	09-29-92	01-27-93
ST93-227	United Gas Pipe Line Co	Gulf Gas Utilities Co	10-19-92	G-S	5,000	N	I	09-24-92	01-22-93
ST93-228	Enogex Inc	Ozark Gas Transmission System.	10-19-92	C	50,000	N	I	10-07-92	Indef.
ST93-229	Florida Gas Transmission Co	Citrus Marketing, Inc	10-19-92	G-S	100,000	N	I	10-01-92	Indef
ST93-230	Channel Industries Gas Co	Moss Bluff Gas Storage Systems.	10-19-92	C	100,000	N	I	09-18-92	Indef
ST93-231	Kern River Gas Transmission Co.	Bonneville Fuels Marketing Corp.	10-19-92	G-S	40,000	N	I	09-19-92	Indef.
ST93-232	Kern River Gas Transmission Co.	Chevron U.S.A. Inc	10-19-92	G-S	100,000	N	F	09-19-92	Indef.
ST93-233	Kern River Gas Transmission Co.	Canwest Gas Supply U.S.A. Inc.	10-19-92	G-S	300,000	N	I	09-19-92	Indef.
ST93-234	Kern River Gas Transmission Co.	Windward Energy & Marketing Co.	10-19-92	G-S	75,000	N	I	09-19-92	Indef.
ST93-235	Kern River Gas Transmission Co.	Union Pacific Fuels, Inc	10-19-92	G-S	150,000	N	I	09-19-92	Indef.
ST93-236	Kern River Gas Transmission Co.	Gasmark, Ltd	10-19-92	G-S	100,000	N	I	09-19-92	Indef.
ST93-237	Kern River Gas Transmission Co.	Southwest Gas Corp	10-19-92	G-S	14,000	N	F	09-19-92	Indef.
ST93-238	Kern River Gas Transmission Co.	Mobil Natural Gas Inc	10-19-92	G-S	85,000	N	F	09-19-92	Indef.
ST93-239	Kern River Gas Transmission Co.	Tenngasco Marketing Corp	10-19-92	G-S	100,000	N	I	09-19-92	Indef.
ST93-240	Enogex Inc	Ozark Gas Transmission System.	10-19-92	C	150,000	N	I	10-08-92	Indef.
ST93-241	Florida Gas Transmission Co	MG Natural Gas Corp	10-19-92	G-S	100,000	N	I	10-01-92	Indef.
ST93-242	Delhi Gas Pipeline Corp	Transwestern Pipeline Co	10-19-92	C	5,000	N	I	09-17-92	Indef.
ST93-244	Northern Natural Gas Co	Westbrook Municipal Light & Power.	10-19-92	B	290	N	F	09-25-92	Indef.
ST93-245	Northern Natural Gas Co	Sioux Pointe, Inc	10-19-92	G-S	40,000	N	F/I	08-01-92	Indef.
ST93-246	Northern Natural Gas Co	Enron Gas Processing Co	10-19-92	G-S	20,000	Y	F/I	10-01-92	Indef.
ST93-247	United Gas Pipe Line Co	Texas School Land Board	10-19-92	B	1,000	N	I	10-01-92	Indef.
ST93-248	National Fuel Gas Supply Corp	Columbia Gas Transmission Corp.	10-20-92	G-S	15,000	N	I	10-10-92	10-31-93
ST93-249	National Fuel Gas Supply Corp	Northern Consolidated Power	10-20-92	G-S	16,837	N	F	08-13-92	07-31-11
ST93-250	National Fuel Gas Supply Corp	Progas U.S.A., Inc	10-20-92	G-S	30,000	N	I	07-17-92	01-15-93
ST93-251	National Fuel Gas Supply Corp	Louis Dreyfus Energy Corp	10-20-92	G-S	100,000	N	I	08-01-92	11-29-92
ST93-254	Channel Industries Gas Co	Northern Natural Gas Co	10-20-92	C	40,000	N	I	09-24-92	Indef.
ST93-255	Channel Industries Gas Co	United Gas Pipeline Co	10-20-92	C	50,000	N	I	10-10-92	Indef.
ST93-256	Colorado Interstate Gas Co	Grand Valley Gas Co	10-20-92	G-S	10,000	N	I	10-10-92	Indef.
ST93-257	Colorado Interstate Gas Co	Helmerich & Payne, Inc	10-20-92	G-S	20,000	N	I	10-03-92	Indef.
ST93-258	Colorado Interstate Gas Co	Ideal Cement Div., Holnam Inc	10-20-92	G-S	125	N	I	09-29-92	09-30-93
ST93-259	Colorado Interstate Gas Co	Oxy USA, Inc	10-20-92	G-S	60,000	N	I	09-01-92	12-01-90
ST93-260	Sabine Pipe Line Co	Neches Gas Distribution Co	10-20-92	G-S	30,000	N	I	09-01-92	Indef.
ST93-261	Sabine Pipe Line Co	Calcasteiu Gas Gathering System.	10-20-92	G-S	220,000	N	I	08-01-92	Indef.
ST93-262	Sabine Pipe Line Co	Olympic Fuels Co	10-20-92	G-S	5,000	N	F	09-01-92	Indef.
ST93-263	Sabine Pipe Line Co	Amoco Gas Co	10-20-92	G-S	100,000	N	I	08-29-92	Indef.
ST93-264	Sabine Pipe Line Co	Energy Development Corp	10-20-92	G-S	150,000	N	I	09-03-92	Indef.
ST93-265	Sabine Pipe Line Co	Pontchartrain Natural Gas System.	10-20-92	G-S	220,000	N	I	08-01-92	Indef.
ST93-266	Sabine Pipe Line Co	American Central Gas Cos., Inc.	10-20-92	G-S	50,000	N	I	09-02-92	Indef.
ST93-267	Arkla Energy Resources	TXG Gas Marketing Co	10-20-92	G-S	50,000	N	F	08-01-92	Indef.
ST93-268	Natural Gas P/L Co. of America.	Enron Gas Marketing, Inc	10-20-92	G-S	150,000	N	I	09-23-92	Indef.
ST93-269	Transcontinental Gas P/L Corp	Elizabethtown Gas Co	10-20-92	B	900,000	N	I	09-24-92	Indef.
ST93-270	El Paso Natural Gas Co	Richardson Products Co	10-21-92	G-S	103,000	N	I	10-03-92	Indef.
ST93-217	Natural Gas P/L Co. of America.	Alumax Extrusions, Inc	10-21-92	G-S	1,200	N	I	06-12-92	Indef.
ST93-272	ANR Pipeline Co	Columbia Gas of Ohio, Inc	10-21-92	B	100,000	N	I	10-01-92	Indef.
ST93-273	ANR Pipeline Co	Trade & Development Corp	10-21-92	G-S	30,000	N	I	10-01-92	Indef.
ST93-274	ANR Pipeline Co	Northern Illinois Gas Co	10-21-92	B	50,000	N	I	10-01-92	Indef.
ST93-275	ANR Pipeline Co	Ohio Gas Co	10-21-92	B	5,000	N	F	10-01-92	Indef.
ST93-276	Colorado Interstate Gas Co	Fuel Resources Development Co.	10-21-92	G-S	2,300	N	F	10-01-92	12-31-08
ST93-277	Colorado Interstate Gas Co	Fuel Resources Development Co.	10-21-92	G-S	1,700	N	F	10-01-92	12-31-08
ST93-278	Colorado Interstate Gas Co	Western Sugar Co	10-21-92	G-S	700	N	F	10-01-92	03-31-93
ST93-279	Colorado Interstate Gas Co	Associated Intrastate Pipeline Co.	10-21-92	G-S	10,000	N	F	10-01-92	09-30-97
ST93-280	United Gas Pipe Line Co	Energy International Market. Corp.	10-21-92	G-S	20,000	N	I	10-16-92	02-13-93

Docket No.[1]	Transporter/Seller	Recipient	Date filed	Part 284 subpart	Estimated maximum daily quantity[2]	Affiliation Y/A/N[3]	Rate schedule	Date commenced	Projected termination date
ST93-281	United Gas Pipe Line Co	Entrade Corp	10-21-92	G-S	104,800	N	I	10-12-92	02-09-93
ST93-282	United Gas Pipe Line Co	Midcon Marketing Corp	10-21-92	G-S	74,198	N	F	10-12-92	02-09-93
ST93-283	Transcontinental Gas P/L Corp	AGIP Petroleum Co., Inc	10-21-92	G-S	150,000	N	I	10-01-92	Indef.
ST93-284	Transcontinental Gas P/L	Union Gas Co	10-21-92	B	3,865	N	F	10-01-92	11-15-95
ST93-285	Tennessee Gas Pipeline Co	Alabama-Tennessee Natural Gas Co.	10-21-92	G	10,000	N	F	09-16-92	Indef.
ST93-286	Tennessee Gas Pipeline Co	Continental Natural Gas, Inc	10-21-92	G-S	10,000	N	I	10-08-92	Indef.
ST93-287	Viking Gas Transmission Co	Peoples Natural Gas Co	10-21-92	B	100,000	N	I	09-21-92	Indef.
ST93-288	Channel Industries Gas Co	Moss Bluff Gas Storage Systems.	10-21-92	C	75,000	N	I	10-01-92	Indef.
ST93-290	United Texas Transmission Co	Natural Gas P/L Co. of America.	10-22-92	C	200,000	Y	I	01-01-92	Indef.
ST93-291	Valero Transmission, L.P	Tennessee Gas Pipeline Co	10-22-92	C	13,000	N	I	10-01-92	Indef.
ST93-292	Valero Transmission, L.P	Natural Gas P/L Co. of America.	10-22-92	C	10,000	N	I	09-25-92	Indef.
ST93-293	Valero Transmission, L.P	United Gas Pipe Line Co	10-22-92	C	6,000	N	I	10-07-92	Indef.
ST93-294	Valero Transmission, L.P	Texas Eastern Transmission Co.	10-22-92	C	3,800	N	I	10-08-92	Indef.
ST93-295	Questar Pipeline Co	Colorado Interstate Gas Co	10-22-92	G	200,000	N	I	10-01-92	Indef.
ST93-296	Tennessee Gas Pipeline Co	Quivira Gas Co	10-22-92	G-S	204,000	N	I	09-23-92	Indef.
ST93-297	Tennessee Gas Pipeline Co	American Central Gas Marketing Co.	10-22-92	G-S	200,000	N	I	09-25-92	Indef.
ST93-298	Tennessee Gas Pipeline Co	City of Decatur	10-22-92	G-S	5,400	N	F	10-01-92	Indef.
ST93-299	Tennessee Gas Pipeline Co	NGC Transportation, Inc	10-22-92	G-S	600,000	N	I	10-10-92	Indef.
ST93-300	Tennessee Gas Pipeline Co	Superior Natural Gas Corp	10-22-92	G-S	50,000	N	I	10-01-92	Indef.
ST93-301	Northern Natural Gas Co	Enron Gas Marketing, Inc	10-22-92	G-S	250,000	A	F/I	09-01-92	Indef.
ST93-302	Texas Gas Transmission Corp	NGC Transportation, Inc	10-22-92	G-S	50,000	N	I	10-01-92	Indef.
ST93-303	Texas Gas Transmission Corp	Hadson Gas Systems, Inc	10-22-92	G-S	15,000	N	I	10-03-92	Indef.
ST93-304	Texas Gas Transmission Corp	Indiana Gas Co., Inc	10-22-92	G-S	10,000	N	F	10-09-92	Indef.
ST93-305	Texas Gas Transmission Corp	Energy Development Corp	10-22-92	G-S	75,000	N	I	10-08-92	Indef.
ST93-306	Mississippi River Trans. Corp	Twister Transmission Co	10-23-92	G-S	3,500	N	I	09-26-92	Indef.
ST93-307	Tennessee Gas Pipeline Co	City of Holyoke Gas & Elect. Dept.	10-23-92	B	1,871	N	F	10-10-92	Indef.
ST93-308	Tennessee Gas Pipeline Co	Yankee Gas Services Co	10-23-92	G-S	15,861	N	F	09-24-92	Indef.
ST93-309	Delhi Gas Pipeline Corp	ANR Pipeline Co	10-23-92	C	250,000	N	I	10-07-92	Indef.
ST93-310	Delhi Gas Pipeline Corp	Texas Eastern Transmission Corp.	10-23-92	C	20,000	N	I	10-01-92	Indef.
ST93-311	Delhi Gas Pipeline Corp	Natural Gas P/L Co. of America.	10-23-92	C	20,000	N	I	10-10-92	Indef.
ST93-312	Delhi Gas Pipeline Corp	Arkla Energy Resources	10-23-92	C	4,000	N	I	10-01-92	Indef.
ST93-313	Enogex, Inc	Phillips Gas Pipeline Co	10-23-92	C	50,000	N	I	09-01-92	Indef.
ST93-314	Enogex, Inc	Natural Gas P/L Co. of America.	10-23-92	C	50,000	N	I	09-01-92	Indef.
ST93-315	Williston Basin Inter. P/L Co	Amoco Production Co	10-23-92	G-S	590	A	I	09-25-92	01-25-93
ST93-316	Texas Eastern Transmission Corp.	North Jersey Energy Associates.	10-23-92	G-S	75,000	N	I	10-01-92	Indef.
ST93-317	Texas Eastern Transmission Corp.	Direct Gas Supply Corp	10-23-92	G-S	70,000	N	I	10-01-92	Indef.
ST93-318	Trunkline Gas Co	Grand Prairie Co-op, Inc	10-23-92	G-S	2,500	N	I	10-01-92	Indef.
ST93-319	Trunkline Gas Co	Tylex, Inc	10-23-92	G-S	5,000	N	I	10-01-92	Indef.
ST93-320	Trunkline Gas Co	Arcola Co-op Grain Co	10-23-92	G-S	2,500	N	I	10-01-92	Indef.
ST93-321	Trunkline Gas Co	Tenaska Marketing Ventures	10-23-92	G-S	50,000	N	I	10-01-92	Indef.
ST93-322	Trunkline Gas Co	Coastal Gas Marketing Co	10-23-92	G-S	75,000	N	I	10-04-92	Indef.
ST93-323	Trunkline Gas Co	Amerada Hess Corp	10-23-92	G-S	200,000	N	I	10-05-92	Indef.
ST93-324	Trunkline Gas Co	Ultramar Oil and Gas Limited	10-23-92	G-S	10,000	N	I	10-05-92	Indef.
ST93-325	Texas Gas Transmission Corp	Aquila Energy Marketing Corp	10-23-92	G-S	20,000	N	I	10-01-92	Indef.
ST93-326	Florida Gas Transmission Co	Citrus World, Inc	10-23-92	G-S	1,200	N	I	10-01-92	09-30-93
ST93-327	Northern Natural Gas Co	Highland Energy Co	10-23-92	G-S	2,500	N	I	10-01-92	03-31-93
ST93-328	Northern Natural Gas Co	Seagull Marketing Services, Inc.	10-23-92	G-S	5,000	N	F	10-01-92	09-30-93
ST93-329	ANR Pipeline Co	Clinton Gas Transportation Inc	10-23-92	G-S	15,000	N	I	10-04-92	Indef.
ST93-330	ANR Pipeline Co	Coast Energy Group, Inc	10-23-92	G-S	5,000	N	I	10-07-92	Indef.
ST93-331	ANR Pipeline Co	Access Energy Corp	10-23-92	G-S	100,000	N	I	10-01-92	Indef.
ST93-332	Tennessee Gas Pipeline Co	Fitchburg Gas and Elect. Light Co.	10-26-92	B	8,000	N	F	10-01-92	Indef.
ST93-333	K N Energy, Inc	Koch Hydrocarbon Co	10-26-92	G-S	780	N	F	10-01-92	02-28-93
ST93-334	Tennessee Gas Pipeline Co	Essex County Gas Co	10-26-92	B	10,000	N	F	10-01-92	Indef.
ST93-335	Channel Industries Gas Co	Sabine Pipe Line Co	10-26-92	C	30,000	N	I	10-01-92	Indef.
ST93-336	K N Energy, Inc	New Mexico Natural Gas Co., Inc.	10-26-92	B	12,000	N	I	10-01-92	Indef.
ST93-337	K N Energy, Inc	Interenergy Corp	10-26-92	G-S	6,100	N	F	10-01-92	Indef.
ST93-338	K N Energy, Inc	Tenaska Marketing Ventures	10-26-92	G-S	5,000	N	F	10-02-92	Indef.
ST93-339	K N Energy, Inc	New Mexico Natural Gas Co., Inc.	10-26-92	G-S	12,000	N	I	10-01-92	Indef.
ST93-340	Transamerican Natural Gas Corp.	United Gas Pipe Line Co	10-26-92	C	20,000	N	I	05-08-92	Indef.
ST93-341	Tejas Gas Corp	Mississippi River Trans. Corp	10-26-92	C	20,000	N	I	09-01-92	Indef.
ST93-342	Phillips Gas Pipeline Co	Phillips Texas Border Pipeline Co.	10-26-92	B	100,000	N	I	01-01-88	Indef.
ST93-343	Valero Transmission, L.P	Texas Eastern Transmission Corp.	10-26-92	C	14,000	N	I	10-06-92	Indef.

Docket No.[1]	Transporter/Seller	Recipient	Date filed	Part 284 subpart	Estimated maximum daily quantity[2]	Affiliation Y/A/N[3]	Rate schedule	Date commenced	Projected termination date
ST93-344	U-I Offshore System	Unigas Energy, Inc	10-26-92	K-S	40,000	N	I	10-01-92	Indef.
ST93-345	Colorado Interstate Gas Co	Mountain Cement Co	10-27-92	G-S	10,000	N	I	10-15-92	Indef.
ST93-346	Tennessee Gas Pipeline Co	Inland Gas Co	10-27-92	G	1,000	N	F	10-01-92	Indef.
ST93-347	Tennessee Gas Pipeline Co	Aquila Southwest Marketing Corp.	10-27-92	G-S	385,887	N	I	10-07-92	Indef.
ST93-348	Tennessee Gas Pipeline Co	Energynorth Natural Gas, Inc	10-27-92	G-S	12,624	N	F	09-30-92	Indef.
ST93-349	Tennessee Gas Pipeline Co	Canadianoxy Offshore Production Co.	10-27-92	G-S	892	N	I	10-06-92	Indef.
ST93-350	Tennessee Gas Pipeline Co	Direct Gas Supply Corp	10-27-92	G-S	51,550	N	I	10-01-92	Indef.
ST93-351	Tennessee Gas Pipeline Co	T.W. Phillips Gas and Oil Co	10-27-92	G-S	10,000	N	I	10-14-92	Indef.
ST93-352	Tennessee Gas Pipeline Co	Southern Connecticut Gas Co	10-27-92	G-S	9,408	N	F	9:30	Indef.
ST93-353	Tennessee Gas Pipeline Co	Anadarko Trading Co	10-27-92	G-S	50,000	N	I	10-02-92	Indef.
ST93-354	Tennessee Gas Pipeline Co	Cranberry Pipeline Co	10-27-92	G-S	30,000	N	I	10-01-92	Indef.
ST93-355	Tennessee Gas Pipeline Co	Meridian Marketing & Trans. Corp.	10-27-92	G-S	2,000	N	I	10-01-92	Indef.
ST93-356	Tennessee Gas Pipeline Co	Transcontinental Gas P/L Corp	10-27-92	G-S	276,490	N	I	04-27-92	Indef.
ST93-357	Tennessee Gas Pipeline Co	ANR Gathering Co	10-27-92	G-S	300,000	N	I	10-07-92	Indef.
ST93-358	Tennessee Gas Pipeline Co	Rochester Gas and Electric Corp.	10-27-92	G-S	15,000	N	I	10-02-92	Indef.
ST93-359	Tennessee Gas Pipeline Co	Piedmont Natural Gas Co., Inc	10-27-92	G-S	55,900	N	F	09-29-92	Indef.
ST93-360	Tennessee Gas Pipeline Co	Unigas Energy, Inc	10-27-92	G-S	5,000	N	I	10-07-92	Indef.
ST93-361	Channel Industries Gas Co	Northern Natural Gas Co	10-27-92	C	50,000	N	I	10-01-92	Indef.
ST93-362	Channel Industries Gas Co	United Gas Pipe Line Co	10-27-92	C	50,000	N	I	10-17-92	Indef.
ST93-363	Ozark Gas Transmission System.	Oxley Petroleum	10-27-92	G-S	15,000	N	I	09-28-92	Indef.
ST93-364	Columbia Gulf Transmission Co.	AGIP Petroleum Co	10-27-92	G-S	45,000	N	I	10-01-92	Indef.
ST93-365	Columbia Gulf Transmission Co.	Aquila Energy Marketing Corp	10-27-92	G-S	100,000	N	I	10-06-92	Indef.
ST93-366	Columbia Gulf Transmission Co.	CNG Trading Co	10-27-92	G-S	20,000	N	I	10-01-92	Indef.
ST93-367	Columbia Gulf Transmission Co.	Columbia Gas Development Corp.	10-27-92	G-S	315,900	A	I	10-02-92	Indef.
ST93-368	Columbia Gulf Transmission Co.	Columbia Gas of Kentucky, Inc	10-27-92	B	10,000	Y	I	03-01-91	Indef.
ST93-369	Columbia Gulf Transmission Co.	Exxon Corp	10-27-92	G-S	50,000	N	I	10-01-92	Indef.
ST93-370	Columbia Gulf Transmission Co.	O & R Energy, Inc	10-27-92	G-S	80,000	N	I	10-15-92	Indef.
ST93-371	Columbia Gulf Transmission Co.	Mobil Natural Gas, Inc	10-27-92	G-S	60,000	N	I	10-03-92	Indef.
ST93-372	Columbia Gulf Transmission Co.	Williams Gas Marketing Co	10-27-92	G-S	100,000	N	I	10-10-92	Indef.
ST93-373	Columbia Gulf Transmission Co.	Woodward Marketing, Inc	10-27-92	G-S	50,000	N	I	09-25-92	Indef.
ST93-374	Columbia Gulf Transmission Co.	Union Oil Co. of California	10-27-92	G-S	400	N	I	10-01-92	Indef.
ST93-375	Houston Pipe Line Co	Tennessee Gas Pipeline Co	10-27-92	C	100,000	N	I	08-06-92	Indef.
ST93-376	Houston Pipe Line Co	Texas Eastern Transmission Corp.	10-27-92	C	50,000	N	I	07-22-92	Indef.
ST93-377	Houston Pipe Line Co	Sabine Pipeline Co	10-27-92	C	50,000	N	I	08-01-92	Indef.
ST93-378	Houston Pipe Line Co	Trunkline Gas Co	10-27-92	C	100,000	N	I	07-13-92	Indef.
ST93-379	Houston Pipe Line Co	Transcontinental Gas P/L Corp	10-27-92	C	100,000	N	I	08-06-92	Indef.
ST93-380	Houston Pipe Line Co	Trunkline Gas Co	10-27-92	C	150,000	N	I	08-19-92	Indef.
ST93-381	Houston Pipe Line Co	Texas Eastern Transmission Corp.	10-27-92	C	150,000	N	I	08-21-92	Indef.
ST93-382	Houston Pipe Line Co	Northern Natural Gas Co	10-27-92	C	10,000	N	I	08-01-92	Indef.
ST93-383	Houston Pipe Line Co	Trunkline Gas Co	10-27-92	C	10,000	N	I	08-26-92	Indef.
ST93-384	Houston Pipe Line Co	Florida Gas Transmission Co	10-27-92	C	100,000	N	I	08-27-92	Indef.
ST93-385	Houston Pipe Line Co	Northern Natural Gas Co	10-27-92	C	10,000	N	I	07-28-92	Indef.
ST93-386	Channel Industries Gas Co	Natural Gas P/L Co. of America.	10-28-92	C	75,000	N	I	10-10-92	Indef.
ST93-387	Channel Industries Gas Co	THC Pipeline Co	10-28-92	C	75,000	Y	I	10-01-92	Indef.
ST93-388	Kern River Gas Transmission Co.	Salmon Resources Limited	10-28-92	G-S	30,000	N	F	10-01-92	Indef.
ST93-389	Kern River Gas Transmission Co.	Petro Canada Hydrocarbons, Inc.	10-28-92	G-S	60,000	N	F	10-01-92	Indef.
ST93-390	Tennessee Gas Pipeline Co	Catex Energy, Inc	10-28-92	G-S	20,000	N	I	10-16-92	Indef.
ST93-391	Algonquin Gas Transmission Co.	Distrigas of Massachusetts Corp.	10-28-92	B	52,412	N	I	10-01-92	Indef.
ST93-392	Westar Transmission Co	Natural Gas P/L Co. of America.	10-28-92	C	50,000	N	I	08-01-92	Indef.
ST93-393	Pacific Gas Transmission Co	Western Gas Marketing U.S.A. Ltd.	10-28-92	G-S	180,579	N	I	08-30-92	Indef.
ST93-394	Pacific Gas Transmission Co	American Hunter Exploration Ltd.	10-28-92	G-S	103,980	N	I	10-19-92	Indef.
ST93-395	Pacific Gas Transmission Co	Pacific Gas & Electric Co	10-28-92	B	180,579	N	I	07-19-92	Indef.
ST93-396	Columbia Gas Transmission Corp.	Columbia Gas of Ohio, Inc	10-28-92	B	100	N	F	10-01-92	09-30-93
ST93-397	Columbia Gas Transmission Corp.	Mark Resources Corp	10-28-92	G-S	450	N	F	10-01-92	Indef.

Docket No.[1]	Transporter/Seller	Recipient	Date filed	Part 284 subpart	Estimated maximum daily quantity[2]	Affiliation Y/A/N[3]	Rate schedule	Date commenced	Projected termination date
ST93-398	Columbia Gas Transmission Corp.	Direct Gas Supply Corp	10-28-92	G-S	150,000	Y	I	10-01-92	Indef.
ST93-399	Columbia Gas Transmission Corp.	Petrobank Operating Co	10-28-92	G-S	1,750	N	I	10-15-92	Indef.
ST93-400	Columbia Gas Transmission Corp.	College of West Virginia	10-28-92	G-S	30	N	I	10-01-12	Indef.
ST93-401	Trailblazer Pipeline Co	North American Resources Co	10-28-92	G-S	353,000	N	I	10-01-92	Indef.
ST93-402	Trailblazer Pipeline Co	Amoco Production Co	10-28-92	G-S	353,000	N	I	10-01-92	Indef.
ST93-403	Natural Gas P/L Co. of America.	Arcadian Corp	10-28-92	G-S	5,000	N	F	10-05-92	10-31-92
ST93-404	Williston Basin Inter. P/L Co	Hiland Partners	10-28-92	G-S	76,350	N	I	10-13-92	05-31-93
ST93-405	Delhi Gas Pipeline Corp	Arkla Energy Resources	10-28-92	C	375,000	N	I	10-01-92	Indef.
ST93-406	Delhi Gas Pipeline Corp	Panhandle Eastern Gas Pipeline Co.	10-28-92	C	375,000	N	I	10-01-92	Indef.
ST93-407	Delhi Gas Pipeline Corp	United Gas Pipeline Co	10-28-92	C	3,000	N	I	10-01-92	Indef.
ST93-408	Arkla Energy Resources	El Dorado Chemical Co	10-28-92	G-S	1,500	N	I	04-01-92	Indef.
ST93-409	Arkla Energy Resources	Ledco, Inc	10-28-92	G-S	75,000	N	I	09-01-92	Indef.
ST93-410	Arkla Energy Resources	Excel Gas Marketing Inc	10-28-92	G-S	150,000	N	I	09-22-92	Indef.
ST93-411	Panhandle Eastern Pipe Line Co.	Citizens Gas Fuel Co	10-28-92	G-S	5,247	N	I	10-01-92	Indef.
ST93-412	Arkla Energy Resources	Arkla Exploration Co	10-28-92	G-S	45,000	Y	I	09-01-92	Indef.
ST93-413	Panhandle Eastern Pipe Line Co.	Brooklyn Interstate Nat. Gas Corp.	10-28-92	G-S	30,000	N	I	10-01-92	Indef.
ST93-414	Panhandle Eastern Pipe Line Co.	Access Energy Corp	10-28-92	G-S	7,775	N	I	10-01-92	Indef.
ST93-415	Panhandle Eastern Pipe Line Co.	Premier Gas Co	10-28-92	G-S	50,000	N	I	10-01-92	Indef.
ST93-416	Panhandle Eastern Pipe Line Co.	Ohio Gas Co	10-28-92	B	1,500	N	I	10-01-92	Indef.
ST93-417	Delhi Gas Pipeline Corp	Northern Natural Gas Co	10-28-92	C	375,000	N	I	10-01-92	Indef.
ST93-418	Delhi Gas Pipeline Corp	Natural Gas P/L Co. of America.	10-28-92	C	375,000	N	I	10-01-92	Indef.
ST93-419	Channel Industries Gas Co	Transcontinental Gas P/L Corp	10-29-92	C	75,000	N	I	10-15-92	Indef.
ST93-420	Tennessee Gas Pipeline Co	Kc's Energy Marketing, Inc	10-29-92	G-S	6,000	N	F	10-01-92	Indef.
ST93-421	Tennessee Gas Pipeline Co	Trans Louisiana Gas Co., Inc	10-29-92	G-S	450	N	F	09-30-92	Indef.
ST93-422	Tennessee Gas Pipeline Co	Berkshire Gas Co	10-29-92	G-S	7,222	N	F	10-01-92	Indef.
ST93-423	Transtexas Pipeline	Meridian Oil Storage, Inc	10-29-92	C	20,000	N	F	09-29-92	Indef.
ST93-424	Alabama-Tennessee Nat. Gas Co.	North Alabama Gas District	10-29-92	B	2,407	A	F	07-01-92	11-01-00
ST93-425	Alabama-Tennessee Nat. Gas Co.	City of Tuscumbia (Water & Gas).	10-29-92	B	1,500	A	F	07-01-92	11-01-93
ST93-426	Transcontinental Gas P/L Corp	City of Richmond	10-29-92	B	180,000	A	I	07-13-91	Indef.
ST93-427	Alabama-Tennessee Nat. Gas Co.	City of Decatur Gas Dept	10-29-92	B	5,400	A	F	07-01-92	11-01-93
ST93-428	Arkla Energy Resources	Universal Oil Products	10-29-92	G-S	4,500	A	F	08-01-92	Indef.
ST93-429	Arkla Energy Resources	Arkla Energy Marketing Co	10-29-92	G-S	1,500	A	F	09-01-92	Indef.
ST93-430	Colorado Interstate Gas Co	Western Gas Resources, Inc	10-30-92	G-S	1,500	N	I	10-01-92	08-31-93
ST93-431	ANR Pipeline Co	Northern Illinois Gas Co	10-30-92	B	100,000	N	I	10-10-92	Indef.
ST93-432	ANR Pipeline Co	Louisiana Resources Co	10-30-92	B	100,000	N	I	10-08-92	Indef.
ST93-433	ANR Pipeline Co	Tejas Hydrocarbons Co	10-30-92	B	100,000	N	I	10-10-92	Indef.
ST93-434	ANR Pipeline Co	Wisconsin Public Service Corp	10-30-92	B	250,000	N	I	10-01-92	Indef.
ST93-435	Iroquis Gas Transmission System.	Continental Energy Marketing Ltd.	10-30-92	G-S	75,000	N	I	10-03-92	10-31-92
ST93-436	Valero Transmission, L.P	Natural Gas P/L Co. of America.	10-30-92	C	50,375	N	I	10-01-92	Indef.
ST93-437	Transcontinental Gas P/L Corp	Maplesville, Water & Gas Board.	10-30-92	B	4,800	A	I	09-02-87	Indef.
ST93-438	Transcontinental Gas P/L Corp	City of Lexington	10-30-92	B	50,000	N	I	09-14-90	Indef.
ST93-439	Transcontintenal Gas P/L Corp	Commonwealth Gas Services Co.	10-30-92	B	300,000	A	I	07-13-91	Indef.
ST93-440	Orange & Rockland Utilities Inc	Columbia Gas Transmission Corp.	10-30-92	G-LS	15,000	N	I	10-10-92	10-07-93
ST93-441	Sonat Intrastate-Alabama Inc	Tennessee Gas Pipeline Co	10-30-92	C	5,000	N	I	10-01-92	Indef.
ST93-442	Transok, Inc	Arkla Energy Resources	10-30-92	C	100,000	N	I	10-01-92	Indef.
ST93-443	Transok, Inc	Black Marlin Pipeline Co	10-30-92	C	100,000	N	I	10-06-92	Indef.
ST93-444	Transok, Inc	Black Marline Pipeline Co	10-30-92	C	20,000	N	I	10-01-92	Indef.
ST93-445	Transok, Inc	Arkla Energy Resources	10-30-92	C	100,000	N	I	10-01-92	Indef.
ST93-446	Transok, Inc	Arkla Energy Resources	10-30-92	C	50,000	N	I	10-01-92	Indef.
ST93-447	Equitrans, Inc	Phoenix Diversified Ventures, Inc.	10-30-92	G-S	10,121	N	I	10-01-92	Indef.
ST93-448	Channel Industries Gas Co	Florida Gas Transmission Co	10-30-92	C	45,000	N	I	10-03-92	Indef.
ST93-449	Kern River Gas Transmission Co.	Pacific Gas and Electric Co	10-30-92	G-S	200,000	N	I	10-04-92	Indef.
ST93-450	Tennessee Gas Pipeline Co	Kentucky-Ohio Gas Acquisition Group.	10-30-92	G-S	1,500	N	I	10-01-92	Indef.
ST93-451	Tennessee Gas Pipeline Co	Xenergy, Inc	10-30-92	G-S	7,500	N	I	10-23-92	Idenf.
ST93-452	Houston Pipe line Co	United Gas Pipe Line Co	10-30-92	C	100,000	N	I	08-28-92	Indef.
ST93-453	Houston Pipe Line Co	Trunkline Gas Co	10-30-92	C	100,000	N	I	08-30-92	Indef
ST93-454	Transwestern Pipeline Co	Sioux Pointe, Inc	10-30-92	G-S	10,000	N	I	10-03-92	Indef.
ST93-455	Transwestern Pipeline Co	NGC Transportation, Inc	10-30-92	G-S	400,000	N	I	10-24-92	Indef.
ST93-456	FRM, Inc	Transcontinental Gas P/L Corp	10-30-92	C	10,000	N	I	10-02-92	09-30-93

Docket No.[1]	Transporter/Seller	Recipient	Date filed	Part 284 subpart	Estimated maximum daily quantity[2]	Affiliation Y/A/N[3]	Rate schedule	Date commenced	Projected termination date
ST93–457	Columbia Gas Transmission Corp.	J.M.L. Oil and Gas	10–30–92	G–S	1,610	N	F	10–01–92	Indef.
ST93–458	Columbia Gas Transmission Corp.	Transfuel Marketing Co	10–30–92	G–S	10,000	N	F	10–01–92	Indef.
ST93–459	Columbia Gas Transmission Corp.	TeJas Power Corp	10–30–92	G–S	100,000	A	I	10–16–92	Indef.
ST93–460	Columbia Gas Transmission Corp.	Columbia Gas Development Corp.	10–30–92	G–S	3,250	A	F	10–01–92	04–30–93
ST93–461	Columbia Gulf Transmission Co.	Amoco Production Co	10–30–92	G–S	100,000	N	I	10–16–92	Indef.
ST93–462	Williams Natural Gas Co	Texaco Gas Marketing, Inc	10–30–92	G–S	5,000	N	I	10–02–92	Indef.
ST93–463	Williams Natural Gas Co	DNR Oil & Gas, Inc	10–30–92	G–S	100	N	I	10–01–92	Indef.
ST93–464	Williston Basin Inter. P/L Co	Prairielands Energy Marketing, Inc.	10–30–92	G–S	124,000	A	I	10–01–92	09–30–94
ST93–465	Williston Basin Inter. P/L Co	Retex Gathering Co., Inc	10–30–92	G–S	32,012	N	I	10–01–92	09–30–94
ST93–466	Williston Basin Inter. P/L Co-	Wyoming Gas Co	10–30–92	B	1,920	N	I	10–01–92	09–30–93
ST93–467	Williston Basin Inter. P/L Co	Texaco Gas Marketing, Inc	10–30–92	G–S	56,100	N	I	10–01–92	09–30–94
ST93–468	Williston Basin, Inter. P/L Co	KN Gas Marketing, Inc	10–30–92	G–S	120,000	N	I	09–30–92	12–31–92
ST93–469	Arkansas Western Gas Co.	Texas Eastern Transmission Co.	10–30–92	G–LT	25,000	N	I	10–01–92	Indef.
ST93–470	Arkansas Western Gas Co	Natural Gas P/L Co. of America.	10–30–92	G–LT	25,000	N	I	10–01–92	Indef.
ST93–471	Arkansas Western Gas Co	Mississippi River Transmission Co.	10–30–92	G–LT	25,000	N	I	10–01–92	Indef.
ST93–472	Arkansas Western Gas Co	Natural Gas P/L Co. of America.	10–30–92	G–LT	12,000	N	I	10–01–92	Indef.
ST93–473	Arkansas Western Gas Co	Arkla Energy Resources	10–30–92	G–LT	12,000	N	I	10–01–92	Indef.
ST93–474	Arkansas Western Gas Co	Natural Gas P/L Co. of America.	10–30–92	G–LT	25,000	N	I	10–01–92	Indef.
ST93–475	Arkansas Western Gas Co	Mississippi River Transmission Co.	10–30–92	G–LT	12,000	N	I	10–01–92	Indef.
ST93–476	Arkansas Western Gas Co	Arkla Energy Resources	10–30–92	G–LT	2,000	N	I	10–01–92	Indef.

[1]Notice of Transactions does not constitute a determination that filings comply with Commission regulations in accordance with order No. 436 (final rule and notice requesting supplemental comments, 50 FR 42,372, 10/10/85).
[2]Estimated maximum daily volumes includes volumes reported by the filing company in MMBTU, MCF and DT.
[3]Affiliation of Reporting Company to entities involved in the transaction. A "Y" indicates affiliation, an "A" indicates marketing affiliation, and a "N" indicates no affiliation.

[Docket No. PL93–1–000]

Post-Employment Benefits Other Than Pensions, Statement of Policy

Issued December 17, 1992.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Statement of Commission Policy.

SUMMARY: This Statement of Policy addresses the Commission's general policy regarding the recovery through rates of the cost of post-employment benefits other than pensions of employees of natural gas companies and public utilities subject to the Commission's jurisdiction, as well as certain accounting issues related thereto. The Statement is premised upon the Statement of Financial Accounting Standards No. 106, Employers Accounting for Post-Retirement Benefits Other Than Pensions (SFAS 106).

The Commission's policy shall be to recognize, as a component of jurisdictional cost-based rates of natural gas pipeline companies and public utilities under its jurisdiction, and oil pipelines should they elect to comply with this statement, allowances for prudently incurred costs of such benefits of company employees when determined on an accrual basis that are consistent with the accounting principles set forth in SFAS 106 provided the following conditions are met: (1) The company must agree to make cash deposits to an irrevocable external trust fund equal to the annual test period allowance for the cost of such benefits; and (2) the company must maximize the use of income tax deductions for contributions to the trust fund. If tax deductions are not available for some portion of currently funded amounts, deferred income tax accounting must be followed for the tax effects of such transactions.

The company must file within three years of its adoption of SFAS 106 accounting a general rate change and seek inclusion of these costs in its rate levels. The company may defer the jurisdictional portion of the difference between the costs determined pursuant to accounting principles previously followed and SFAS 106 accruals from the time it adopts SFAS 106 until the company files such general rate case and places such rates into effect. The regulatory asset (or liability) thus created is to be amortized over a period not to exceed twenty years beyond the SFAS 106 adoption date. Amortization of the regulatory asset (or liability) will be eligible for recovery in future rates.

EFFECTIVE DATE: This order is effective December 17, 1992.

FOR FURTHER INFORMATION CONTACT: Harris S. Wood, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–0696.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS) an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this order will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the

Commission's contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler, Jerry J. Langdon and Branko Terzic.

The Federal Energy Regulatory Commission (Commission) announces a general policy regarding the recovery through rates of the cost of post-employment benefits (other than pensions) (PBOPs)[1] of employees of natural gas pipeline companies and public utilities subject to its jurisdiction, as well as certain accounting issues related thereto. This Statement of Policy is premised upon the Statement of Financial Accounting Standards No. 106, Employers' Accounting for Post-retirement Benefits Other Than Pensions (SFAS 106). The term "PBOPs" is intended to encompass arrangements whereby a jurisdictional company promises to exchange future post-retirement benefits other than pensions for employees' current services.

I. Background

In December 1990 the Financial Accounting Standards Board (FASB)[2] issued SFAS 106 which requires that, for fiscal years beginning after December 15, 1992, employers reflect in current expense an accrual for post-retirement benefits other than pensions during the working lives of covered employees. That Statement essentially finds that PBOP plans are deferred compensation arrangements whereby an employer promises to exchange future benefits for employees' current service and that their cost should be recognized over the employees' service periods for financial accounting and reporting purposes. The specifics of the accounting standards for current cost recognition of the benefits and the transition from the previous accounting are set forth in SFAS 106 and are not restated here. However, for regulated industries, SFAS 106 must be read in conjunction with Statement of Financial Accounting Standards No. 71, Accounting for the Effects of Certain Types of Regulation (SFAS 71). SFAS 71 recognizes that actions of rate regulators have an economic effect on regulated enterprises and requires accounting that may be different than that required to be followed by a non-regulated enterprise if certain criteria are met.

On October 16, 1992, the Interstate Natural Gas Association of America (INGAA) filed a petition for issuance of a policy statement addressing the appropriate rate and accounting treatment of PBOPs. INGAA maintained in its petition that the change in accounting required by SFAS 106 will result in a reduction in income and equity for natural gas pipelines unless the Commission acts expeditiously to remove regulatory uncertainty regarding rate treatment of PBOPs and to allow regulated entities to recover PBOP accruals in rates on a current basis.

On October 21, 1992, the Commission issued a Request for Public Comments generally on the INGAA petition. Public comments were requested by November 12, 1992, and 77 comments were received.[3] The Commission has reviewed those comments and is issuing this policy statement to address the concerns raised by the commenters.

II. The Policy

It shall be the policy of the Commission to recognize, as a component of jurisdictional cost-based rates of natural gas pipeline companies and public utilities under its jurisdiction, and oil pipelines should they elect to comply with this statement, allowances for prudently incurred costs of PBOPs of company employees when determined on an accrual basis (and supported by independent actuarial studies) that are consistent with the accounting principles set forth in SFAS 106 provided that the following conditions are met:

(1) The company must agree to make cash deposits to an irrovocable external trust fund,[4] no less frequently than quarterly, in amounts that are proportional and, on an annual basis equal, to the annual test period allowance for PBOPs. The trust must provide that any disbursements made from the trust are limited to payments for the benefit of employees pursuant to the company's postretirement plans, payments for expenses of the trust, and refunds to customers pursuant to a Commission approved refund plan in the event the funds are not to be paid to employees. The trustee must be independent of the company and authorized to make only those investments which are consistent with sound investment policies for funds of this nature.

(2) The company must agree, when it is consistent with good business practices to do so, to maximize the use of income tax deductions for contributions to funds of this nature. If tax deductions are not available for some portion of currently funded amounts, deferred income tax accounting must be followed for the tax effects of such transactions.

The jurisdictional company must file within three years of its adoption of SFAS 106 accounting a general rate change under section 4 of the Natural Gas Act or Section 205 of the Federal Power Act (or in the case of oil pipeline companies which elect to do so, section 6 of the Interstate Commerce Act),[5] as appropriate, and seek inclusion of these costs in its rate levels, in order to obtain rate recovery of PBOPs on an accrual basis. The company may defer the jurisdictional portion of the difference between PBOPs determined pursuant to accounting principles previously followed and SFAS 106 accruals from the time it adopts SFAS 106 unitl the company files such general rate case which includes costs related to SFAS 106 and places such rates into effect. The regulatory asset (or liability) thus created and attributable to its jurisdicational cost-based rates is to be amortized over a period to be determined in the rate proceeding, but in no event to exceed twenty years beyond the SFAS 106 adoption date. Amortization of the regulatory asset (or liability) will be eligible for recovery in future rates.

The purpose of this policy statement is to provide guidance for the efficient disposition of pending or future cases which include PBOPs as a component of

[1] In the Commission's October 21, 1992 Request for Comments in this proceeding, the acronym "OPEB" was used to denote these costs. Contemporaneously with this Statement of Policy, the Commission is issuing an order in Docket No. ER91-565-000, *New England Power Company*. That order refers to these same costs as post-retirement benefits other than pensions, or "PBOPs." For consistency, the acronym "PBOP" will be used in this Statement instead of "OPEB."

[2] Since 1973, the FASB has been the designated organization in the private sector for establishing standards of financial accounting and reporting. The mission of the FASB, which is funded by the accounting profession and industry, is to establish and improve standards of financial accounting and reporting for the guidance and education of the public, including issuers, auditors, and users of financial information. These standards are, in effect, rules governing the preparation of financial reports. They are officially recognized as authoritative by the Securities and Exchange Commission (Accounting Series Release No. 150) and the American Institute of Certified Public Accountants (AICPA) (See Rule 203 and appendix A of the AICPA's Code of Professional Conduct, as amended May 20, 1991).

[3] See the appendix for a list of comments received.

[4] An "external trust fund," or "external funding," used herein means a fund under the direction of a trustee independent of and external to the company. Contrast this with establishing an internal reserve account, or "internal funding."

[5] Section 6 of the Interstate Commerce Act, 49 App. U.S.C. 6(3) (1988). Rate authority over oil pipelines was transferred to the Department of Energy from the Interstate Commerce Commission and further transferred to this Commission pursuant to the Department of Energy Organization Act, 42 U.S.C. 7155, 7172(b) (1988).

the cost of service and to provide a statement of the Commission's intent to permit recovery in future rates of PBOP costs appropriately deferred. The Commission is mindful that a general policy statement is an articulation of the Commission's intention, which will be followed unless particular circumstances demonstrate the policy to be inappropriate. Where, as here, the Commission has adopted a general statement of Commission policy, both the underlying validity of the policy and its application to particular facts may be challenged and are subject to further consideration in individual cases.

III. Discussion

A. General Principles

1. Ratemaking

It is self-evident that where a jurisdictional company's rates are to be judged just and reasonable based upon its cost of providing service, the Commission must prescribe the accounting principles it will use to define and measure the cost to track ratemaking. One of the primary purposes of the Commission's Uniform Systems of Accounts is to assist in this regard. When an authoritative body prescribes changes in accounting principles (or new principles come into being when none existed before) the Commission may examine those principles to see if they are compatible for ratemaking purposes as well. The Commission has examined SFAS 106 in this regard and finds the following:

(a) PBOPs are a form of deferred compensation to employees for the services that they provide during their working years. Therefore, the costs of providing these benefits are properly included in the cost of service during the period that the benefits are earned.

(b) Measurement of PBOPs for a given rate test period is a process of allocating accrued costs between periods in a rational manner so that each period bears its equitable portion of such costs. SFAS 106 provides a reasonable convention for measurements of accrued costs including the transitional treatment of prior service costs.

(c) Uniform principles of cost measurements between similarly situated regulated companies and between time periods are beneficial for carrying out the Commission's regulatory programs.

(d) Ratepayers can be adequately protected from overly compensating a company for PBOPs by the imposition of a requirement for placing amounts collected for such purposes in an irrevocable trust.

(e) If there are special circumstances for a specific company which dictate that PBOPs should be recovered in rates through use of a different method, a case-specific review will be permitted.

2. Commission Accounting Requirements

The Commission requires in its ratemaking and other regulatory activities that financial information be obtained from statements that are prepared in accordance with the requirements of the Commission's Uniform System of Accounts. The accounting principles embodied in the Uniform System are, in the main, consistent with generally accepted accounting principles (GAAP)[6] that apply to non-regulated enterprises. Any differences are due either to the Commission's needs for financial measurements to be accomplished in a specific manner to enable it to meet its regulatory responsibilities or are necessary, in the view of the Commission, to permit recognition of the economic effects that regulation itself imposes on the enterprise.[7]

The instances where the Commission has required the adoption of accounting principles that are outside of GAAP are rare. There may be occasions, however, where a regulatory need overrides the potential harm that may result from having a regulated enterprise present to the public two different financial statements both of which purport to be comprehensive financial statements that report the results of operations. However, by reason of the policy statement that the Commission is issuing today, the Commission's prescribed accounting and ratemaking treatment of PBOPs does not, in the Commission's view, create such a situation.

In the event of special circumstances where the Commission finds it appropriate to use a different method of allocating PBOPs for rate purposes than required by SFAS 106 for accounting purposes, the Commission will require natural gas companies and public utilities subject to its regulation to recognize a regulatory-created asset or liability for the prudently incurred dollar differences between the two methods. Over the life-cycle of a company, the cost of PBOPs is unchanged by the method of accounting. The differences between the cost reported for a particular period within that life-cycle is due only to allocation methods[8] and therefore the cost deferrals will be eligible for rate recovery in future periods.

3. Funding Requirements

The Commission will require that an irrevocable trust be established to insure that the amounts that the customers are paying for PBOPs will, in fact, be utilized for such purpose, or in the event that they are not, that customers obtain refunds of the funds accrued in the trust account, including any earnings thereon, for the excess amounts paid. The Commission believes that such protection is necessary for several reasons.

There may be long periods between the time that rates reflect the cost of PBOPs and the time that payments are made to employees. During such periods many events could occur that would affect the ultimate payments or the amounts required to make such payments. For instance, there could be major changes in a company's post-retirement plans due to the advent of new governmental programs or for other reasons. Also, there could be significant changes from what was anticipated in the factors that affect annual accruals, such as inflation rates and investment earnings, thereby enabling settlement of post-retirement obligations through

[6] The phrase "generally accepted accounting principles" is a technical accounting term that encompasses the conventions, rules, and procedures necessary to define accepted accounting practice at a particular time. It includes not only broad guidelines of general application, but also detailed practices and procedures. Those conventions, rules, and procedures provide a standard by which to measure financial presentations. Statement on Auditing Standards No. 69, a pronouncement of the Auditing Standards Board, the senior technical body of the American Institute of Certified Public Accountants, designates FASB Statements as constituting the highest level in the GAAP hierarchy.

[7] There are basically three types of differences that may occur between GAAP applicable to enterprises in general and Commission accounting requirements. Some of these differences potentially may cause a conflict in financial reporting and some will not. One type relates to optional accounting. GAAP may permit optional accounting for certain types of transactions but for regulatory purposes, the Commission may require a uniform method for all jurisdictional companies (or a more limited number of options). Another type of difference pertains to the definition of cost. Under the Commission's regulatory scheme, return on equity captial is a component of the costofservice and in certain instances the Commission will require such cost to be deferred for later recovery in rates. Equity return is not a cost under GAAP. Further, SFAS 71 specifically restricts allowable deferrals for regulated enterprises to "incurred cost" which excludes equity return. A third type of difference is where a valid regulatory purpose is served by requiring that a particular type of cost is allocated to different time periods for ratemaking purposes than under GAAP.

[8] The ratepayer's cumulative cost in nominal dollar terms through use of different allocation methods may not be the same however, but this is due to factors relating to cash flows, time values of monies and availability of investment earnings, and not to total life-cycle cost. The amount that will ultimately be paid to employees is a finite sum.

alternative means and to realize a gain on plan assets after settlement.

FASB statements permit in certain instances gains realized on settlements and curtailments of post-retirement plans to be taken to income. Recognition of income by the regulated company without a concurrent reduction in rates would not be fair to ratepayers, particularly if any shortfalls in fund assets are to be made up through increased future rates. That would be the effect of adopting the accounting principles of SFAS 106 for ratemaking purposes. A mandatory requirement to establish an irrevocable trust will prevent the company from realizing income not intended to be earned when the rates were originally established by the Commission. The Commission recognizes that the earning rate for external funding may be lower than the effective earning rate that could be realized from internal funds. However, the Commission believes that fund security is more important than earning rates in this instance and will therefore require external funding.

4. Income Taxes

As a general statement, companies can expect to realize tax deductions for pension plans when they make contributions to qualified funds.[9] Therefore, ratepayers receive the benefit of the tax deductions at the time that they pay for service. This may not always be the case with PBOPs. There are some tax effective vehicles[10] available as funding arrangements for PBOPs, but they may not be sufficient to obtain current tax deductions equal to the total required contributions to the trust when the contributions are determined on an accrual basis. The tax deductions in such cases will not be allowed until a later period, perhaps until the payments are made to retired employees. In such instance, companies should follow deferred tax accounting for the portion that is not tax advantaged. The resulting accumulated deferred tax balance will be eligible for inclusion in the jurisdictional rate base of the company until such time as the timing difference reverses.

B. Issues Raised in Comments Received

Persons representing all segments of the natural gas, electric and oil pipeline industries; state commissions and public power authorities; consumers and users of oil, electricity and gas; and public accounting firms and rate consultants responded to the Commission's Request for Comments in this proceeding. The Commission has considered these comments and discusses the major issues raised below.

1. Applicability to Oil Pipelines

The Association of Oil Pipelines has requested that any statement of general policy adopted by the Commission respecting SFAS 106 costs exclude oil pipelines from its coverage. The Commission is mindful of the differences between most oil pipelines and natural gas pipelines under its jurisdiction. While, as contemplated by this statement of policy, rate recovery will be limited only to those companies which file a general rate increase applicable to cost-based rates (absent a special exception being granted), and then only to the extent that such company seeks to include such costs in rates, the Commission believes that the differences between oil pipeline companies and other regulated entities justify a departure from the Commission's general policy. Therefore, recovery of PBOP costs by oil pipelines will be considered on a case-by-case basis.[11] Of course, to the extent that oil pipelines desire to comport with the policy enunciated here, they may do so.

2. Accrual or Pay-As-You-Go Rate Treatment

Some commenters[12] state that a change in the method of accounting for PBOPs does not require or justify a change in the rate treatment of such expense. They argue that FASB recognizes in paragraph 364 of SFAS 106 that, pursuant to SFAS 71, regulators may choose not to change the treatment of post-retirement benefits for ratemaking purposes. Paragraph 364 would then require the utility to adopt an accounting treatment consistent with the regulatory treatment. They assert that the Commission could continue to use the pay-as-you-go rate method, and that the regulated company would record a regulatory asset for the difference between the accounting expense and the ratemaking allowance. Creation of the regulatory asset would, they argue, assure eventual recovery in rates. They state that, under this scenario, continuation of the pay-as-you-go policy would have no adverse effect on earnings and equity of the regulated companies.

This Commission chooses to adopt the accural method in this Statement of Policy because the accrual method better matches cost recovery in rates with the cost of providing service than does the pay-as-you-go method. The fact that all post-retirement benefits are earned by employees during their working careers, not after they retire, is undisputed. Therefore, the Commission will adopt as its policy the accrual method for rate purposes.

3. Establishment of a Funding Mechanism

Most, if not all, jurisdictional companies urged that the Commission issue a policy statement similar to that requested by INGAA, with some variations, must notably in the funding of PBOP liability. Those entities opposed to the issuance of the policy statement nonetheless asked that any funding of such liabilities be accomplished through the vehicle of an external irrevocable trust.[13] Many public utilities and some gas pipelines sought no restrictions on the manner in which funding would occur, citing alleged cost benefits from flexibility in the funding of the liabilities.

The Commission is persuaded that regulated entities should be required to set up an irrevocable trust into which the amounts included in rates attributable to PBOPs will be placed for the benefit of employees who retire in the future.[14]

Disbursements from the trust must be limited to payments for the benefit of employees pursuant to the company's post-retirement plans, payments for expenses of the trust and refunds to customers pursuant to a Commission-approved refund plan in the event the funds are not to be paid to employees.[15] In this way, customers can be assured that the element of rates which are designed for PBOP costs are in fact utilized for that purpose. Further, the Commission requires that the trustee be independent of the company and authorized to make only those investments which are consistent with sound investment policies for funds of this nature.[16]

[9] *I.e.*, qualified for special tax treatment under the Internal Revenue Code.

[10] *I.e.*, tax deductible funding arrangements.

[11] This exclusion of oil pipelines from this policy statement applies only to rate recovery as articulated herein. Oil pipelines must still comply, as appropriate, with SFAS 106.

[12] Joint Consumer Advocates, the Industrial Groups, Electricity Consumer Resource Council.

[13] See fn. 4, *supra*.

[14] Fina Natural Gas Company alleges that the accrual method of treating PBOP expense for rate purposes places utilities in an excess cash flow position. Since the Commission is requiring companies to contribute the amount included in rates for PBOP to an external trust, there will be no excess cash flow.

[15] There are costs involved in start-up as well as maintaining irrevocable trusts. There are no data in this record upon which the Commission can base a determination that such costs are excessive. If the company believes that such costs are prohibitively high, it may request a waiver of this external funding requirement.

[16] Some regulated entities already have converted to the accrual method and have used

4. Limited Rate Filings

INGAA requested that the Commission specifically allow a special Natural Gas Act section 4 rate filing limited to reflect the SFAS 106 costs in rates coincident with the company's adoption of SFAS 106. Most gas pipeline companies supported this request, but some electric utilities and customer groups opposed. Opponents argue that all parties and the Commission should be allowed to examine the companies' cost of service for offsetting decreases in costs which may exist. Upon consideration, the Commission believes that it is not necessary to prescribe in this policy statement a rate change methodology based solely on this item. The Commission believes its action in allowing deferrals will permit companies to file general rate increases for rate recovery of PBOPs without incurring financial penalties. Of course, if the item is of a magnitude to require a change in rates, a company may request consideration of a stand-alone PBOP rate filing and such a request will be considered on a case-by-case basis. Moreover, the Commission anticipates that due to Order No. 636 pipelines will be filing new rate cases or will have ongoing rate cases where rate issues that flow from restructuring are being considered. The Commission will consolidate any stand-alone rate filing with these ongoing cases.

5. Transition Period Costs

Several commenters [17] in opposition to the issuance of a policy statement have claimed that to allow regulated companies to recover costs for PBOPs on an accrual basis attributable to benefits already earned but not paid would violate the "filed rate" doctrine and constitute retroactive ratemaking. The Commission rejects this argument. Under the historical pay-as-you-go, or cash, method, the only PBOP costs recovered in rates are costs for retired employees and their beneficiaries when actually paid. Because use of the cash method for ratemaking only permits recovery of PBOP costs as paid, the PBOB costs related to benefits which had been earned by employees but not yet expensed were deferred. Those PBOPs earned in a prior period which were not immediately recovered in rates, because there had been no recognized expense under GAAP or the Commission's accounting or ratemaking requirements, were deferred under the legitimate expectation that such costs would be allowed in rates in future periods. Companies are now required to recognize this expense during the working life of employees, well in advance of the payment of PBOPs. Recovery of prior period PBOP costs under the cash method or under the accrual method does not violate the filed rate doctrine. There simply is a different timing of recovery under the different methods.

6. Tax Normalization vs. Immediate Recovery

A number of commenters have argued that tax normalization of non-deductible amounts funded for PBOPs will result in a cash drain to regulated companies in that the companies would need to use internally generated funds to finance the increased income tax cost. Others argue that the Commission should allow only income tax normalization.

Under the Internal Revenue Code, regulated companies may be able to deduct only a portion of the amount which they are required to fund for PBOBs. Regulated companies will have taxable income from the collection of PBOP accruals in their rates for that portion funded into the trust that is not deductible. There are two alternatives for dealing with this resulting tax liability. The first alternative is to provide a specific tax allowance in the company's cost of service to reimburse the company for the income tax expense. The second alternative is to require companies to use tax normalization, which would result in the income tax liability being included in rate base until a valid tax deduction is available.

PBOP accruals reflected in rates will be constant between rate cases; however, the taxable portion of the PBOP accruals will change from year to year depending on the level which can be tax effectively funded. Because of the constant change it is difficult to determine the appropriate level of income tax allowance to include in cost of service if the Commission employed the first alternative. With the second alternative, however, whatever income tax effect is incurred by the company is accumulated and included in rate base. Further, income tax effects of PBOP accruals included in rates are due to a book-tax timing difference. All similar timing differences are normalized as required by Commission Order No. 144, FERC Statutes and Regulations, ¶ 30,254 (1981). The Commission is not persuaded that it should deviate from this policy. Therefore, regulated companies will be required to utilize the second alternative and normalize the differences related to non-deductibility of PBOP accruals funded.

7. Other Issues

Some commenters [18] have also objected to issuance of a Statement of Policy respecting the proper regulatory rate treatment of SFAS 106 requirements, claiming that there may be factual differences which would require another method of treatment of these costs. As previously stated herein, the purpose of this policy statement is to provide guidance for the efficient disposition of existing and future cases which include PBOPs as a component of cost of service and to indicate the Commission's intent to permit recovery in future rates of PBOP cost appropriately deferred. In individual cases, the application of the policy to particular facts may be challenged upon demonstration that particular circumstances dictate a different treatment.

IV. Conclusion

The Commission, in adopting this Statement of Policy, is providing for a fair method of cost recovery for regulated companies and consumers alike. Adding a measure of certainty to the ratemaking methodology is to the benefit of all. Therefore, this Statement of Policy shall be effective immediately for all natural gas pipeline companies and public utilities under the jurisdiction of this Commission for fiscal years beginning after December 15, 1992.

By the Commission, Commissioner Trabandt concurred with a separate statement attached.

Lois D. Cashell,

Secretary.

Appendix—Post-Employment Benefits Other Than Pensions

Comments Received

Alabama PSC
Allegheny Power Systems, Inc.
American Electric Power Companies
American Gas Association
American Institute of Certified Public Accountants

internal funding for a portion of PBOPs. Other regulated entities are currently funding PBOPs in compliance with slightly different requirements imposed by state commissions. Amounts collected prior to issuance of this policy statement and already "booked" will be subject to review by the Commission to determine whether additional conditions should be placed on the existing funding mechanisms before recovery in rates will be allowed. Where it can be demonstrated that it will not be cost effective and that it will cause an undue administrative burden to create a separate funding mechanism, specific waivers of external funding as required by this policy statement will be considered on a case-by-case basis.

[17] Joint Consumer Advocates, National Association of Gas Consumers, Iowa Consumer Advocate, Old Dominion Electric Cooperative.

[18] Blue Ridge Power Agency, *et al.*, Electric Consumers.

American Public Power Association
ANR Pipeline Company, et al.
Arizona Public Service Company
Arthur Anderson
Association of Oil Pipelines
Blue Ridge Pwr. Agcy., City of Danville, VA
Central Power & Light Company
Central and South West Service, Inc., et al.
CNG Transmission Corporation
Commonwealth Edison Company
Columbia Gas Transmission Company, et al.
Consumers Power Company, et al.
Coopers & Lybrand
Deloitte & Touche
Delmarva Power & Light Company
Detroit Edison Company
Duke Power Company
Edison Electric Institute
Electric Consumers (consisting of Electric Co-operatives and Municipal Utilities)
Electricity Consumers Resource Council
El Paso Electric Company, et al.
El Paso Natural Gas Company
ENRON Interstate Pipeline Companies
Entergy Corp.
Fina Natural Gas Company
Florida Municipal Power Agency, et al.
Florida Power & Light Company
Great Lakes Gas Transmission, LP
Gulf States Utilities Company
Idaho Power Company
Indiana Gas Company, et al.
The Industrial Groups (Process Gas Consumers Group, American Iron & Steel Inst., Georgia Industrial Group)
Interstate Natural Gas Association of America
Iowa Office of Consumer Advocate
Joint Consumer Advocates (numerous state consumer agencies)
Kentucky Utilities Company
K N Energy, Inc.
KPMG Peat Marwick
Minnesota Power & Light Company
National Association of Gas Consumers
National Fuel Gas Company
Natural Gas Pipeline Company of America
Natural Gas Supply Association
New England Power Company
New York PSC
New York Public Power Authority
Northern Illinois Gas Company
Northern States Power Company
Northwest Pipeline Corporation
Ohio Edison Company
Old Dominion Electric Cooperative
Pacific Gas Transmission Company
Pacific Interstate Company
Panhandle Eastern Pipeline Company, et al.
Pennsylvania Power Company
Peoples Gas, Light & Coke Company, et al.
Potomac Electric Power Company
Price Waterhouse
Questar Pipeline Company
Southern California Gas Company
Southern Company Services, Inc.
Southern Natural Gas Company
Southwestern Public Service Company
Tampa Electric Company
Texas Utilities Electric Company
UtiliCorp United, Inc.
Virginia Electric & Power Company
Williams Natural Gas Company
Williston Basin Interstate Pipeline Company
Wisconsin Utilities Association, Inc.
Wisconsin Wholesale Customers
Zinder Companies, Inc.

TRABANDT, Commissioner, *concurring:*

I support the instant Statement of Policy. I concur and write separately to express a concern about any stand-alone post-employment benefits (other than pensions) (PBOPs) rate filings, as discussed at page 16 and 17 of the slip opinion. My strong preference would be that interstate natural gas pipelines seek to recover the SFAS 106 PBOP cost increases in general Section 4 rate filings, either those general rate cases now pending or those new general rate cases that otherwise inevitably will be filed as a result of the Order No. 636 restructuring process. I agree with many commenters that all parties and the Commission should be allowed to examine the company's costs of service for offsetting decreases in costs which may exist, as well as the fundamental changes in the nature and associated costs of restructured operations under Order No. 636. Consequently, I believe that the Commission should not accept stand-alone PBOP rate filings for separate processing outside for general rate cases. However, I have no objection to the appropriate consolidation of the SFAS 106 PBOP issue by amendment into a pending general rate case.

For that reason, I concur.

Charles A. Trabandt,

Commissioner.

[FR Doc. 92–31103 Filed 12–22–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–14–003]

Algonquin Gas Transmission Company; Proposed Changes in FERC Gas Tariff

December 17, 1992.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on December 11, 1992, filed proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1, as set forth in the following revised tariff sheets, to be effective May 1, 1993:

1 Rev Fifth Revised Sheet No. 20
17 Rev Sheet No. 21
17 Rev Sheet No. 22
13 Rev Sheet No. 25
17 Rev Sheet No. 26
17 Rev Sheet No. 27
17 Rev Sheet No. 28
17 Rev Sheet No. 29
15 Rev Sheet No. 41
15 Rev Sheet No. 42
Sheet Nos. 69–79
Sheet Nos. 81–90
Second Revised Sheet No. 123
Second Revised Sheet No. 125
Second Revised Sheet No. 141
Second Revised Sheet No. 142
Third Revised Sheet No. 143
Third Revised Sheet No. 144
Third Revised Sheet No. 145
Third Revised Sheet No. 146
Second Revised Sheet No. 151
Second Revised Sheet No. 152
Third Revised Sheet No. 153
Third Revised Sheet No. 154
Third Revised Sheet No. 155
Third Revised Sheet No. 156
Second Revised Sheet No. 157
Second Revised Sheet No. 161
Second Revised Sheet No. 162
Second Revised Sheet No. 163
Second Revised Sheet No. 164
Sub. Second Revised Sheet No. 166
Second Revised Sheet No. 372
Second Revised Sheet No. 392
Second Revised Sheet No. 631
Third Revised Sheet No. 632
Third Revised Sheet No. 633
Third Revised Sheet No. 634
Second Revised Sheet No. 636
Second Revised Sheet No. 637
Second Revised Sheet No. 639
Second Revised Sheet No. 639A
Sub. Original Sheet No. 639B
Second Revised Sheet No. 654
First Revised Sheet No. 655
Second Revised Sheet No. 694
Third Revised Sheet No. 695
Third Revised Sheet No. 696
Sub. First Revised Sheet No. 1100
Sub. First Revised Sheet No. 1101
Sub. First Revised Sheet No. 1102
Sub. First Revised Sheet No. 1103
Sub. First Revised Sheet No. 1104
Sub. First Revised Sheet No. 1105
Sub. First Revised Sheet No. 1106
Sub. First Revised Sheet No. 1107
Sub. First Revised Sheet No. 1108
Original Sheet No. 1109
Original Sheet No. 1110
Original Sheet No. 1111

Algonquin states that the purpose of this filing is to comply with the Commission's "Order Accepting and Suspending Certain Tariff Sheets Subject to Refund and Conditions, Establishing a Hearing, and Denying Consolidation" issued on November 27, 1992 (November 27, 1992 Order) in Docket No. RP93–14–000. As directed in part E of the November 27, 1992 Order, Algonquin has corrected the tariff sheets listed as incorrectly paginated in appendix B of the November 27, 1992 Order. In addition, as required in part F of the November 27, 1992 Order, Algonquin has updated and revised the Index of Purchasers in compliance with the Commission's regulations §§ 154.41 and 284.7.

Algonquin states that copies of this filing were mailed to all affected customers, interested state commissions, and other parties to Docket No. RP93–14–000.

Any person desiring to protest said filing should file a protest with Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 24, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–31108 Filed 12–22–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM93–2–48–001]

ANR Pipeline Company; Proposed Changes in FERC Gas Tariff

December 17, 1992.

Take notice that ANR Pipeline Company ("ANR"), on December 14, 1992 tendered for filing as part of its F.E.R.C. Gas Tariff, First Revised Volume No. 1 Substitute Original Sheet No. 78B, which ANR proposes to become effective January 1, 1993. Such tariff sheet is being submitted to amend ANR's filing of December 1, 1992 in the referenced docket. ANR proposes no changes to any of the other tariff sheets submitted at Docket No. TM93–2–48–000.

ANR states that this tariff sheet is being submitted to amend the terms and conditions under which surcharges will be collected and remitted to Gas Research Institute ("GRI"). As more fully described in its filing, the tariff sheet reflects a change in the underlying agreement between ANR and GRI for purposes of funding the 1993 GRI research and development program which agreement conforms to the Modified Funding Mechanism approved by the Commission in its Order issued August 28, 1992 at Docket No. RP92–133–000.

ANR states that all of its Volume Nos. 1, 1–A, 2 and 3 customers and interested State Commissions have been apprised of this filing via. U.S. Mail.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 24, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary,

[FR Doc. 92–31118 Filed 12–22–92; 8:45 am]

BILLING CODE 6717–01–M

Federal Energy Regulatory Commission

[Docket No. PR93–7–000]

Consumers Power Company; Petition for Rate Approval

December 17, 1992.

Take notice that on December 1, 1992, Consumers Power Company (Consumers) filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of $0.1275 per Mcf for transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Consumers is a Hinshaw pipeline subject to the jurisdiction of the Michigan Public Service Commission. By Commission order issued February 7, 1990 in Docket No. CP90–272–000, Consumers was granted a § 284.224 blanket certificate of public convenience and necessity to engage in the sale, transportation or assignment of natural gas subject to the Commission's jurisdiction under the Natural Gas Act. By Commission letter order issued June 21, 1990 in Docket No. ST90–567–000, Consumers was authorized to charge a maximum rate of $0.1314 per Mcf for section 311(a)(2) transportation.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All motions must be filed with the Secretary of the Commission on or before January 4, 1993. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–31109 Filed 12–22–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP90–95–005]

Colorado Interstate Gas Company; Compliance Filing

December 17, 1992.

Take notice that Colorado Interstate Gas Company ("CIG"), on December 11, 1992, tendered for filing a semiannual compliance filing consisting of work papers detailing accrued interest payments made by CIG to its affected customers related to the unused portion of transportation credits in the instant docket.

CIG states that copies of the filing were served upon all of the parties to this proceeding and affected state commissions as well as all of CIG's firm sales customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 24, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–31119 Filed 12–22–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM93–2–51–001]

Great Lakes Gas Transmission Limited Partnership; Proposed Changes in FERC Gas Tariff

December 17, 1992.

Take notice that Great Lakes Gas Transmission Limited Partnership ("Great Lakes") on December 14, 1992, tendered for filing the following revised tariff sheets to its FERC Gas Tariff proposed to be effective January 1, 1993:

First Revised Volume No. 1

Substitute Original Sheet No. 56–B1

Great Lakes states that Substitute Original Sheet No. 56–B1 was filed to amend section 16.4, "Remittance to GRI", to reflect the latest agreement reached between GRI and its pipeline members.

Great Lakes requested that the Commission grant any necessary waivers such that the above tariff sheets become effective January 1, 1993 to coincide with the effective date of the GRI funding unit rates approved per the

Commission's Order in Docket No. RP92–133–000.

Any person desiring to protest said filing should file a protest with the Federal Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 24, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–31120 Filed 12–22–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–35–001]

Northwest Pipeline Corporation; Proposed Change in FERC Gas Tariff

December 17, 1992.

Take notice that on December 10, 1992, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance the following tariff sheets:

Second Revised Volume No. 1

Second Revised Sheet No. 139
Third Revised Sheet No. 140
Third Revised Sheet No. 141

First Revised Volume No. 1–A

Second Revised Sheet No. 435
Second Revised Sheet No. 436

Northwest states that the purpose of this filing is to update Northwest's Supplier Settlement Payment Mechanism tariff provisions. The filing proposes to delete references to the outdated "sunset date" requirements relating to Order No. 500, *et al.* Those requirements became obsolete as a result of actions taken by the courts in *American Gas Ass'n* v. *FERC*, 888 F.2d 136,151 (D.C. Cir. 1989) (AGA–I) and the Commission in Order No. 528–A.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 24, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–31115 Filed 12–22–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–212–001]

Questar Pipeline Company; Compliance Filing

December 17, 1992.

Take notice that Questar Pipeline Company (Questar) on September 14, 1992, tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 2–A, to become effective August 29, 1992 in compliance with the Commission's Letter Order issued August 28, 1992:

Substitute First Revised Sheet No. 25
Original Sheet No. 25A
Substitute First Revised Sheet No. 28
Original Sheet No. 28A

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 24, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–31110 Filed 12–22–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–140–014]

Questar Pipeline Company; Report of Refunds

December 17, 1992.

Take notice that Questar Pipeline Company (Questar) on November 9, 1992, tendered for filing with the Federal Energy Regulatory Commission (Commission) its Refund Report made in accordance with the Commission's order issued November 3, 1992, in Docket No. RP91–140, which accepted a settlement with conditions.

Questar states that on November 6, 1992, Questar refunded $5,812,524.70 inclusive of interest calculated in accordance with 18 CFR 154.67(c), to its transportation, storage and sales customers. Questar also states that the refunds are for the period November 1, 1991, through September 30, 1992, with the exception of storage Rate Schedule FSS which includes October 1992. Service rendered after September 30, 1992, will be billed at the rates set out in the settlement.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 24, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–31114 Filed 12–22–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP90–104–021]

Texas Gas Transmission Corporation; Proposed Changes in FERC Gas Tariff

December 17, 1992.

Take notice that on December 10, 1992, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets:

FERC Gas Tariff

Original Volume No. 1

Substitute Original Sheet No. 133D

FERC Gas Tariff

First Revised Volume No. 2–A

Substitute First Revised Sheet No. 28
Substitute First Revised Sheet No. 51
Substitute Original Sheet No. 121
Substitute Original Sheet No. 123
Substitute First Revised Sheet No. 134
Substitute First Revised Sheet No. 154

Texas Gas states that the supplemental filing is making technical corrections to certain tariff sheets that were included in Texas Gas's filing to comply with the provisions outlined in the "Order Approving Contested Partial Settlement as Modified" issued November 21, 1991, the "Order on Rehearing and Clarification" issued May 21, 1992, and the "Order Granting Reconsideration" issued October 21, 1992.

Texas Gas states that copies of the filing were served upon Texas Gas's jurisdictional sales customers, all parties on the Commission's official restricted service list and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 24, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–31107 Filed 12–22–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–165–004]

Trunkline Gas Company; Proposed Changes in FERC Gas Tariff

December 17, 1992.

Take notice that Trunkline Gas Company (Trunkline) on October 22, 1992, tendered for filing the following revised tariff sheet to its FERC Gas Tariff, Original Volume No. 1:

Sub Second Revised Sheet No. 9–CX

Trunkline proposes that this revised tariff sheet become effective November 1, 1992.

Trunkline states that this revised tariff sheet is being filed in compliance with the Commission's Order dated October 7, 1992 in Docket No. RP92–165–000. Specifically, the revised tariff sheet reflects the clarification of the terms of Trunkline's termination provision under Rate Schedule PT–Firm to enable Trunkline, after an appropriate notice period, to terminate a shipper's transportation agreement for nonpayment.

Trunkline states that a copy of this filing is being served on all jurisdictional customers, applicable state regulatory agencies and parties to the above-referenced proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before December 24, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–31121 Filed 12–22–92; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of November 23 Through November 27, 1992

During the week of November 23 through November 27, 1992, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Refund Applications

Gulf Oil Corp./Pate's Gulf, 11/23/92 *RF300–16154*

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Pate's Gulf, Inc. The applicant, Cecil Pate, owned 51% of the corporate stock of Pate's Gulf, Inc. The corporation was voluntarily dissolved in 1979. The OHA has determined that in the case of a voluntary dissolved corporation, the refund should be awarded to the former stockholders according to their respective ownership interests in the corporation at the time of dissolution. Therefore, Mr. Pate was granted a refund based on his allocable share of 51% of the total 634,570 gallons. The total refund granted in the Decision was $346.

Shell Oil Co./Parkway Shell, Inc., Pici Shell, Doddtown Shell, Marco Shell, 11/24/92 *RF315–7304, RF315–7305, RF315–7306, RF315–7307*

The DOE issued a Decision and Order granting three Applications for Refund and denying one Application for Refund in the Shell Oil Company special refund proceeding. In the case of Parkway Shell, Inc., the owner, Marco Pici, stated that he sold all of the outstanding stock of the corporation in 1988. In general, the DOE has held that the purchaser of all of a corporation's stock acquires all of the assets of the corporation, including the right to a refund, unless otherwise specified in the stock purchase agreement. Because the purchase agreement pertaining to the sale was unavailable, the DOE determined that the Application for Refund filed on behalf of Parkway Shell, Inc., be denied. Conversely, ownership of Mr. Pici's other three stations, Pici Shell, Doddtown Shell, and Marco Shell, had been transferred in a sale of assets only, Consequently, the DOE granted the applicant refunds totalling $4,680, representing $3,191 principal and $1,489 interest.

Texaco Inc./United Service Center, Huffy Gas, Inc., 11/23/92 *RF321–14710, RF321–14808, RF321–19293, RF321–19294*

The DOE issued a Decision and Order concerning four Applications for Refund filed in the Texaco Inc. special refund proceeding. One applicant, Huffy Gas, Inc. included in its application a request that its refund be divided equally between it and Mid-States Petroleum, Inc., a corporation which purchased Huffy's assets at the time of Huffy's dissolution. This request was rejected because to do so would have been to abdicate the DOE's statutory responsibility to identify injured claimants and contrary to the standards used to evaluate claims when a change of ownership has occurred. Applying the standards set forth in a prior case, the DOE found that the former owner of Huffy, and not Mid-States Petroleum, was the proper recipient of an oil overcharge refund based on Huffy's petroleum product purchases during the price control period. Accordingly, in the present case, the refund was granted to Huffy Gas, Inc.

Time Oil Co./Washington, 11/23/92, *RQ334–584*

The Department of Energy issued a Decision and Order granting a request by the State of Washington to use $397,023, plus accumulated interest, in Time Oil monies to fund the Energy Matchmakers Program, a weatherization program for low-income residences.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Co./Kellam Energy, Inc. et al.	RR304–15	11/23/92
Atlantic Richfield Co./Ralph's Grocery Co.	RF304–13207	11/27/92
Atlantic Richfield Co./Ray's Arco Service Station et al.	RF304–13163	11/23/92
Beacon Oil Co./King Currie Co., Inc.	RF238–27	11/27/92
City of Brent et al	RF272–83463	11/24/92

City of Doraville et al.	RF272–86670	11/25/92
Frederick County, Maryland.	RF272–67439	11/25/92
Idaho County, Idaho	RF272–68133	.....
El Paso County, Texas.	RF272–69549	.....
Gulf Oil Corporation/Mathis Gulf Station #1 et al.	RF300–14207	11/23/92
Miami East Local School Dist. et al.	RF272–81802	11/27/92
P.W. Gillibrand Co. .	RF272–65525	11/24/92
P.W. Gillibrand Co. .	RD272–65525	.....
P.J. Keating Co.	RF272–67862	.....
P.J. Keating Co.	RD272–67862	.....
Schloss Paving Co. ..	RF272–69946	.....
Schloss Paving Co. ..	RD272–69946	.....
Rosemont College ...	RF272–83413	11/25/92
Barstow Unified School District.	RF272–83511	.....
Shelby County C–I Schools.	RF272–83517	.....
North Andover School System.	RF272–83561	.....
Shell Oil Co./Mong. Wyoming Shell et al.	RF315–327	11/25/92
Shell Oil Co./U-Serve and Save et al.	RF315–5221	11/24/92
St. Johns County et al.	RF272–85813	11/25/92
Texaco Inc./Fountain Oil Co.	RF321–16899	11/27/92
Texaco Inc./Fred's Eastside Texaco et al.	RF321–16600	11/24/92
Texaco Inc./Freeway Texaco No. 1 et al.	RF321–13607	11/24/92
Texaco Inc./Mallard Oil Co. et al.	RF321–9296	11/27/92
Texaco Inc./Robert Johnson's Texaco et al.	RF321–16214	11/25/92
Town of Normandy et al.	RF272–84303	11/25/92
Washington County et al.	RF272–86671	11/25/92

Dismissals

The following submissions were dismissed:

Name	Case No.
Barrett Mobile Home Transport	RF272–13994
Central Vermont Public Service Corp.	RF272–48038
Circle G. Petroleum	RF304–13149
Dembeck's Sparrow's Point Gulf ...	RF300–147
George Bando's Arco	RF304–3710
Teague Industries	RR300–197
Town & River Texaco	RF321–18942
Xaverian High School	RF272–75683

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: December 16, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92–31136 Filed 12–22–92; 8:45 am]

BILLING CODE 6450–01–M

Western Area Power Administration

Boulder Canyon Project; Notice of Rate Order No. WAPA–58

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of rate order—Boulder Canyon Project power rate adjustment.

SUMMARY: Notice is given of the confirmation and approval by the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) of the Department of Energy (DOE) of Rate Order No. WAPA–58 and Rate Schedule BCP–F4 placing the proposed ratesetting methodology and increased power rates for the Boulder Canyon Project (BCP) of the Western Area Power Administration (Western) into effect on an interim basis. The new ratesetting methodology will be submitted to the Federal Energy Regulatory Commission (FERC) for a 5-year approval subject to subsequent annual rate adjustments by the Administrator of Western as provided for by the ratesetting methodology. These rates, hereafter called the provisional rates, will remain in effect on an interim basis until the FERC confirms, approves, and places them in effect on a final basis or until they are superseded.

The provisional rates for BCP power are based on a composite rate of 14.56 mills per kilowatthour (mills/kWh). This composite rate consists of an energy charge of 7.28 mills/kWh and a capacity charge of $1.28 per kilowatt per month ($/kW/month).

The Deputy Secretary, U.S. DOE, approved the existing rate schedule (BCP–F3) on an interim basis, effective on July 1, 1991. FERC approved BCP–F3 on a final basis by Order dated November 10, 1992.

A comparison of existing and provisional rates follows:

COMPARISON OF EXISTING AND PROVISIONAL RATES

	Existing rate (FY 1992)	Provisional rate (FY 1993)*
Rate Schedule	BCP–F3	BCP–F4
Composite Rate (mills/kWh)	10.21	14.58

COMPARISON OF EXISTING AND PROVISIONAL RATES—Continued

	Existing rate (FY 1992)	Provisional rate (FY 1993)*
Energy Rate (mills/kWh)	5.11	7.28
Capacity Rate ($/kW/month)	$1.05	$1.28

*The ratesetting methodology is in effect from January 1, 1993, through September 30, 1997. The rates will change annually.

DATES: Rate Schedule BCP–F4 will be placed into effect on an interim basis beginning on January 1, 1993, and will be in effect until FERC confirms, approves, and places the rate schedule in effect on a final basis for a 5-year period or until superseded.

FOR FURTHER INFORMATION CONTACT:

Mr. Thomas A. Hine, Area Manager, Phoenix Area Office, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 352–2453

Ms. Deborah M. Linke, Chief, Rates and Statistics Branch, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401–3398, (303) 231–1535

Mr. Joel Bladow, Assistant Administrator for Washington Liaison, Western Area Power Administration, room 8G–061, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–001, (202) 586–5581

SUPPLEMENTARY INFORMATION: By Amendment No. 2 to Delegation Order No. 0204–108, published August 23, 1991 (56 FR 41835), the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such ratesetting methodology and rates into effect on an interim basis to the Assistant Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such ratesetting methodology and rates to FERC. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) became effective on September 18, 1985 (50 FR 37835).

These power rates are established pursuant to the DOE Organization Act (42 U.S.C. 7101 *et seq.*), the Reclamation Act of 1902 (43 U.S.C. 372 *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), the Colorado River Basin Project Act of 1968 (43 U.S.C. 1501 *et seq.*), the

Colorado River Project Act of 1965 (43 U.S.C. 620 *et seq.*), the Boulder Canyon Project Act of 1928 (43 U.S.C. 617 *et seq.*), the Boulder Canyon Project Act of 1940 (43 U.S.C. 618 *et seq.*), the Hoover Power Plant Act of 1984 (43 U.S.C. 619 *et seq.*), the General Regulations for Power Generation, Operation, Maintenance, and Replacement at the Boulder Canyon Project, Arizona/Nevada (43 CFR part 431) published in the **Federal Register** at 51 FR 23960 on July 1, 1986, and the General Regulations for the Charges for the Sale of Power from the Boulder Canyon Project, Final Rule (10 CFR part 904) published in the **Federal Register** at 51 FR 43124 on November 28, 1986, the procedures for public participation in rate adjustments for power and transmission service marketed by Western (10 CFR part 903) published in the **Federal Register** at 50 FR 37835 on September 18, 1985, and the DOE financial reporting policies, procedures, and methodology (DOE RA 6120.2 dated September 20, 1979).

The Power Repayment Spreadsheet Study (PRSS) has incorporated new methodology which is different from the power repayment study (PRS). The comparison of the methodologies is set forth in the rate order of this FERC package. The Fiscal Year 1992 Ratebase PRSS filed with FERC has changed from the PRSS in the BCP Rate Adjustment Brochure (Brochure) and the PRSS that determined the rates that were filed in a **Federal Register** notice dated June 10, 1992. These changes are also explained in the rate order of this FERC package. As a result of these changes, the provisional rates are set by the first year in the 5-year window, which is greater than an average of the 5-year window. The rates in the Brochure were set by the average of the 5-year window.

During the 110-day comment period, Western received 29 written comments. In addition, 11 speakers commented during the September 10, 1992, public comment forum. All comments and responses are addressed in the rate order.

On October 15, 1992, Overton Power District No. 5 and Valley Electric Association (Overton/Valley) filed a Motion for Preliminary Injunction and a Verified Complaint praying for a declaratory judgment against the DOE and FERC. The Motion for Preliminary Injunction was heard and denied by the Court on December 2, 1992. We anticipate that Overton/Valley will file their Motion for Summary Judgment in the near future. The Plaintiffs allege that the existing BCP rate based on Rate Order No. WAPA–49 is too high and contains components which are illegal and unreasonable, and the rate adjustment currently in progress should be delayed. By Order of November 10, 1992, FERC approved WAPA–49 on a final basis.

Western will present a vigorous defense to the allegations.

Rate Order No. WAPA–58, confirming, approving, and placing the BCP proposed ratesetting methodology and rates into effect on an interim basis, is issued, and Rate Schedule BCP–F4 will be promptly submitted to FERC for conformation and approval on a final basis.

Issued in Washington, DC, December 14, 1992.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Order Confirming, Approving, and Placing the Boulder Canyon Project Power Rates Into Effect on an Interim Basis

In the matter of: Western Area Power Administration, Rate Adjustment for Phoenix Area Office, Boulder Canyon Project.

[Rate Order No. WAPA–58]

December 14, 1992.

Pursuant to section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7152(a), the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902, 43 U.S.C. 372 *et seq.*, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), and other acts specifically applicable to the projects involved, were transferred to and vested in the Secretary of Energy (Secretary).

By Amendment No.2 to Delegation Order No. 0204–108, published August 23, 1991 (56 FR 41835), the Secretary delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of the Western Area Power Administration; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Assistant Secretary for Conservation and Renewable Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission. Existing DOE procedures for Public participation in power rate adjustments (10 CFR part 903) became effective on September 18, 1985 (50 FR 37835).

Acronyms and Definitions

As used in this rate order, the following acronyms and definitions apply:

1941 General Regulations: General Regulations for Generation and Sale of Power in Accordance with the Boulder Canyon Project Adjustment Act, May 20, 1941.

1984 Act: Hoover Power Plant Act of 1984, August 17, 1984 (43 U.S.C. 619 *et seq.*).

$/kW/month: Monthly charge for capacity (usage—$ per kilowatt per month).

Additions: A unit of property constructed or acquired which enhances or improves a project or system and which is properly allocated to power or the joint features allocated to power.

Adjustment Act: Boulder Canyon Project Adjustment Act, July 19, 1940 (43 U.S.C. 618 *et seq.*).

BCP: Boulder Canyon Project.

Bathtub curve: See definition of Replacement Study.

CRSS: Colorado River Simulation Study.

Capacity Rate: Shown in the PRSS as a $/kW/year charge. Billed on a $/kW month basis. Applied each billing period to each kW of rated output to which each contractor is entitled by contract.

Colorado River Basin Project Act: The Colorado River Basin Project Act, September 30, 1968 (43 U.S.C. 1501 *et seq.*).

Colorado River Dam Fund (CRDF): A fund established by section 2 of the Boulder Canyon Project Act of 1928 which is to be used only for the purposes specified in the Boulder Canyon Project Adjustment Act of 1940, the Colorado River Basin Project Act of 1968, and the Hoover Power Plant Act of 1984.

Composite Rate: Combination of an energy and a capacity component.

Conformed Criteria: Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects (49 FR 50582, December 28, 1984) beginning on June 1, 1987.

Cost Evaluation Period (CEP): The first 5 future years in the PRSS.

Contractors: The Boulder Canyon Project Power Customers.

Crosswalk: A reconciliation between a project PRSS and the Western and Reclamation financial statements.

CSRS: Civil Service Retirement System.

Current PRSS: The PRSS included in this rate order based on the existing rates.

Customer Brochure: A document prepared for public distribution

explaining the background of the rate proposal contained in this rate order. Also referred to as the Boulder Canyon Project proposed rate Adjustment Brochure.

DOE: Department of Energy.

DOE Order No. RA 6120.2: An order dealing with Power Marketing Administration Financial Reporting.

E&OC: Engineering and Oversight Committee consisting of members from BCP contractors, Western, and Reclamation. Their function is to establish a regular review process of Western's and Reclamation's planned O&M, additions, and replacements.

Energy Rate: Expressed in mills per kWh. Applied to each kWh made available to each contractor.

FY 1992 Ratebase PRSS: FY 1992 Revised PRSS.

FERC: Federal Energy Regulatory Commission.

FY: Fiscal year.

Guide Service: This is service provided to the visitors at the Hoover Dam site.

Hoover Dam: The dam on the Colorado River which forms Lake Mead.

Hoover Rates Committee: The Hoover Power Rates Methodology Review Standing Committee made up of BCP contractors who developed the new proposed ratesetting methodology (Settlement Agreement).

Interior: U.S. Department of the Interior.

kW: Kilowatt.

kW/month: The greater of (1) the highest 30-minute demand measured during the month, not to exceed the contract obligation, or (2) the contract rate of delivery.

kWh: Kilowatthour.

LCRBDF: Lower Colorado River Basin Development Fund—a fund established by the Colorado River Basin Project Act of 1968.

Master Schedule: This is an 18-month schedule of projected BCP hydrology.

mills/kWh: Mills per kilowatthour.

Multiproject Costs: These are costs for facilities being charged to one project that benefits other projects.

MW: Megawatt.

MWh: Megawatthour.

NEPA: National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

OMB: Office of Management and Budget.

O&M: Operations and maintenance.

P–DP: Parker-Davis Project.

pinch-point: The FY in which the level of the rate is set as dictated by a revenue requirement in some future year to meet relatively large annual costs or to repay investments which come due.

Project Act: The Boulder Canyon Project Act authorizing the construction of Boulder Canyon Project dated December 21, 1928 (43 U.S.C. 617 *et seq.*).

PRS: Power Repayment Study.

PRSS: Power Repayment Spreadsheet Study.

Proposed rate: A rate revision that the Administrator of Western recommends to the Assistant Secretary for Conservation and Renewable Energy for approval.

Provisional rate: A rate which has been confirmed, approved, and placed in effect on an interim basis by the Assistant Secretary for Conservation and Renewable Energy.

Reclamation: Bureau of Reclamation, U.S. Department of the Interior.

Reclamation's 1986 General Regulations: General Regulations for Power Generation, Operation, Maintenance, and Replacement at BCP, Arizona/Nevada 43 CFR part 431 (51 FR 23960, July 1, 1986).

Replacements: A unit of property constructed or acquired as a substitute for an existing unit of property for the purpose of maintaining the power features of a project or the joint features properly allocated to power.

Replacement Study: The cyclical analysis of replacement service lives. A high level of replacement activity for a few consecutive years will re-occur in future years at a similar high level with the years in between tending to be at a lesser level of replacement.

Secretary: Secretary of Energy.

Schedule A: Boulder Canyon Project Contractors that receive capacity and energy. Contractors are Arizona Power Authority (APA), Boulder City, Burbank, Colorado River Commission of Nevada (CRC), Glendale, Los Angeles Department of Water and Power, Metropolitan Water District of Southern California, Pasadena, and Southern California Edison.

Schedule B: Boulder Canyon Project Contractors that receive Hoover capacity and energy and who also advanced the funds for the Uprating Program. These Contractors include Anaheim, APA, Azusa, Banning, Burbank, CRC, Colton, Glendale, Pasadena, Riverside, and Vernon.

Schedule C: Both the Schedule A and Schedule B Contractors (All Contractors).

Settlement Agreement: See Hoover Rates Committee.

Treasury: Secretary of the Department of the Treasury.

Uprating Contractors: Contractors who contributed to advance of funds for financing the upgrading of the BCP system.

Uprating Credits: The payments/credits that are returned to the Uprating Contractors in repayment for the advancement of funds.

Uprating Program: Non-federally financed work to increase the capacity of the existing generating and associated electrical equipment at the BCP.

Western: Western Area Power Administration, DOE.

Western's 1986 General Regulations: General Regulations for the Charges for the Sale of Power from the Boulder Canyon Project, 10 CFR part 904 (51 FR 43154, November 28, 1986).

Working Capital Fund: Reserve of funds contributed by the Contractors to be used when the Colorado River Dam Fund has no money available.

Effective Date

The new ratesetting methodology is effective January 1, 1993, pending FERC approval on a final basis, through September 30, 1997.

The rates in Rate Schedule BCP–F4 will be in effect pending FERC approval of these or substitute rates on a final basis from January 1, 1993, through September 30, 1993. For all other FYs of the ratesetting methodology approval period (through FY 1997) the rates will be set in accordance with the new ratesetting methodology approved and placed into effect by the Administrator of Western.

Public Notice and Comment

The Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR part 903, have been followed by Western in the development of the ratesetting methodology and power rates. The provisional rates for power represent an increase of approximately 43 percent in the composite rate; therefore, it is a major rate adjustment as defined at 10 CFR 903.2(e) and 903.2(f)(1). The distinction between a minor and a major rate adjustment is used only to determine the public procedures for the rate adjustment.

The following summarizes the steps Western took to ensure involvement of interested parties in the rate process:

1. A **Federal Register** notice was published on June 10, 1992 (57 FR 24641), officially announcing the proposed power rate adjustment,

initiating the public consultation and comment period, announcing the public information and public comment forums, and presenting procedures for public participation.

2. A letter was mailed to all BCP customers and other interested parties on June 22, 1992, providing a copy of the BCP proposed rate Adjustment Brochure and announcing an informal customer meeting, and public information forum. The informal customer meeting was held on June 29, 1992, in Phoenix, Arizona. At this informal meeting, Western and Reclamation representatives explained the need for the increase and answered questions from those attending.

3. At the public information forum held on July 7, 1992, Western and Reclamation representatives explained the need for the rate increase in greater detail and answered questions.

4. On August 6, 1992, a **Federal Register** notice was published (57 FR 34776) formally announcing the consultation and comment period would be extended through September 28, 1992, for the proposed rate adjustment for the BCP.

5. The public comment forum was held on September 10, 1992, to give the public an opportunity to comment for the record. Eleven people representing customers and customer groups made oral comments.

6. Twenty-nine written comment letters were received during the 110-day consultation and comment period. The consultation and comment period ended September 28, 1992.

Project History

The BCP was authorized for construction by the Project Act. The Project Act provided for a dam to be built in the Black Canyon located on the Colorado River adjacent to the Arizona/Nevada border. The dam was built for the express purposes of: (1) Controlling the flooding in the lower regions of the Colorado River drainage system; (2) improving navigation of the Colorado River and its tributaries; (3) regulating the Colorado River, while providing storage and delivery of the stored water for the reclamation of public lands; and (4) generating electrical energy as a means of making the BCP a self-supporting and financially solvent undertaking. Congress authorized Treasury to advance up to $165 million to the Secretary of the Interior to provide for the construction of the dam, powerplant, and related features; $25 million of the $165 million were allocated to flood control.

Construction of the Hoover Dam, formerly known as Boulder Dam, began in 1930, and the first generating unit of the power plant went into service in 1937. Upon completion of the project facilities, power sales commenced, in accordance with the provisions of the Project Act, to contractors in the States of Arizona, California, and Nevada.

The Project Act was modified in 1940 by the Adjustment Act. The Adjustment Act, among other things, authorized the Secretary of the Interior to promulgate and to put into effect power rates based upon a repayment period from June 1, 1937, to May 31, 1987; to reduce the interest rate from 4 percent to 3 percent per annum on unpaid Treasury advances; to require annual payments to the States of Arizona and Nevada in lieu of taxes levied; and to defer without interest until June 1, 1987, the repayment of the $25 million allocated to flood control.

Subsequently and pursuant to the Adjustment Act, the Secretary of the Interior published and implemented the 1941 General Regulations for the period ending May 31, 1987.

As the end of the 50-year term of the original contracts approached, controversy developed among the BCP contractors over renewal rights to BCP power, and litigation resulted. Compromises were reached and embodied in the 1984 Act.

The 1984 Act authorized an increase in the capacity of the existing generating and associated electrical equipment at the BCP. The work to accomplish this increase, referred to as the Uprating Program, was to be funded initially by advances from certain BCP contractors to Reclamation. Funds advanced would be returned to these contractors through credits on their monthly power bills. The 1984 Act provided for advances from the Treasury for the improvement of visitor facilities at the BCP. The 1984 Act also required that an additional charge of 4.5 mills/kWh be assessed on energy sales to Arizona and an additional charge of 2.5 mills/kWh be assessed on energy sales to California and Nevada; all revenue resulting from the additional charge is to be transferred to the LCRBDF.

Under the 1984 Act, BCP's power was sold to 15 contractors located in the States of Arizona, California, and Nevada, in accordance with the Conformed Criteria.

Due to the numerous requirements set out in the 1984 Act and the earlier division of the Federal responsibilities relating to Hoover Dam between Reclamation and Western, both agencies published new regulations governing their respective responsibilities at the BCP after June 1, 1987. These regulations are cited herein as Reclamation's 1986 General Regulations and Western's 1986 General Regulations, and they supersede the 1941 General Regulations, which terminated on May 31, 1987.

Power Repayment Studies

PRS and/or PRSSs are prepared each fiscal year to determine if power revenues will be sufficient to pay, within the prescribed time periods, all costs assigned to the power function. Repayment criteria are based on law, policies, and authorizing legislation. DOE Order No. RA 6120.2, section 12.b, states:

> In addition to the recovery of the above costs (operations and maintenance and interest expenses) on a year-by-year basis, the expected revenues are at least sufficient to recover: (1) Each dollar of power investment at Federal hydroelectric generating plants within 50 years after they become revenue producing, except as otherwise provided by law; plus (2) each annual increment of Federal transmission investment within the average service life of such transmission facilities or within a maximum of 50 years, whichever is less; plus (3) the cost of each replacement of a unit of property of a Federal power system within its expected service life up to a maximum of 50 years; (4) each dollar of assisted irrigation investment within the period established for the irrigation water users to repay their share of construction costs; plus (5) other costs such as payments to basin funds, participating projects or States.

Existing and Provisional Rates

A comparison of the existing and provisional rates follows:

COMPARISON OF EXISTING AND PROVISIONAL RATES

	Existing rates (FY 1992)	Provisional rates (FY 1993)
Power rate schedule	BCP–F3	*BCP–F4
Composite rate (mills/kWh)	10.21	14.56
Energy rate (mills/kWh)	5.11	7.28
Capacity rate ($/kW/month)	$1.05	$1.28

*The ratesetting methodology is in effect from January 1, 1993, through September 30, 1997. The rates will change annually.

Certification of Ratesetting Methodology and Rates

Western's Administrator has certified that the BCP ratesetting methodology and rates placed into effect on an interim basis herein are the lowest possible consistent with sound business principles, pursuant to the ratesetting methodology agreed to by the BCP contractors, Western, and Reclamation. The rates have been developed in accordance with administrative policies and applicable laws.

Discussion

The new ratesetting methodology of the PRSS compares to the existing ratesetting methodology of the PRS as follows:

PRSS methodology	PRS methodology
Compound interest amortization repayment schedule assures repayment of investments throughout repayment period.	No assurance of principal payments until end of repayment period.
Highest interest rate investments paid first up to amortization schedule amounts through the year 2017.	Highest interest-bearing investments paid first throughout the study.
Personal computer based spreadsheet	"PRIME" (mainframe computer) based program.
Rate based on higher of first future year rate or 5-year average rate. Data shown for 50 years.	Rate based upon "pinch point" methodology over study period (typically 50 years).
Annual over/under revenue collection reflected immediately in following 5-year average.	Not reflected immediately.
Easy to understand and arithmetically verify results by contractors	Considerably more complicated and results difficult to verify by contractors.
Hydrology uses 2-year Master Schedule & 3-year CRSS average. Average hydrology for remainder of study.	Same for first 2 years, then Reclamation estimate for 3 years, then variable CRSS data.
50/50 energy/capacity revenue split	Same.
Creation of a Working Capital Fund to eliminate delays in the availability of funds from accounting period to accounting period & collection of approximately $9.0 million to pay past due uprating credits..	No working capital fund. Uprating credit recovery built into expenses.
Will request FERC approval of a formula based rate which will be used annually to calculate the rates..	Request approval of a single rate for 5 years.

The provisional rate and the FY 1992 Ratebase PRSS filed with FERC have been updated from the rate originally proposed in the Customer Brochure and **Federal Register** notice dated June 10, 1992. The changes to the FY 1992 Ratebase PRSS are as follows:

—Multiproject costs were updated through September 30, 1991.

—Replacement projections in the years past the cost evaluation period were changed to be based on the average from the replacement study.

—Working Capital Fund was changed to demonstrate the running balance at the end of each FY. The working capital would be reduced each year by whatever is left over in the current year CRDF carryover balance.

—The debt service interest expense changed on the visitor facilities from 8.5 percent to 8.40 percent (average weighted).

—Debt service principal payments changed due to the interest rate on the visitor facilities.

—Prior-year carry-over balance column is displayed in different location on spreadsheet.

—Other revenue changed because of expiration of a facility contract and the increased guide service charge from $1 to $2 beginning January 1, 1993.

—Capacity sales were changed in FY 1992 due to uprating program delays.

—Energy sales were revised to more recent hydrology predictions. As a result of these changes, the provisional rates are set by the first year in the 5-year window, which is greater than an average of the 5-year window. The rates in the customer brochure were set by the average of the 5-year window.

The existing and proposed revenue requirements for the BCP are as follows:

	Revenue requirements	
	Existing rate (FY 1992)	Provisional rate (FY 1993)*
Revenue requirements	$42,877,030	$56,406,822

*The provisional rates are in effect from January 1, 1993, through September 30, 1997.

The rate increase is necessary to satisfy the cost-recovery criteria set forth in DOE Order No. RA 6120.2.

Statement of Revenue and Related Expenses

The following table provides a summary of revenue and expense data through the 5-year proposed rate approval period.

BOULDER CANYON PROJECT COMPARISON OF 5-YEAR RATE PERIOD (FY 1993–97) REVENUES AND EXPENSES ($1,000)

	FY 1990 PRS 1993–97	FY 1992 PRSS 1993–97	Difference
Revenues:			
Energy Sales	$136,559	$140,674	$4,115
Capacity Sales	123,022	140,674	17,652
Water Sales	2,000	2,250	250
Other Revenue	3,185	6,201	3,016
CRDF Carry-Over Balance	0	1,830	1,830
Total Revenues	$264,766	$291,629	$26,863
Revenue Distribution:			
Operation & Maintenance	$97,500	$107,753	$10,253
Payment to States	3,000	3,000	0
Other Expenses	3,380	9,037	5,657
Annual Uprating Payments	79,688	91,539	11,851
Annual Replacement	23,464	27,766	4,302
Interest	37,135	35,716	1,419
Principal Payments	20,599	11,148	9,451
Working Capital Fund	0	5,670	5,670
Total	$264,766	$291,629	$26,863

Basis for Rate Development—BCP

The BCP provisional rates are designed to maintain a 50/50 split between revenue earned from energy and capital rates. The cost to individual customers will vary, because of differences in their supplies and loads.

The provisional rate consists of a 7.28 mills/kWh energy rate and $1.28/kW/month capacity rate effective January 1, 1993. The ratesetting methodology approval period is through September 30, 1997.

Comments

During the 110-day comment period, Western received 29 written comments. In addition, 11 speakers commented at the September 10, 1992, public comment forum. All comments were reviewed and considered in the preparation of this rate order.

Written comments were received from the following sources:

Ak-Chin Indian Community (Arizona)
Aquila Irrigation District (Arizona)
Arizona Power Authority (Arizona)
Basic Management, Inc. (Nevada)
Buckeye Water Conservation & Drainage District (Arizona)
Central Arizona Water Conservation District (Arizona)
Chemstar Lime Company (Arizona)
Colorado River Commission of Nevada (Nevada)
Electrical District Number Five, Pinal County (Arizona)
Electrical District Number Seven (Arizona)
Electrical District Number Eight (Arizona)
Electric Resource Strategy & Contracts Consultants (Arizona)
Harquahala Irrigation District (Arizona)
Irrigation & Electrical Districts Association of Arizona (Arizona)
Los Angeles, City of, Department of Water and Power (California)
Maricopa Water District (Arizona)
Metropolitan Water District of Southern California (California)
Meyer, Hendricks, Victor, Osborn & Maledon (Arizona)
McMullen Valley Water Conservation and Drainage District (Arizona)
Nevada Power Company (Nevada)
Overton Power District No. 5 (Nevada)
Pioneer Chlor Alkali Company (Nevada)
Roosevelt Irrigation District (Arizona)
Safford, City of, Arizona (Arizona)
Salt River Project (Arizona)
Southern California Edison (California)
Titanium Metal Corporations (Nevada)
Tonopah Irrigation District (Arizona)
Valley Electric Association (Nevada)

Representatives of the following organizations made oral comments:

Aquila Irrigation District (Arizona)
Arizona Power Authority (Arizona)
Chemstar Lime Company (Arizona)
Colorado River Commission of Nevada (Nevada)
Harquahala Irrigation District (Arizona)
Los Angeles, City of, Department of Water and Power (California)
Basic Management, Inc. (Nevada)
Electrical District Number Seven (Arizona)
Irrigation & Electrical Districts Association of Arizona (Arizona)
McMullen Valley Water Conservation and Drainage District (Arizona)
Overton Power District No. 5 (Nevada)
Pioneer Chlor Alkali Company (Nevada)
Safford, City of, Arizona (Arizona)
Southern California Edison (California)
Tonopah Irrigation District (Arizona)
Valley Electric Association (Nevada)

Most of the comments received at the public meetings and in correspondence dealt with hydrology, capitalized investments, annual expenses, working capital, other revenue, ratesetting, capitalized deficits, and audits. All comments were considered in developing the provisional rate.

The comments and responses, paraphrased for brevity, are discussed below. Direct quotes from comment letters are used for clarification where necessary.

Boulder Canyon Comments

Hydrology—Energy Sales

Comment: Disagrees with Reclamation's hydrology (i.e., energy) projections in that Reclamation distorts the prediction of energy production for 1996 and 1997 by the selective removal of surplus water release sequences and by averaging the remaining sequences. Surplus water release sequences should be capped at the high value for downstream requirements and be used as part of the average for annual energy prediction, thus increasing energy sales by 315,000 MWh.

Comment: Recommends accepting Reclamation's predicted energy total of 20,413,000 MWh for the 5-year window period of 1993–97.

Comment: The CRSS model should be used for projecting the hydrology and energy generation, without adjustments.

Comment: Rates should be based upon contractual allocation numbers of the 1984 Act rather than on projected generation numbers.

Response: Reclamation was requested by the Hoover Rates Committee to prepare its best projections for energy generation at Hoover Dam. The Hoover Rates Committee requested that Reclamation use the 24-Month Annual Operating Plan model for the first 2 year's data with the last 3 years of the 5-year study period to be based on the CRSS. Reclamation has followed the Hoover Rates Committee's request in its preparation of the energy projections for the BCP and has predicted an energy production of 20,413,000 MWh for the 5-year cost evaluation period. Reclamation has reviewed the methodology of removing the surplus water sequences and believes that removal of these sequences, rather than capping them, and averaging of the remaining sequences, most accurately portrays the projected hydrology.

The BCP Electric Service Contracts with each of the contractors are based on an entitlement share of generated capacity and energy, rather than on a contractual commitment. Therefore the energy projections in the PRSS are based upon forecasted generation estimates. Subsection 5.1.2.2 of the BCP contracts between Western and the individual contractors states, "* * * That the measure of the Contractor's rights to Power hereunder shall be the quantity of capacity and energy available from Hoover Powerplant." The total of schedule A and schedule B firm energy is demonstrated in Table 5 of the BCP contract. This Table gives each contractor's percentage of entitlement of the energy generated at Hoover Dam. Once Hoover Dam annual generation exceeds 4,527,001 kWh, the contract provides for schedule C excess energy provisions based on the 1984 Act.

Subsection 6.3.1 of the BCP contract states, "The quantities of Firm Energy and Excess Energy deemed to be delivered and to be paid for shall be the quantities measured or scheduled to the contractor by Western under this Contract." Hence, under current contracts, Western is unable to bill based on contractual entitlement. It can only bill based on actual energy delivered.

Hydrology—Water Sales

Comment: Concern that projected water sales are below the actual sales for the last 3 historical years and requests water sales revenues be increased to reflect the average of actual sales.

Response: Reclamation has reviewed available water sales data and believes that the current PRSS accurately represents the best estimate for future water sales revenue.

Hydrology—S_L

Comment: Estimated energy generation per acre-foot of water released must be revised to recognize the benefits of unloaded synchronized generation by adding 250,000 MWh for years FY 1993–97 and 207,000 MWh for return of backlogged S_L energy.

Response: According to Exhibit C (Accounting For Use of Unloaded Synchronized Generation) of the BCP Electric Service Contracts with the contractors, L is defined as the "megawatthour energy reduction in the energy entitlement to the Contractor in

the following Billing Period or as soon as practicable". S_L is "computed energy, expressed in megawatthours, lost due to reduced plant efficiency caused by operation of generating units in a partially loaded spinning mode for all Contractors that schedule Unloaded Synchronized Generation during the Billing Period." Therefore, S_L is an energy loss that causes a reduction in the contractor's energy entitlement in a future billing period and does not create additional energy. Western and Reclamation have reviewed the hydrology assumptions and do not believe that further adjustments are necessary regarding S_L. Any adjustments due to backlogged S_L will be handled pursuant to agreements reached between Western and the contractors.

Capitalized Investments

Comment: Concern that a portion of the multiproject facilities allocated to BCP and the Mead Substation facility charges charged to P–DP transmission customers, amounts to a double recovery for the same capital facilities.

Response: Western has reviewed the provisions concerning the Mead facilities charges in the P–DP transmission agreements and has determined that there is no double accounting to the BCP contractors for the same capital facilities. In determining Mead facilities charges to P–DP transmission customers, the costs of the Mead facilities, replacements, and O&M expenses are first allocated to the P–DP based upon the number of bay positions used. This allocation is further allocated based upon the transmission capacity contracted for. Since there is no allocation to the contractors in the determination of the Mead facilities charges, there can be no double accounting to those contractors through the multiproject facilities cost.

Comment: Principal payments in the PRSS should be made throughout the year and interest credits given.

Response: The amortization of debt under the new methodology assumes only one principal payment at the end of each year. Reclamation makes its payments to Treasury at the end of each fiscal year due to the fact that the BCP is a revolving fund. This process incurs a full year's interest expense on the unpaid balance of each investment and thus no interest credits should be given.

Comment: The levelization of debt service obligations was a key consideration in the development of the level amortization approach. Western has assumed that the uncollected principal payments during the first 5 years should be collected over a similar 5-year period; however, the contractor believes that this amount should be recovered over the last 25 years of the contract.

Response: Western has concurred with the levelization over 25 years since the debt service obligations to be recovered are investment costs. Therefore, the cost for uncollected principal payments has been changed in the FY 1992 Ratebase PRSS to be recovered by the end of FY 2017.

Visitor Facilities

Comment: Concern about the visitor facilities excessive costs that had not been anticipated by the contractors and that exceed the authorized amounts.

Response: The 1984 Act, section 103(a)(2), states that $77 million (October 1983 price levels) represent the additional amount required for the uprating program and the visitor facilities program. This $77 million shall be adjusted plus or minus such amounts as may be justified by fluctuation of construction costs. Since the uprating program was financed by the contractors, the $77 million was left to be used at Reclamation discretion. Reclamation believes they have not exceeded the indexed authorized ceiling.

Comment: The interest rate used in the PRSS for the visitor facilities should be the weighted average as required by the 1984 Act.

Response: Western agrees that the interest rate used in the PRSS for the visitor facilities should be the weighted average interest rate. Western had been using an 8.50-percent interest rate in the PRSS but has since calculated the weighted average rate to be 8.40 percent.

Comment: Columns 8 and 11 in the PRSS should be footnoted with a statement indicating the renegotiations of the portion of the debt service attributable to the visitor facilities is pending.

Comment: The $45 million in visitor facilities costs should either be reclassified as non-reimbursable and reallocated to the National Highway System, or be postponed, without interest, for repayment after FY 2017. It was suggested that Reclamation take the lead on achieving legislation that would be required to accomplish either solution.

Response: Reclamation has been meeting with the contractors to discuss different methodologies which would ease the contractors' burden regarding visitor facilities costs. No formal negotiations are in process that would justify such a footnote.

Annual Expenses—O&M

Comment: Western and Reclamation should work with its contractors by establishing a formal review process of planned O&M, additions, and replacements. The process should include measurement of program needs, costs and budgets against agreed criteria, review thereof by contractors prior to decisions, and an opportunity for review of decisions where contractors for more than one-half of Hoover capacity disagree.

Response: Western believes this is being accomplished through the E&OC. Western will continue its involvement on the E&OC.

Comment: Commitment to cost containment should be reflected in the O&M and replacement budgets.

Response: Western and Reclamation are fully committed to cost containment. Cost containment plays a major role in the preparation of Western's and Reclamation's O&M and replacement budgets.

Comment: Hoover's O&M and replacement costs shown in the PRSS need to be reevaluated to determine whether they are absolutely essential or can be deferred to a later date.

Response: Western and Reclamation, in cooperation with the E&OC, have reviewed their O&M and Replacement costs and feel that the costs are essential and cannot be deferred to a later date. Both Western and Reclamation are committed to work with the contractors through the E&OC to ensure that all entities are informed and have the opportunity to review the O&M and replacement expenditures.

Comment: Two million, one hundred thousand dollars of Reclamation O&M should be removed from PRSS in 1997 because it had not been reviewed by the E&OC ($1.2 million in extraordinary maintenance and $.9 million in dam and power additions).

Response: Both Western and Reclamation utilize information contained in the latest approved budget document available for inclusion in the PRSS.

The E&OC will be requested to expand its evaluation period by 1 year to match the cost evaluation period contained in the PRSS.

Comment: Western has not justified substantial increases in O&M costs shown in the PRSS.

Response: Western's O&M costs are being driven by (i) general Western allocation costs, (ii) multiproject costs, (iii) CSRS costs and (iv) environmental compliance issue costs. The general Western allocation costs are indirect costs allocated directly to power

projects. These indirect costs are expenditures that benefit the ratepayers at large or that are incurred in establishing or maintaining the system as a whole. Multiproject costs are costs associated with the construction of facilities (principal, interest, and O&M expenses) charged to other projects that also benefit the BCP. CSRS costs reflect the retirement costs of a number of Western employees under the CSRS retirement program in the Phoenix Area Office that are anticipated to retire within the next 20 years. Environmental compliance issue costs are those costs associated with cleanup such as disposal of oil and PCB contaminated equipment, removal of oil and above ground equipment as stations are de-energized, removal of underground oil piping, and excavating and disposal of contaminated soil and debris.

Annual Expense—Replacements

Comments: Hoover-Mead consolidation costs should be removed from replacements and funded through the Uprating Program.

Response: Western and Reclamation believe this must be a decision of the uprating contractors. As of this date there is no consensus position by the uprating contractors and thus there will be no change in the PRSS at this time.

Comment: Replacements should be funded by appropriations and capitalized rather than being expensed.

Response: Reclamation has planned for a portion of the replacement costs to be funded by appropriations in its FY 1995 budget. Until this is approved by the OMB, Reclamation and Western must continue expensing the replacements in the PRSS. Discussion will continue as provided by the Settlement Agreement dated September 15, 1992.

Comment: The three million, four hundred thousand dollar projection for replacement costs in the PRSS should be patterned to reflect the bathtub curve (replacement study) which was submitted by Western on September 4, 1992, in response to a contractor's data request.

Response: Western and Reclamation have agreed to use the replacements study (bathtub curve) average for the out years in the PRSS. The replacement study represents higher replacements costs at the beginning and end of the repayment period with the in-between years having lower replacement costs. The PRSS has been revised to display an average annual expenditure of $1.7 million from 1998 through the end of the study.

Annual Expenses—Uprater Payments

Comment: In the interest of sound accounting practice and a conservative approach, Western should ensure that uprating contractor payments included in the PRSS are based on the latest information provided by the contractors. Some contractors believe Western is using the wrong schedules of uprating payments.

Response: The uprating contractor payment schedules utilized in the PRSS are the same schedules utilized by Western in determining the monthly power bills. Western has also consulted with each of the contractors as to the proper schedule Western should be using. The contractors all agree with the schedules being used in the PRSS.

Comment: Western has improperly deferred the payment of the uprating credits.

Response: Subsection 6.5 of the BCP contracts states, "* * * That a Schedule B Contractor shall not receive any credits or portions thereof on its power bills for any Billing Period unless sufficient funds are legally available for (i) the payment of operation, maintenance, and replacement costs of the Boulder Canyon Project; (ii) repayments to the Treasury, with interest, of advances or any readvances made to the Colorado River Dam Fund that may not be legally deferred; and (iii) in-lieu-of-tax payments to the States of Arizona and Nevada." Western and Reclamation implemented this section of the BCP contract to suspend the payment of uprating credits on the power bills.

Annual Expenses—Other Expenses

Comment: Multiproject costs should be deleted from the PRSS until the E&C has had an opportunity to review.

Response: These multiproject costs are costs for facilities being charged to one project that benefits other projects. Therefore, Western believes this is not a regular O&M cost; although it is an element in the total O&M cost, this does not fall under the review process by the E&OC.

Working Capital

Comment: The PRSS should provide for the return of working capital to the contractors at the end of the contract period.

Response: The FY 1992 Ratebase PRSS provides for returning the contributed working capital to the BCP contractors in FY 2017.

Comment: No amount of working capital requirement has been justified.

Comment: The sum of the working capital and the carry-over balance should equal the $7.5 million rather than $7.5 million for working capital alone.

Response: The contractors, Western, and Reclamation had previously agreed to a $7.5-million working capital fund to be shown in the PRSS. This amount was proposed by the Hoover Rates Committee in its February 13, 1992, proposal to Western and Reclamation. Western and Reclamation are agreeable to make the sum of the working capital and the carry-over balance for 1992 equal to $7.5 million. The FY 1992 Ratebase PRSS has been modified accordingly.

Comment: Western and Reclamation should effect a 30-day reduction in the payment delay of revenue collection and deposit to Reclamation, having the effect of reducing the CRDF carryover expense by one-half.

Response: Western and Reclamation have met to establish procedures to minimize the delay of revenue collection and deposit to Reclamation. Discussions are continuing to speed this process to the maximum extent possible.

Other Revenue

Comment: Revenue collected through the guide service must be sufficient to recover the costs of providing that service by increasing fees from $1 to $2.

Response: Reclamation is implementing a fee of $2 for guide service, effective January 1, 1993. The PRSS has been revised to incorporate this increase in revenue.

Comment: Recognition must be given to the marketing of an additional 30 MW from the P–DP as a consequence of Hoover providing spinning reserves for Western's system. Contractor believes Hoover is providing P–DP with a significant benefit that has not been recognized in the form of revenue reallocation or expense credit. P–DP has an additional 30 MW of firm capacity because Hoover is providing the P–DP spinning reserves. Contractor believes a reduction to other expenses in the amount of approximately $450,000/year should be made to account for the allocation of 30 MW of spinning reserve capacity held at Hoover for the benefit of P–DP.

Response: Western has researched this matter thoroughly and can find no evidence that Hoover is providing spinning reserves to the P–DP. Although the Consolidated Marketing Plan anticipated that an additional 30 MW of P–DP capacity would be available for sale as result of consolidated operations within the Boulder City Area (now the Phoenix Area), spinning reserve requirements have not changed.

Spinning reserve requirements for the Phoenix Area are today identical to what they were prior to initiation of consolidated operations.

What did change with the initiation of consolidated operations is that the BCP, P–DP, and Navajo Project are all able to "consolidate" their capacity and energy resources into a single fungible resource. By being able to schedule power from this fungible resource, the Phoenix Area Office has been able to schedule the region's resources from the most economical resource possible without sacrificing reliability or reducing capacity. Although an additional 30 MW of capacity and associated energy is being marketed by the P–DP under the Consolidated Marketing Plan, the greatest benefits under the plan are being realized by the BCP. Since tracking started in January 1989, the BCP has accumulated through October 1992, 151,579 NW of hourly generation commitment from the P–DP.

Ratesetting

Comment: Preference customers' ability-to-pay should be considered before replacement and new construction obligations are incurred.

Response: While Western and Reclamation are sympathetic to the current financial plight of a number of the contractors with large agricultural loads, they cannot allow the BCP facilities to deteriorate to a point where safe and continued operation to all contractors is jeopardized. Both Western and Reclamation believe that replacements and new construction obligations have been and will continue to be thoroughly discussed in the E&OC forum.

Comment: One of the missing ingredients in decision making related to the ratesetting proposal for Hoover is an analysis of the impact to contractors.

Response: While it is true that Western did not analyze the BCP rate proposal to determine its impact on individual customers, Western does not have sufficient information at its disposal nor is it required to complete such an analysis. This is a function that the individual contractors should perform. While being sympathetic to individual contractor's positions, Western has a financial and legal obligation to the Treasury to pay expenses related to the operation of the BCP.

Comment: Is Western providing power at the lowest possible cost consistent with sound business principles?

Response: Western is of the opinion that it is providing power from the BCP at the lowest possible cost consistent with both sound business principles and with the principles outlined by the Hoover Rates Committee.

Comment: Due to the contractor-requested limitations regarding the year 2017, the PRSS improperly pays off lower-cost debt before higher-cost debt.

Response: While this statement is basically true, the contractors, who have financial obligations to the BCP only through the year 2017, suggested this particular methodology for paying off principal. In this manner they are insured of not paying any debt that would be amortized after 2017 which under the new ratesetting methodology is payable by the post 2017 BCP contractors.

Comment: The proposed rates are so fraught with impropriety that they should be withdrawn. However, if Western declines to withdraw, contractor believes Western should proceed on the basis of the third option outlined in the DOE governing regulations, 10 CFR 903.21 a.3., which states, "develop rates which in the Administrator's judgment should be confirmed, approved, and placed into effect by FERC on a final basis without being placed into effect on an interim basis."

Response: Western believes that the proposed rates are properly set and is recommending that the proposed rates be placed into effect on an interim basis by the Assistant Secretary for Conservation and Renewable Energy effective January 1, 1993, to meet the immediate cashflow requirements of the BCP.

Capitalized Deficits

Comment: The capitalized deficits of annual costs should be amortized over remainder of PRSS rather than 10 years.

Response: Western agrees that it would be appropriate to recover these annual costs over a 10-year period. Capital investment costs have been amortized over the 25 years remaining in the contract period.

Audits

Comment: Western's proposed rates reflect abnormally high unaudited levels of replacements and O&M costs.

Response: Western has incorporated the crosswalk as of September 30, 1991, in the PRSS. This crosswalk reconciles the financial statements to the PRSS through FY 1991.

Comment: Western fails to have biennial audits performed.

Response: Rates are set on projected costs. While historical costs are of value, they are not highly significant unless there is a sizeable discrepancy in the data. To avoid any such discrepancy there have been crosswalks to reconcile PRS data with financial data. Further there was a 50-year BCP audit ending operating year 1987 and a FY 1991 Western-wide audit. Annual Western-wide audits are expected in the future.

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*; Council on Environmental Quality Regulations (40 CFR part 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), Western has determined that this action is categorically excluded from the preparation of the environmental assessment or EIS.

Executive Order 12291

DOE has determined that this rate action is not a major rule within the meaning of the criteria of section 1(b) of Executive Order 12291. In addition, Western is exempt from sections 3, 4, and 7 of that order and therefore will not prepare a regulatory impact statement.

Availability of Information

Information regarding this rate adjustment, including PRSS's, comments, letters, memorandums, and other supporting material made or kept by Western for the purpose of developing the power rates, is available for public review in the Phoenix Area Office, Western Area Power Administration, Office of the Assistant Area Manager for Power Marketing, 615 South 43rd Avenue, Phoenix, Arizona 89009; Western Area Power Administration, Division of Marketing and Rates, 1627 Cole Boulevard, Golden, Colorado 80401; and Western Area Power Administration, Office of the Assistant Administrator for Washington Liaison, room 8G–061, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

Submission to Federal Energy Regulatory Commission

The ratesetting methodology and rates herein confirmed, approved, and placed into effect on an interim basis, together with supporting documents, will be submitted to FERC for confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary, I confirm and approve on an interim basis, effective January 1, 1993, the ratesetting methodology and Rate Schedule BCP–F4. The rate schedule, subject to adjustment pursuant to the ratesetting methodology, shall remain in

effect on an interim basis, pending FERC confirmation and approval of it or a substitute rate on a final basis, through September 30, 1997.

Issued in Washington, DC, December 14, 1992.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Rate Schedule BCP–F4/1
(Supersedes Schedule BCP–F3)

Boulder Canyon Project

Schedule of Rates for Power Service

Effective (In accordance with approved ratesetting methodology)

January 1, 1993, that being the first day of the January 1993 billing period.

Available

In the marketing area served by the Boulder Canyon Project.

Applicable

To power customers served by the Boulder Canyon Project supplied through one meter at one point of delivery, unless otherwise provided by contract.

Character and Conditions of Service

Alternating current at 60 hertz, three-phase, delivered and metered at the voltages and points established by contract.

Monthly Rate

The base charge capacity rate is $1.28/kW/month for each kW of rated capacity to which each contractor is entitled by contract during the billing period.

The base charge energy rate is 7.28 mills/kWh for each kWh measured or scheduled at the point of delivery during the billing period, except for purchased power.

Lower Basin Development Fund Contribution Charge

The Lower Basin Development Fund Contribution Charge is 4.5 mills/kWh for each kWh measured or scheduled to an Arizona purchaser and 2.5 mills/kWh for each kWh measured or scheduled to a California or Nevada purchaser, except for purchased power.

Billing for Unauthorized Overruns

For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual power obligations, such overruns shall be billed at 10 times the above base charge energy and capacity rates. The Lower Basin Development Fund Contribution Charge shall be applied also to each kWh of overrun.

Adjustments: None.

[FR Doc. 92–31137 Filed 12–22–92; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4547–6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before January 22, 1993.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: Water Quality Standards Regulation (ICR No. 0988.05.)

Abstract: ICR No. 0988.05 covers the activities that States and Territories must perform in reviewing and revising their water quality standards as required by section 303(c) of the Clean Water Act (CWA). Section 303(c) requires States and Territories to carry out this review and revision every three years. This requirement involves updating existing standards to take into account new information, identifying and evaluating water bodies, and deciding whether use designations and water quality criteria are appropriate for them.

The States and Territories must submit the results of these reviews to the EPA Regional Administrators, who may approve or reject them. The Water Quality Standards Regulation (40 CFR Part 131) sets out the procedures by which States and Territories develop and revise their Water Quality Standards, and the criteria by which EPA reviews and approves these standards.

The States and Territories' standards must include a policy of protecting existing water uses and water quality. When the States and Territories submit the results of their water quality standards reviews to EPA, the Agency compares them with the requirements of the CWA in deciding whether or not to approve the standards. The standards that the States and Territories submit to EPA are used primarily as the basis for controlling pollutant discharges. Without this information, Federal and State authorities would be unable to establish permit limits to protect water quality.

In addition, ICR No. 0988.05 describes information burden associated with CWA section 518(e), which requires EPA to specify how Indian Tribes will be treated as States for the purposes of the Water Quality Standards Program. Section 518(e) also requires EPA to set up a means of resolving Tribe/State disputes over water quality standards on common waterbodies. Tribes and States will have to submit information to EPA to enable the Agency to determine a Tribe's qualifications for treatment as a State and so that the Agency can decide whether formal dispute resolution is necessary.

Burden Statement: The average burden imposed by the Water Quality Standards Regulation is 1953 hours per response. This total includes time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the collection of information. However, the burden varies considerably between the two classes of respondent. The burden of a State, Territory or Tribe meeting its section 303(c) requirements will average 2500 hours per response, while the burden on a Tribe applying for treatment as a State will average 40 hours per response.

Respondents: States, Territories, Indian Tribes.

Estimated No. of Respondents: 77.

Estimated Total Annual Burden on Respondents: 193,440 hours.

Frequency of Collection: Once every three years, one-time, on occasion.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW.,Washington, DC, 20460.

and

Matt Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW.,Washington, DC, 20503.

Dated: December 17, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92–31156 Filed 12–22–92; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4547–4]

Final Maximum Pressures for Rule-Authorized Enhanced Recovery Injection Wells In Michigan—First Group Fields

AGENCY: Environmental Protection Agency.

ACTION: Notice of final maximum injection pressure in fields with rule-authorized enhanced recovery injection wells in Michigan—first group fields.

SUMMARY: The United States Environmental Protection Agency (USEPA or Agency) today is issuing pressure gradients for calculating the maximum allowable liquid injection pressure for rule-authorized class II enhanced recovery injection wells in 14 of 45 Michigan fields currently approved by the State of Michigan for enhanced recovery operations. (These 14 fields include 20 of 68 enhanced recovery units recognized by the State). Therefore, as of the date of publication of this notice, operators of rule-authorized enhanced recovery wells in the 14 fields must limit their liquid injection pressure as directed in this notice. This notice now becomes part of the applicable Underground Injection Control program for the State of Michigan, administered by Region 5 of USEPA, promulgated under the provisions of the Safe Drinking Water Act.

FOR FURTHER INFORMATION CONTACT: Leah Haworth, Underground Injection Control Section, Water Division, (312) 886–6556, 17th floor Metcalfe Building (WD–17J), 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

SUPPLEMENTARY INFORMATION:

I. Background

Federal regulations at 40 CFR 147.1154 stipulate that the Regional Administrator shall establish maximum injection pressures ("field rules") for rule-authorized enhanced recovery injection wells in Michigan fields, after proper notice and opportunity for public comment. Notice was given on July 31, 1992, to persons on a state-wide mailing list and on September 11, 1992, in the **Federal Register** (57 FR 41751). The public notice period ended October 13, 1992. One written comment was received.

II. Final Field Rules

In this final notice, USEPA is announcing that rule-authorized, enhanced recovery, injection wells in the Michigan fields listed in Table 1, must operate below a maximum injection pressure for liquids calculated using the following formula:

Pm=(FPG–0.433 Sg)d

Where

Pm=injection pressure at the wellhead (psi)

FPG=fracture pressure gradient from Table 1 (psi/ft)

Sg=specific gravity of the injection fluid (dimensionless)

d=depth to top of injection zone (ft)

III. Alternative Maximum Pressures

If an owner or operator wishes to inject at a pressure higher than that calculated using the above formula, he or she may submit a request that the USEPA establish an alternative maximum pressure for a particular field and formation. This request may result in permission to inject at higher pressures if the operator can demonstrate to the satisfaction of the Agency that the desired injection pressure will not fracture the confining layer adjacent to the lowermost Underground Source of Drinking Water (USDW) and that there will be no migration of fluids into a USDW. The Agency may grant such a request after notice and opportunity for public comment, according to the provisions of 40 CFR part 124.

If a request for an Alternative Maximum Pressure is denied, the owner or operator may apply for a UIC permit under 40 CFR 144.25(c). The final permit decision, including permit conditions which the owner or operator considers to be inappropriate, may be subject to administrative review pursuant to 40 CFR 124.19. To be added to a mailing list to receive notice of Agency decisions in Michigan regarding Alternative Maximum Pressures or Class IIR permits, contact USEPA, Region 5 Underground Injection Control Section at the address given above.

IV. Notice to Owners and Operators

Concurrent with publication of this notice, USEPA is sending certified written notices to owners and operators of wells in affected fields informing them of the applicable formula to be used in determining the maximum allowable liquid injection pressure. After receipt of this notice, owners and operators who exceed the injection pressure established under the formula or the alternative maximum pressure approved by USEPA will be considered in violation of 40 CFR 147.1154(a), and may be subject to enforcement action, including the assessment of civil penalties and the issuance of compliance orders. If an owner or operator does not receive a certified written notice from USEPA within thirty (30) days of the date of this notice, he or she should immediately contact USEPA, Region 5 at the telephone number given above, to avoid the possibility of violating UIC regulations.

Dated: November 27, 1992.

Kenneth A. Fenner,

Acting Director, Water Division, Region 5, U.S. Environmental Protection Agency.

TABLE 1.—FRACTURE PRESSURE GRADIENT VALUES

Field	Formation	County	Township/range/section	FPG (psi/ft)
Aurelius 35	Niagaran Reef	Ingham	T2N, R2W, S26, 35, 36	0.65
Beaver Creek	Richfield	Crawford/Kalkaska	T25N, R5W, S12, 13, 24 and T25N, R4W, S7, 8, 16–21, 28, 29.	1.07
Bentley-Dundee	Dundee	Gladwin	T17N, R2E, S18, 19, 20	1.15
Billings	Dundee	Gladwin		1.12
Billings 2 Unit			T17N, R1E, S2, 3, 10, 11	
Billings-Bentley Unit			T17N, R1E, S12, 13 and T17N, R2E, S18	
Chester	A1 Carbonate & Niagaran	Otsego		
Chester 18 Unit			T30N, R2W, S7, 8, 17, 18, 19, 20	0.99
Chester 21 Unit			T30N, R2W, S21, 22	0.78
Columbus 3	Niagaran	Saint Clair	T5N, R15E, S3, 10 and T6N, R15E, S34	0.79
Cranberry Lake	Richfield	Clare	T20N, R6W, S1, 2, 11, 12	1.10
Hayes	Salina-Niagaran	Otsego		0.67
Hayes 15 Unit			T29N, R4W, S15	
Hayes 21A Unit			T29N, R4W, S21, 28	
Headquarters	Richfield	Roscommon		1.22
Headquarters Unit			T21N, R3W, S19, 29, 30	
Headquarters-Sour Unit			T21N, R3W, S29, 30, 32, 33	
Ingham 13	Salina-Niagaran	Ingham	T2N, R1E, S13	0.76

TABLE 1.—FRACTURE PRESSURE GRADIENT VALUES—Continued

Field	Formation	County	Township/range/section	FPG (psi/ft)
Kalkaska "21"	Salina-Niagaran	Kalkaska	T27N, R8W, S22	0.92
Onondaga 10	Salina-Niagaran	Ingham	T1N, R2W, S2–4, 10, 11, 14	0.61
Pennfield 35	Niagaran Reef	Calhoun	T1S, R7W, S35	0.60
Rose City	Richfield	Ogemaw		1.07
Rose City Unit			T23, 24N, R2E, S3, 19–21, 27–30, 32–35	
Rose City Central Unit			T24N, R1, 2E, S25	
Rose City West Unit			T24N, R1E, S21	

[FR Doc. 92–31152 Filed 12–22–92; 8:45 am]
BILLING CODE 6560–50–M

[FRL–4548–1]

Public Meeting on the Land Disposal Restrictions (LDR's) Program

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Pursuant to the 1984 Hazardous and Solid Waste Amendments (HSWA) to the Resource Conservation and Recovery Act (RCRA), EPA established the Land Disposal Restrictions program (LDR's). EPA's Office of Solid Waste will hold a roundtable discussion on the LDR program on January 13 and 14, 1993. The roundtable is aimed at those implementing the LDR program and the discussions will focus on what is working or not working in the implementation of the LDR program.

The public is welcome to observe the discussions among participants; however, these meetings are not intended as public hearings. The roundtable will be held from 8:30 a.m. to 5 p.m. at the Crystal City Hyatt Regency, 2799 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Contact Michelle Prejean of the Waste Treatment Branch at (703) 308–8467.

Dated: December 14, 1992.

Elizabeth Cotsworth,

Deputy Director, Waste Management Division.

[FR Doc. 92–31154 Filed 12–22–92; 8:45 am]
BILLING CODE 6560–50–M

[OPP–180880; FRL–4178–5]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the 18 States as listed below. One public health exemption was granted to the California Environmental Protection Agency and 10 crisis exemptions were initiated by various States. These exemptions, issued during the months of August and September 1992, except for the one in July, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. EPA has denied a specific exemption from the Florida Department of Agriculture and Consumer Services. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific, crisis, and public health exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–305–5805).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Arizona Department of Agriculture for the use of avermectin B_1 on melons to control leafminers; July 1, 1992, to June 30, 1993. Arizona had initiated a crisis exemption for this use. (Larry Fried)

2. Arizona Department of Agriculture for the use of bifenthrin on head lettuce, broccoli, and cauliflower to control the sweet potato whitefly; September 18, 1992, to June 15, 1993. (Andrea Beard)

3. California Environmental Protection Agency for the use of cypermethrin on sugar beets to control the granulose cutworm; September 24, 1992, to May 1, 1993. (Andrea Beard)

4. Florida Department of Agriculture and Consumer Services for the use of avermectin B_1 on celery, head lettuce, and tomatoes to control leafminers; September 28, 1992, to September 27, 1993. (Libby Pemberton)

5. Florida Department of Agriculture and Consumer Services for the use of propiconazole on sweet corn to control rust and leaf blight; September 8, 1992, to September 8, 1993. (Andrea Beard)

6. Idaho Department of Agriculture for the use of paraquat on dry peas and lentils to control weeds prior to harvest; August 14, 1992, to August 15, 1992. Idaho had initiated a crisis exemption for this use. (Susan Stanton)

7. Indiana State Chemist and Seed Commissioner for the use of cryolite on potatoes to control the Colorado potato beetle; August 27, 1992, to October 31, 1992. Indiana had initiated a crisis exemption for this use. (Libby Pemberton)

8. Michigan Department of Agriculture for the use of sethoxydim on canola to control volunteer cereal grains; September 4, 1992, to November 30, 1992. (Susan Stanton)

9. Minnesota Department of Agriculture for the use of glyphosate on hard red spring wheat to control weeds (preharvest); September 18, 1992, to October 1, 1992. Minnesota had initiated a crisis exemption for this use. (Susan Stanton)

10. Ohio Department of Agriculture for the use of cryolite on potatoes to control the Colorado potato beetle; August 27, 1992, to October 31, 1992. (Libby Pemberton)

11. Oregon Department of Agriculture for the use of oxyfluorfen on grasses grown for seed to control various weeds; August 31, 1992, to Janaury 15, 1993. This chemical was the subject of a Special Review; a Rebuttable Presumption Against Registration (RPAR), but it has been returned to Registration Division. (Libby Pemberton)

12. South Dakota Department of Agriculture for the use of glyphosate on wheat, oats, and feed barley to control weeds (preharvest); September 18, 1992, to October 1, 1992. South Dakota had initiated a crisis exemption for this use. (Susan Stanton)

13. Texas Department of Agriculture for the use of glyphosate on grain sorghum (preharvest) to control weeds; September 18, 1992, to October 20,

1992. Texas had initiated a crisis exemption for this use. (Susan Stanton)

14. Washington Department of Agriculture for the use of paraquat on dry pea and lentil fields to control weeds prior to harvest; August 14, 1992, to September 15, 1992. Washington had initiated a crisis exemption for this use. (Susan Stanton)

15. Specific exemptions have been granted for the use of amitraz on honey bee colonies to control tracheal mites. EPA completed a rebuttable presumption against registration (RPAR) for this chemical; final determination notice published in April 1979. The effective dates for the following States listed below are from September 1, 1992 to: (Libby Pemberton)

a. Arkansas State Plant Board, February 16, 1993.

b. Illinois Department of Agriculture, August 31, 1993.

c. Indiana State Chemist and Seed Commissioner, May 1, 1993.

d. Louisiana Department of Agriculture and Forestry, March 31, 1993.

e. Maryland Department of Agriculture, May 21, 1993.

f. Michigan Department of Agriculture, May 30, 1993.

g. North Dakota Department of Agriculture, May 16, 1993.

h. South Dakota Department of Agriculture, June 1, 1993.

i. Virginia Department of Agriculture and Consumer Services, May 1, 1993.

Crisis exemptions were initiated by the:

1. California Environmental Protection Agency, Pesticide Regulation, on September 22, 1992, for the use of avermectin B_1 on fresh market tomatoes to control leafminers. This program has ended. (Libby Pemberton)

2. Louisiana Department of Agriculture and Forestry on September 10, 1992, for the use of paraquat on corn to control weeds. This program has ended. (Susan Stanton)

3. Minnesota Department of Agriculture on August 11, 1992, for the use of glyphosate on spring wheat to control weeds. This program has ended. (Susan Stanton)

4. Mississippi Department of Agriculture and Commerce on August 20, 1992, for the use of paraquat on grain sorghum to control weeds. This program has ended. (Susan Stanton)

5. Mississippi Department of Agriculture and Commerce on August 17, 1992, for the use of paraquat on corn to control weeds. This program has ended. (Susan Stanton)

6. Montana Department of Agriculture on August 5, 1992, for the use of glyphosate on spring wheat to control weeds. This program has ended. (Susan Stanton)

7. Nebraska Department of Agriculture on August 7, 1992, for the use of sodium chlorate on winter wheat to desiccate weeds prior to harvest. This program has ended. (Susan Stanton)

8. North Dakota Department of Agriculture on August 12, 1992, for the use of glyphosate on wheat to control weeds. This program has ended. (Susan Stanton)

9. North Dakota Department of Agriculture on August 7, 1992, for the use of glyphosate on feed barley to control weeds. This program has ended. (Susan Stanton)

10. Texas Department of Agriculture on August 4, 1992, for the use of esfenvalerate on sorghum to control midge and headworm in the entire State. This program has ended. (Libby Pemberton)

EPA has granted a public health exemption to the California Environmental Protection Agency, Department of Pesticide Regulation, for the use of formaldehyde on poultry houses, hatcheries, and immobile equipment to control *salmonella spp.*; September 4, 1992, to September 3, 1993. (Susan Stanton)

EPA has denied a specific exemption request from the Florida Department of Agriculture and Consumer Services for the use of propiconazole on field corn grown for seed to control rust and leaf blight. The Agency denied this request because mancozeb, a previously unregistered alternative, is now registered; chlorothalonil, a registered alternative, was previously impractical due to rotational restrictions, but these restrictions have been removed from the label. Available studies have shown no significant yield differences among field corn treated with mancozeb, chlorothalonil, and propiconazole. Therefore, it appears that the registered alternatives, mancozeb and chlorothalonil, can be used without significant economic loss due to yield losses. (Andrea Beard)

Authority: 7 U.S.C. 136.

Dated: December 16, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 92–31150 Filed 12–22–92; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

December 11, 1992.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street, NW., Suite 640, Washington, DC 20036, (202) 452–1422. for further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0020

Title: Application for Ground Station Authorization in the Aviation Services

Form Number: FCC Form 406

Action: Revision of a currently approved collection

Respondents: Individuals or households, state or local governments, non-profit institutions, and businesses or other for-profit (including small businesses)

Frequency of Response: On occasion reporting

Estimated Annual Burden: 1,600 responses; 1 hour average burden per response; 1,600 hours total annual burden

Needs and Uses: FCC Rules require that applicants file the FCC Form 406 to apply for new, modification, renewal with modification or for an assignment of a Ground station authorization. This form has been revised to remove questions no longer needed; to add new questions; to reformat for enhanced key entry screens and to further clarify instructions for completing the form. Data are used to update the existing database and to issue licenses.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–31049 Filed 12–22–92; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–969–DR]

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia (FEMA–969–DR), dated December 1, 1992, and related determinations.

EFFECTIVE DATE: December 17, 1992.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is amended as follows: The incident period for this disaster is November 22, 1992 through December 7, 1992.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Robert H. Volland,

Chief, Individual Assistance Division, State and Local Programs and Support.

[FR Doc. 92–31138 Filed 12–22–92; 8:45 am]

BILLING CODE 6718–02–M

Board of Visitors for the National Fire Academy; Open Meeting

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, FEMA announces the following committee meeting:

NAME: Board of Visitors for the National Fire Academy.

DATE OF MEETING: February 5–6, 1993.

PLACE: National Emergency Training Center, National Fire Academy, Building N, Conference Room, Emmitsburg, MD 21727.

TIME: February 5, 1993, 9 a.m.–5 p.m. February 6, 1993, 9 a.m.–12 noon.

PROPOSED AGENDA: February 5: Quarterly meeting—old business. February 6—Agenda completion.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public with seating available on a first-come, first-served basis. Members of the general public who plan to attend the quarterly meeting should contact the Office of the Superintendent, National Fire Academy, U.S. Fire Administration, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1117, on or before January 15, 1993.

Minutes of the meeting will be prepared and will be available for public viewing in the Office of the Administrator, U.S. Fire Administration, Federal Emergency Management Agency, Emmitsburg, MD 21727. Copies of the minutes will be available upon request 30 days after the meetings.

Dated: December 9, 1992.

Olin L. Greene,

U.S. Fire Administrator,

[FR Doc. 92–31139 Filed 12–22–92; 8:45 am]

BILLING CODE 6718–01–M

[Docket No. FEMA–REP–I–MA–2]

Massachusetts Radiological Emergency Response Plan

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: The Region I Office of FEMA gives notice that it has received radiological emergency response plans from the Commonwealth of Massachusetts. These plans support the Commonwealth of Massachusetts and include the plans of local governments near the North Atlantic energy Service Corporation's Seabrook Nuclear Power Station, located in Seabrook, New Hampshire.

DATE PLANS RECEIVED: Initial submittal: September 24, 1991; latest revisions received: December 9, 1992.

ADDRESSES: Comments on the plans may be submitted in writing to Albert A. Gammal, Jr., Chief, Natural and Technological Hazards Division, Federal Emergency Management Agency, Region I Office, J.W. McCormack Post Office and Courthouse, Boston, Massachusetts 02109, on or before January 22, 1993.

Copies of the plans are available for review and copying at the FEMA Region I Office at the Federal Emergency Management Agency, Region I Office, J.W. McCormack Post Office and Courthouse, Boston, Massachusetts 02109. Please call (617) 223–9559 in advance to arrange a time to review the plans. Copies are also available upon request in accordance with the fee schedule for FEMA Freedom of Information Act requests, 44 CFR 5.26. See Supplementary Information below for further information on requesting copies of the plans.

FOR FURTHER INFORMATION CONTACT: Albert A. Gammal, Jr., Federal Emergency Management Agency, Region I Office, J.W. McCormack Post Office and Courthouse, Boston, Massachusetts 02109.

SUPPLEMENTARY INFORMATION: For continued operation of nuclear power plants, the Nuclear Regulatory Commission requires approved licensee and State and local governments' radiological emergency response plans. Under 44 CFR 350.7, "Application by State for Review and Approval," The Commonwealth of Massachusetts submitted its Radiological Emergency Response Plan for the Commonwealth of Massachusetts to the Federal Emergency Management Agency, Region I Office for review and approval.

Included in the submission are plans for the Commonwealth of Massachusetts and for local communities that are wholly or partially within the established plume exposure pathway emergency planning zone of Massachusetts for the Seabrook Nuclear Power Station.

Copies of the plans are available for review at the Federal Emergency Management Agency, Region I, J.W. McCormack Post Office and Courthouse, Boston, Massachusetts 02109. They are also available on request in accordance with the fee schedule for FEMA Freedom of Information Act request, 44 CFR 5.26. Reproduction fees are $.15 a page payable at the time the copies are requested.

The policies and procedures for FEMA's review, evaluation and approval process on the adequacy of offsite plans and preparedness are established in 44 CFR 350. FEMA findings and determinations, made under this rule, are provided to the Nuclear Regulatory Commission for its use in making Commission findings on the adequacy of offsite plans and preparedness and in making licensing decisions on authorizing full-power operation of commercial nuclear power plans.

Dated: December 15, 1992.

Richard H. Strome,

Regional Director, FEMA Region I.

[FR Doc. 92–31140 Filed 12–22–92; 8:45 am]

BILLING CODE 6718–20–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) 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.: 224–010876–006.

Title: Palm Beach/Gulfstream Lines Terminal Agreement.

Parties:

Port of Palm Beach District
Gulfstream Line, Inc.

Synopsis: The amendment continues the leasing agreement between the parties on a month-to-month basis.

By Order of the Federal Maritime Commission.

Dated: December 17, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92–31068 Filed 12–22–92; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

[Docket No. R-0786]

Telecommunications Service Priority

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice; Request for comment.

SUMMARY: In November 1988, the Federal Communications Commission (FCC) established the Telecommunications Service Priority (TSP) system to provide a uniform system for assigning priorities for provisioning and restoring telecommunication services that support national security and emergency preparedness (NS/EP) functions. Under the FCC rule, the Board may sponsor TSP assignments to telecommunication services of private-sector organizations that are critical for supporting the Board's NS/EP responsibilities.

Backbone circuits used for the Federal Reserve's Fedwire system, which interconnect the Federal Reserve Banks, have been assigned TSP status. The Board is requesting comment on proposed criteria for providing TSP sponsorship for backbone circuits of eligible private-sector interbank large-value funds or securities transfer systems and access circuits that connect participants to a sponsored large-value payments system.

The Board believes that assignment of TSP status to these circuits will help ensure the operations and liquidity of banks and the maintenance and restoration of stable and orderly financial markets, and thus is consistent with its NS/EP responsibilities. Applications soliciting TSP sponsorship from the Board should not be submitted until these criteria are approved.

DATES: Comments must be submitted on or before March 5, 1993.

ADDRESSES: Comments, which should refer to Docket No. R-0786, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments addressed to Mr. Wiles may also be delivered to the Board's mail room between 8:45 a.m.and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room B-1122 between 9 a.m. and 5 p.m., except as provided in § 261.8 of the Board's Rules Regarding the Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Louise L. Roseman, Assistant Director (202/452-3975), or Kenneth D. Buckley, Manager (202/452-3993), Division of Reserve Bank Operations and Payment Systems, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf, Dorothea Thompson (202/452-2077), Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551. The above individuals can also be contacted to obtain copies of the NCS forms and instructions referenced in this document.

SUPPLEMENTARY INFORMATION:

Background

The Communications Act of 1934 authorizes the Federal Communications Commission (FCC) to assign and approve reasonable priorities for the provision and restoration of common carrier-provided telecommunications services.[1] In November 1988, the FCC adopted rules establishing the Telecommunications Service Priority (TSP) system for priority restoration and provision of telecommunications services that support National Security and Emergency Preparedness (NS/EP) functions (47 CFR part 64, appendix A). Telecommunication services necessary for NS/EP are defined as those that are used to maintain a state of readiness or to respond to and manage any event or crisis (local, national, or international) which causes or could cause injury or harm to the population, damage to or loss of property, or degrades or threatens the NS/EP posture of the United States.

Two categories of telecommunication services fall within this definition: Emergency NS/EP and Essential NS/EP. Under the FCC rule, Emergency NS/EP telecommunication services are those new services that are "so critical as to be required to be provisioned at the earliest possible time without regard to the costs of obtaining them." An example of Emergency NS/EP service is Federal Government activity in response to a Presidentially declared disaster or emergency. All Emergency TSP services are designated "E".

The FCC rule establishes two types of Essential priority functions:

(1) Expedited restoration of disrupted telecommunication service; and

(2) Expedited provision of new telecommunication services. Essential NS/EP telecommunication services must qualify under one of four subcategories:

(A) National security leadership (the President of the United States);

(B) National security posture and U.S. population attack warning;

(C) Public health, safety, and maintenance of law and order; and

(D) Public welfare and maintenance of national economic posture.

Essential services are assigned a priority on a scale of 1 to 5 (with 1 as the highest priority) based on the appropriate subcategory. Services in subcategory A qualify for priority levels 1-5; those in subcategory B qualify for priority levels 2-5; those in subcategory C qualify for priority levels 3-5; and services in subcategory D qualify for priority levels 4-5.

The FCC rules establish procedures for the assignment and approval of priority levels and set forth priority categories and criteria for determining priority levels. Although the FCC must approve all priority level assignments, the FCC has delegated the administration of the NS/EP TSP program to the Executive Office of the President (EOP). The EOP's responsibilities under the NS/EP TSP program are administered by the

[1] Under section 706 of the Act, this authority may be superseded, and expanded to non-common carrier telecommunications services, by the emergency war powers of the President of the United States. The Executive Office of the President has developed separate regulations and procedures to cover the exercise of these emergency powers. See 47 CFR Ch. II and Executive Order 12656.

National Communications System (NCS), established by Executive Order 12472.[2]

Private-sector organizations must apply for TSP assignments through a Federal agency that is willing to sponsor such applications. Pursuant to the FCC rule, the Board may sponsor essential telecommunication services of organizations that contribute to the performance of NS/EP functions under subcategory D "Maintenance of National Economic Posture" for a TSP level of 4 or 5.

TSP status is intended to be limited to the minimum number of telecommunication circuits necessary to support an NS/EP function. TSP is intended to be invoked only as a "last resort" and, as such, organizations granted TSP status are required to ensure that circuits covered by TSP are afforded the highest level of disaster recovery and contingency capabilities. Payment system participants requesting TSP sponsorship by the Board will be expected to minimize single points of failure or other vulnerabilities through diverse circuit routing, dual physical pathing of circuits, or redundant switching arrangements.

Proposed TSP Sponsorship Criteria

Telecommunication services are designated as essential where a disruption of "a few minutes to one day" could seriously affect the continued operations that support an NS/EP function. The Federal Reserve has NS/EP responsibilities on matters related to the "operation and liquidity of banks" and "the development of plans for the maintenance and restoration of stable and orderly markets." An outage of up to one day affecting large-value funds or securities transfer services may adversely affect the operation and liquidity of banks and/or the stability of financial markets. Backbone circuits used for the Federal Reserve's Fedwire system, which interconnect the Federal Reserve Banks, have been assigned TSP priority level 4. TSP further enhances the resilience and recoverability of the communications infrastructure supporting the Fedwire system and is consistent with the Federal Reserve's efforts to improve the reliability of its automation and communications environment. The Board believes that assignment of TSP status for other circuits used by large-value funds and securities transfer systems will help ensure the operations and liquidity of banks and the maintenance and restoration of stable and orderly financial markets, and thus is consistent with its NS/EP responsibilities.

The Fedwire funds and securities transfer services are used to facilitate much of the country's economic activity. The average value of Fedwire funds and securities transfers approaches $1.5 trillion per day. Most domestic transactions that rely on the immediate and irrevocable transfer of a large-value payment are processed through the Fedwire system. A substantial level of international economic activity is conducted via the domestic telecommunication services used by the Clearing House Interbank Payments System (CHIPS) and the Society for Worldwide Interbank Financial Telecommunication (SWIFT) system. Interruptions in the ability to make payments via these systems could adversely affect the ability of private enterprises to engage in their business activities, which could in turn affect the ability of their counterparties to conduct business.

In addition, the Fedwire funds transfer system is critical to the ability of participants in the securities, options and futures markets to effect settlement for their trading activity. The Fedwire system is also used by these market participants to fund margin calls. These transactions require the ability to transfer funds in a short time frame (*i.e.*, the less than one day specified by the NS/EP criteria). In addition, the Fedwire system is critical to depository institutions' ability to manage their reserve positions.

Therefore, the Board believes TSP status is warranted to expedite the provision and restoration of those resources within the telecommunication infrastructure that supports these systems. Assignment of TSP status to circuits used in large-value payment systems will help ensure an orderly and timely resumption of large-dollar funds and securities transfer services in the event of an emergency or disaster. Specifically, the Board believes it would be appropriate to sponsor TSP status for backbone circuits of private-sector interbank large-value funds or securities transfer systems, and certain access circuits that connect participants to a sponsored large-value payments system.The Board proposes that these circuits be sponsored for a TSP priority level 4. The Board requests comment on the following criteria for determining whether particular telecommunications circuits should be considered for sponsorship by the Board for TSP status:

1. *The payments system requesting TSP sponsorship must be critical to the operation and liquidity of banks or to the stability of financial markets.*

A payments system seeking TSP sponsorship from the Board must provide a large-value interbank payments service, such as a funds or securities transfer service, that requires same-day recovery. The New York Clearing House has requested that the Board sponsor circuits used in the CHIPS network. The Board would consider sponsoring TSP assignment to certain CHIPS circuits pursuant to this criterion as finally adopted.

The Board also will consider sponsorship of providers of large-value payment-related services that direct the transfer of funds, such as SWIFT. To qualify for TSP sponsorship, an outage of a large-value payment system of up to one day must be determined to adversely affect bank operations and liquidity or national financial markets.

The Board considered extending TSP sponsorship to telecommunication circuits supporting other electronic services, such as the automated clearing house (ACH) service. At this time, however, the Board does not believe that the ACH service meets the NCS definition of an Essential telecommunication service where a disruption of a "few minutes to one day" would have a serious effect on Federal Reserve NS/EP responsibilities. Retail payment systems, such as automated teller machine, point-of-sale, or credit card networks, also would not meet this criterion. The Board will continue to review the appropriateness of extending TSP sponsorship to ACH or other electronic payment systems as these systems evolve over time.

2. *A payments system seeking TSP sponsorship must clearly delineate the boundaries of its backbone telecommunications network.*

The Board or a Federal Reserve Bank must be able to identify the minimum number of telecommunication circuits that are necessary to support the large-value payment system. Since TSP assignment is not applicable to switched

[2] The administrative structure of the NCS consists of the executive agent, (the Secretary of Defense, as designated by the President), the Manager (designated by the executive agent) and the Committee of Principals (representatives from federal departments, agencies, and entities with significant national security or emergency preparedness telecommunications responsibilities). The Federal Reserve System was designated as a "participating independent entity" on the Committee of Principals. The EOP has assigned to the NCS Manager the administrative authority delegated to the EOP by the FCC, as well as the authority to administer the NS/EP TSP program after invocation of the President's war emergency powers. The NCS has issued, with the FCC's approval, a directive (NCS Directive 3-1), a service vendor handbook (NCS Handbook 3-1-2), and a user manual (NCS Manual 3-1-1) to implement its responsibilities. (Memorandum Opinion and Order, 4 FCC Rcd 9473 (1989) and 54 FR 50622, December 8, 1989).

circuits, both the backbone and access circuits must be leased line circuits. If a leased circuit is a sub-component of a larger circuit, the full circuit may be sponsored for TSP status.

3. *Access circuits connecting depository institutions or other participants to a sponsored large-value system may be eligible for sponsorship if they are used to transmit a daily average aggregate value of at least $2 billion of funds and/or securities transfers, or if they meet an alternative criterion acceptable to the Board.*

The Board would sponsor TSP status for circuits that connect depository institutions or other network participants to a sponsored large-value payments system if a daily average of at least $2 billion in funds and/or securities transfers is transmitted over the circuit. The Board recognizes that certain private-sector large-value payment systems may have difficulty providing information necessary to determine whether this criterion is met. For example, the SWIFT system transmits payment instructions in multiple currencies and does not cause the settlement of the underlying transactions. Consequently, SWIFT does not accumulate the value of transfers sent over particular access circuits. The Board will consider proposals by sponsored large-value systems of alternative methods for determining eligible access circuits that would reduce the administrative costs of determining eligibility and remain consistent with the spirit of this criterion.

The Board believes that the administrative costs associated with tracking Fedwire funds and securities transfer volumes in order to identify Fedwire access circuits eligible for TSP sponsorship under this criterion could exceed the cost of the TSP tariffs applied to these circuits. To minimize the costs associated with administering the TSP program, the Board proposes sponsoring TSP status for the approximately 300 point-to-point computer interface leased connections used for the Fedwire funds and/or securities transfer services. These circuits generally are used to transmit a large aggregate value of Fedwire transfers.

Access circuits eligible for TSP sponsorship by the Board generally will consist of one or more circuits originating from the premise of the depository institution (or other network participant) and terminating at the premise of the sponsored organization. In some circumstances, however, another circuit that connects the network access circuit to the participant's back-office processing location also may be eligible for Board sponsorship for TSP assignment if it meets the Board's criteria, including the threshold value transmitted over that circuit (or equivalent criterion).

4. *The network backbone circuits and the access circuits for which a payments system seeks TSP sponsorship must be subject to adequate contingency backup arrangements.*

TSP is intended as a "last resort" for restoration of disrupted telecommunication services. The NCS strongly encourages TSP users to maintain adequate communication diagnostic and monitoring equipment that can differentiate outages due to a circuit disruption from those arising from premise equipment. The sponsored organization must maintain a robust backbone network that can recover quickly from equipment or circuit failures. Disaster recovery capabilities also must be maintained in a high state of readiness. Network management procedures should be able to isolate errors, reroute data, and remotely reconfigure equipment. The Board would expect the backbone network of sponsored organizations to provide a level of redundancy in equipment, diverse circuit routing, and diagnostic capabilities commensurate with expectations for supporting critical NS/EP functions. A depository institution that uses an access circuit(s) with TSP assignment should have a backup circuit or dial backup capabilities. In the Federal Reserve's new Fednet network environment, Fedwire leased-line access circuits will have, at a minimum, dial backup capability and a redundant digital service unit, and thus will satisfy this criterion.

5. *A payments system sponsored by the Board that receives TSP status for essential circuits must provide the Federal Reserve the opportunity to verify continuing TSP eligibility for those circuits.*

TSP authorization code(s) must be revalidated by the NCS for eligibility every three years. The Board or the Reserve Banks must be provided with an opportunity to review and verify the use of TSP circuits by a sponsored organization to ensure continuing eligibility. This review and verification process will include, but may not be limited to, circuit topologies, contingency provisions, and the level of compliance with Board and NCS TSP criteria and procedures.

Open Market Operations

The Board will sponsor TSP status for eligible dedicated voice circuits from the Federal Reserve Bank of New York's Open Market Desk to major securities dealers and from the Foreign Exchange Desk to foreign exchange counterparties and foreign central banks. These operations are necessary to the stability of the financial markets. The Federal Reserve Bank of New York leases these circuits and will complete the necessary applications for sponsorship.

Application for TSP Sponsorship

Private-sector organizations can apply to the Board for TSP sponsorship to obtain priority restoration of existing circuits. The Board can also sponsor TSP priority to provision new telecommunication services on an "as needed" basis as a result of national emergencies or disasters warranting extraordinary action. The Board will consider requests from sponsored private-sector organizations for TSP provision of new services under the sponsorship criteria proposed in this notice. The Board will delegate to the Director of the Division of Reserve Bank Operations and Payment Systems, or his designee, the authority to sponsor TSP assignments or to sponsor expedited provision of new telecommunications services to sponsored payment system organizations, pursuant to the Board's criteria, as finally adopted. Applications related to telecommunication services that the Board believes warrant TSP status will be forwarded to the Manager of NCS, who is charged with making TSP assignments.

Fedwire Access Circuits

The Board proposes to sponsor for TSP status all point-to-point leased Fedwire access circuits. The Reserve Banks that lease these circuits will complete the necessary applications for TSP sponsorship.

A depository institution that has additional circuits connecting a TSP-sponsored leased Fedwire access circuit with its Fedwire processing location may apply for TSP sponsorship of those additional circuits, if they satisfy the Board's criteria. Since these circuits are not leased by a Reserve Bank, the depository institutions will be expected to complete the TSP applications and submit them to their Reserve Bank, which will forward the applications to the Board. The requesting depository institution should provide, along with its TSP application, a letter that describes how the access circuit meets the Board's criteria for TSP sponsorship.

Private-Sector Payment Systems

Upon final adoption of these criteria, an organization operating a large-value payments system may apply to the Board for TSP sponsorship. The organization applying for sponsorship must describe how the backbone and access circuits for which it is requesting TSP assignment qualify under each applicable criterion. Requests for sponsorship of access circuits must be made by the operator of the large-value network, rather than by individual network participants.

As a sponsoring organization, the Board is required by the NCS to maintain accurate records of the assignment and disposition of TSP codes provided to sponsored payment system participants. As such, organizations receiving TSP assignments pursuant to the Board's sponsorship will be required to (1) provide the Board with information pertaining to the telecommunication carrier and identifying code for each circuit receiving a TSP assignment; (2) notify the Board of any engineering changes affecting TSP assigned circuits; and (3) notify the Board of any TSP codes that should be revoked. Copies of the NCS forms and instructions for applying for TSP status and for reporting this information are available on request.

Confidentiality of TSP Information

The Board believes that information provided to apply for TSP status as well as information included in subsequent TSP reports will be, in most cases, proprietary. Applicants will be required to describe the topology of their payments network and disaster recovery capabilities. Furthermore, private-sector entities will be required to identify telecommunication service providers and the unique circuit identifiers supporting sponsored TSP services. The release of this information could cause competitive harm. Consequently, the Board will generally consider TSP information exempt from the Freedom of Information Act under exemption 4 to protect both the interests of commercial entities that submit proprietary information to the government and the interests of the government in receiving continued access to such data (5 U.S.C. 552(b)(4)).

Revalidation

Consistent with NCS criteria, approved applicants will be required to reapply to the Board every three years to revalidate their continued sponsorship and eligibility of each TSP assigned circuit. The revalidation process will include a review of the validity of the original justification qualifying the depository institution or other organization for TSP status under the Board's TSP criteria. In addition, the Board will reserve the right to periodically audit records pertaining to TSP sponsored circuits to ensure compliance with NCS and FCC criteria on TSP. Such an audit may require the sponsored organization to provide evidence of disaster recovery, network diagnostic, or backup capabilities as well as information necessary to determine continued eligibility for TSP status under the Board's criteria.

Costs Associated with TSP Status

Restoration and Provision Services

In the event of a telecommunications disruption, carriers are obligated to restore TSP designated circuits according to the ranking of their assigned codes and preempt any other priority restoration arrangement for non-TSP circuits. The status of a TSP-designated circuit and its preemptive rights over non-TSP circuits are recognized by all telecommunication carriers. Consequently, a consistent level of priority is provided end-to-end on a TSP designated circuit and the priority is acknowledged with the same level of urgency by local exchange carriers and inter-exchange carriers. Carriers are required to ensure that any trouble tickets or problem logs specifically identify TSP circuits to ensure priority service is received.

In the event that a disaster or national emergency requires the provision of new telecommunications services to a TSP participant, such as relocating to or establishing new facilities, telecommunication carriers are required to expedite circuit installation. Both local exchange and inter-exchange carriers prioritize TSP requests for the provision of new service above any requests from non-NS/EP services. Telecommunication service providers are obligated by the NCS to maintain an accurate inventory of circuits that are assigned TSP status and must reconcile this inventory against NCS records annually.

Telecommunication Carrier Tariffs

Tariffs filed with the FCC and state regulatory agencies allow telecommunication carriers to assess surcharges for providing TSP services. The tariffs permit carriers to assess a one-time charge and a monthly charge for each circuit assigned a TSP restoration authorization code. In the event new service is provisioned under TSP, carriers can apply a surcharge to the normal installation charges for each telecommunication service ordered. Finally, telecommunication carriers can assess a penalty to TSP customers for reporting an erroneous outage on a TSP circuit that is traced to the customer's premise equipment.

Telecommunications carriers' charges for TSP are filed with the FCC and with state regulatory agencies, as applicable. Charges are cost based and are not uniform between states or carriers. Tariff No. 9 specifies TSP charges associated with inter-exchange carrier services. Tariff No. 11 lists TSP charges, by state, associated with Local Access and Transport Area (LATA) services. These LATA-related TSP charges are based on tariffs filed by local exchange carriers with state regulatory agencies. A single carrier generally collects TSP charges for all portions of the end-to-end service. TSP restoration assignment involves a one-time "set-up" charge and an ongoing monthly charge. Under Tariff 11, the one-time charge for assigning TSP ranges from $46 to $345 and ongoing monthly charges range from $.90 to $9.00 by LATA. TSP restoration charges for long distance circuits are assessed on three network components: the LATA access provider at each end of the circuit and the inter-exchange carrier. Under Tariff 9, the inter-exchange portion of a circuit incurs a one-time charge of $235 and a monthly charge of $9.00.[3] Under Tariff 9 and 11, the TSP surcharges for the emergency provision of new service range from $50 to $200 for endpoint access circuits, depending on the LATA, and $400 for the inter-exchange portion of a circuit. The penalty for initiating a service call resulting from an erroneous report of an outage on a TSP circuit is $127.00.

Fedwire Access Circuits

The costs associated with TSP status for point-to-point computer interface leased Fedwire access circuits used for priced services will be recovered through the fees charged to depository

[3] For example, under Tariff 11, the cost of TSP restoration priority on an intra-LATA Fedwire access circuit of the Federal Reserve Bank of Philadelphia would include a one-time charge of $45.93 and monthly charges of $1.29. TSP restoration priority on an inter-LATA Fedwire access circuit from a Delaware depository institution to the Federal Reserve Bank of Philadelphia would include the costs referenced above as well as an additional one-time charge of $45.93 and monthly charges of $1.29 for the Delaware LATA access portion of the circuit and, under Tariff 9, an additional $235 one-time charge and monthly charges of $9.00 for the inter-exchange portion of the circuit.

institutions that use those circuits.[4] The incremental costs associated with TSP status should not have a material effect on Federal Reserve fees. The Federal Reserve will not pay for TSP assignment to any additional circuits connecting a network access circuit to an institution's back-office Fedwire processing location. The TSP costs related to these circuits would be borne by the depository institution leasing the circuits.

Private-Sector Payment Systems

Private-sector payment system organizations that are granted TSP status must bear the cost of all tariffs. The Federal Reserve will not assume an obligation for funding surcharges assessed by local and inter-exchange carriers for establishing and administering TSP on backbone or access circuits used by private-sector large-value payment systems. Furthermore, any costs incurred by sponsored payment system participants for improvements to network facilities necessary to comply with NCS standards will not be reimbursed by the Federal Reserve.

Competitive Impact Analysis

The Board does not believe that its sponsorship of telecommunications circuits of private-sector large-value payment systems or certain Fedwire access circuits for TSP status would adversely affect the ability of other service providers to compete effectively with Federal Reserve Banks in providing similar services. The Board's proposed criteria for determining whether it should sponsor the critical backbone and access circuits of a private-sector payments mechanism would be consistent with the criteria for determining whether it should sponsor circuits used to provide Federal Reserve services.

The Board recognizes that granting TSP status to access circuits of certain depository institutions could provide a slight competitive advantage to those institutions vis-a-vis institutions whose access circuits do not qualify for TSP sponsorship, due to the slightly higher level of reliability and availability they may be able to achieve due to the TSP assignment. To eliminate this competitive advantage, TSP would need to be extended to all depository institution access circuits, or provided to none of these circuits. Neither of these alternatives would be consistent with the objective of protecting only critical NS/EP functions. Given that any circuit subject to TSP status must be subject to other contingency backup arrangements, which would be used in most situations of service outage, the Board does not believe that the marginal competitive advantage that TSP assignment may provide some institutions is significant enough to outweigh the benefits to the payments system of this program.

Paperwork Reduction Act

The Board would use two NCS forms to implement its TSP sponsorship responsibilities, as well as a separate unstructured information collection. The NCS reports are entitled "Telecommunications Service Priority (TSP) Request for Service Users" (NCS Form 315) and "TSP Service Order Report" (NCS Form 316). After consideration of the comments received during the comment period, the Board, under authority delegated by the Office of Management and Budget, will review its proposed additional information collection in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and the OMB's regulation on Controlling Paperwork Burdens on the Public (5 CFR part 1320). Comments regarding the information collection requirements may be submitted to the Board at the address listed above, or to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC, 20503, Attention: Desk Officer for the Federal Reserve Board, with a copy sent to the Board. Copies of the NCS forms and related instructions are available from the Board upon request.

A description of the proposed reporting requirements, including the reasons for the requirements, is contained elsewhere in this docket. The reporting forms will be required of all depository institutions and other payments system providers that wish to obtain TSP sponsorship or that have obtained sponsorship and are obligated to make certain status reports to the Board on their TSP circuits. Payments system providers would apply on behalf of eligible depository institutions for access circuits using the NCS forms. Depository institutions that need TSP on secondary circuits would directly file the NCS 315 and 316 forms with the Board. TSP sponsorship requests must be renewed once every three years (NCS Form 315), and status reports must be made as required (NCS Form 316). Based on an average response time of .5 hours for NCS Form 315 and .25 hours for NCS Form 316, the Board estimates that information collections will result in an annual reporting burden for these two forms of approximately 275 hours for an estimated 500 reporters. In addition to the NCS forms, the Board also would require information from payments system participants on a one-time basis to justify sponsorship of their network and access circuits for TSP sponsorship. This would not require a reporting form, but participants would be required to address, in a letter to the Board, the proposed criteria. This activity likely would take 4 hours per response. Small businesses should not be burdened substantially by these reporting requirements. The information collections will be mandatory to obtain or retain the benefit of a TSP assignment, as authorized in Appendix A of 47 CFR part 64, and generally will be treated as confidential in accordance with 5 U.S.C. 552(b)(4).

By order of the Board of Governors of the Federal Reserve System, December 18, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-31145 Filed 12-22-92; 8:45 am]

BILLING CODE 6210-01-F

[4] Depository institutions that use their access circuits solely for non-priced services are not assessed electronic connection fees. Computer interface point-to-point leased Fedwire access circuits used only for non-priced services will not be charged for TSP.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

National Institute for Occupational Safety and Health

Request for Comments and Secondary Data on Performance Specifications and Testing Protocols for Field Instruments

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), Public Health Service (PHS), Department of Health and Human Services (DHHS).

ACTION: Notice of request for comments and secondary data.

SUMMARY: In response to the need to monitor worker exposure and to evaluate workplace atmospheres for gases, vapors and aerosols, NIOSH is requesting information, comments and secondary data relative to the development of performance criteria and the development and evaluation of a testing protocol for field instruments. NIOSH will use this information in the formulation of the performance specifications and testing protocol(s). The resultant performance specifications and testing protocol(s) are

also intended for publication in the NIOSH Manual of Analytical Methods.

DATES: Comments concerning this notice should be submitted by March 23, 1993.

ADDRESSES: Please submit four copies of any information, comments, suggestions, or recommendations in writing to Diane Manning, NIOSH Docket Office (C–34), National Institute for Occupational Safety and Health, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

FOR FURTHER INFORMATION CONTACT: Mary Lynn Woebkenberg, Division of Physical Sciences and Engineering (R–7), National Institute for Occupational Safety and Health, 4676 Columbia Parkway, Cincinnati, Ohio 45226, (513) 841–4241.

SUPPLEMENTARY INFORMATION: Under the Occupational Safety and Health Act of 1970 (Pub. L. 92–596), NIOSH is directed to conduct research, experiments and demonstrations, conduct health hazard evaluations and industrywide studies, and develop criteria for improving occupational safety and health standards. In carrying out these responsibilities, industrial hygienists, safety and health professionals, and other scientists use portable and transportable direct-reading instrumentation for on-site analysis of hazardous gases, vapors and aerosols. In order to accurately characterize workplace atmospheres, estimate the extent of exposure, and adequately protect worker health, valid data need to be obtained from the monitoring instrumentation and the instrumentation needs to operate predictably and reliably. NIOSH is currently considering the preparation of recommended performance standards and corresponding testing protocol(s) for field instrumentation and is interested in obtaining existing and secondary information related to the same. The information sought includes the following:

1. Existing performance standards and testing protocols that have been developed for field instrumentation. (All steps of such protocols are of interest.)

2. Results of research wherein existing protocols have been used to evaluate field instrumentation.

3. The existence, availability, characteristics, and suggested applications of instrumentation capable of on-site analysis of gases, vapors, and aerosols.

All information received in response to this notice (except that designated as trade secret and protected by section 15 of the Occupational Safety and Health Act, or that are exempt from disclosure under the Freedom of Information Act) will be available for public examination and copying at the above address.

Dated: December 16, 1992.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 92–31077 Filed 12–22–92; 8:45 am]

BILLING CODE 4160–19–M

[CRADA 93–001]

Cooperative Research and Development Agreement

AGENCY: Centers for Disease Control and Prevention (CDC), Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC) announces the opportunity for potential collaborators to enter into a Cooperative Research and Development Agreement (CRADA) to develop diagnostic probes for virulence-associated genes of selected bacterial pathogens.

It is anticipated that all inventions which arise from this CRADA will be jointly owned and licensed on a royalty-bearing basis exclusively to the collaborator with which the CRADA is made.

Because CRADAs are designed to facilitate the development of scientific and technological knowledge into useful, marketable products, a great deal of freedom is given to Federal agencies in implementing collaborative research. The CDC may accept staff, facilities, equipment, supplies, and money from the other participants in a CRADA. CDC may provide staff, facilities, equipment, and supplies to the project. There is a single restriction in this exchange: CDC May Not Provide Funds to the other participants in the CRADA.

DATES: This opportunity is available until January 22, 1993. Respondents may be provided a longer period of time to furnish additional information if CDC finds this necessary.

FOR FURTHER INFORMATION CONTACT:

Technical

Pathogenesis Study Group (Carolyn M. Black, Barry S. Fields, Patricia I. Fields, C. Harold King, Orjan Olsvik, and Frederick D. Quinn) National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC): 1600 Clifton Road, NE., Mailstop D–11, Atlanta, GA 30333. Telephone: (404) 639–2841.

Business

Greg Jones, Technology Transfer Representative, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC): 1600 Clifton Road, NE., Mailstop C–19, Atlanta, GA 30333. Telephone: (404) 639–2434.

SUPPLEMENTARY INFORMATION: The collaborator and CDC will jointly support research aimed at identifying bacterial genes worthy of use in the detection of pathogenic bacteria including, but not limited to, *Mycobacterium tuberculosis, Legionella pneumophila, Vibrio cholera, Neisseria meningitidis, Chlamydia pneumoniae, Salmonella* spp., and *Afipia felis.* This process will entail the use of CDC's large collection of strains and hybridization techniques developed at CDC which can identify genes and/or gene products present in virulent but not avirulent strains of bacteria.

Applicants will be judged according to the following criteria:

1. Soundness of the research plan;
2. Adequacy of the staff to develop the diagnostic test(s);
3. Adequacy and availability of the facilities and equipment;
4. Evidence of scientific credibility; and
5. Evidence of commitment and ability to develop diagnostic tests that will detect specific organisms based on specific genes.

This CRADA is proposed and implemented under the Federal Technology Transfer Act of 1986: Public Law 99–502.

The responses must be made to: Nancy C. Hirsch, Technology Transfer Coordinator, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop, C–19, Atlanta, GA 30333.

Dated: December 17, 1992.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 92–31078 Filed 12–22–92; 8:45 am]

BILLING CODE 4160–18–M

Advisory Committee for Energy-Related Epidemiologic Research: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

NAME: Advisory Committee for Energy-Related Epidemiologic Research.

TIMES AND DATES: 8:30 a.m.–5 p.m., January 12, 1993. 8:30 a.m.–3:15 p.m., January 13, 1993.

PLACE: CDC, (Chamblee Facility), Building 101, Conference Room 1301, 4770 Buford Highway, NE., Atlanta, Georgia 30341–3724.

STATUS: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

PURPOSE: This committee is charged with providing advice and recommendations to the Secretary of Health and Human Services (HHS); the Assistant Secretary for Health; the Director, CDC; and the Administrator, Agency for Toxic Substances and Disease Registry (ATSDR), on the establishment of a research agenda and the conduct of a research program pertaining to energy-related analytic epidemiologic studies. The committee will take into consideration information and proposals provided by the Department of Energy's (DOE) Advisory Committee for Environment Safety and Health.

MATTERS TO BE DISCUSSED: This is the initial meeting of the Advisory Committee for Energy-Related Epidemiologic Research. Presentations will be made by staff of the National Center for Environmental Health (NCEH), CDC; the National Institute for Occupational Safety and Health, CDC; ATSDR; and DOE with emphasis placed on developing priorities for potential research projects for funding in fiscal year 1993.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Nadine Dickerson, Program Analyst, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, (F–35), Atlanta, Georgia 30341–3724, telephone 404/488–7040, FAX 404/488–7044.

Dated: December 17, 1992.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 92–31076 Filed 12–22–92; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–020–3–4210–05; AZA–27349]

Classification of Public Lands; Arizona

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Recreation and Public Purposes (R&PP) Act Classification; Arizona.

BLM is considering the lease of public lands within the following described township for recreation and public purpose:

Gila and Salt River Meridian, Arizona

T. 6N., R. 1W.,
Sec. 24, all;
Sec. 25, N½.
Aggregating 960 acres, more or less, Maricopa County.

The land has been examined and found suitable for classification for lease and patent for recreation and public purposes under provisions of the R&PP Act of June 14, 1926, as amended (44 Stat. 741: 43 U.S.C. 869; 869–4) and the regulations contained in 43 CFR part 2740 and 43 CFR part 2912.

In addition the land is determined to meet the general classification criteria of 43 CFR 2410.1 (a-d) and specific public purposes classification criteria of 43 CFR 2430.4 (a and c).

Classification of this land under the provisions of the above cited R&PP Act segregates the land from appropriation under the public land laws and the mining laws, but not from applications under the mineral leasing laws or the R&PP Act for a period of eighteen months from the date this notice is published in the **Federal Register** (43 CFR 2741.5(h)(2)).

Detailed information concerning this classification is available from the Phoenix District Office, Bureau of Land Management, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

For a period of 45 days from the date of publication of this notice in the **Federal Register** interested parties may submit comments to the Phoenix District Manager.

Dated: December 15, 1992.

David J. Miller,

Acting District Manager.

[FR Doc. 92–31085 Filed 12–22–92; 8:45 am]

BILLING CODE 4310–32–M

[AZ–040–7122–03–5441]

Availability of Final Environmental Impact Statement (FEIS) for Plan of Operations, Case Number A 25564; Gila Resource Area, Graham County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of final environmental impact statement.

SUMMARY: The Gila Resource Area, United States Department of Interior, Bureau of Land Management has prepared an FEIS for a proposed open pit copper mine near Safford, Arizona. The FEIS complies with regulations developed by the Council on Environmental Quality for implementing the National Environmental Policy Act of 1969 (40 CFR part 1500) and BLM regulations for surface mining on public lands (43 CFR part 3809). The FEIS was filed with the Environmental Protection Agency on December 10, 1992. The applicant, AZCO Mining, Incorporated (AZCO, Inc.), submitted a Plan of Operations to the BLM Gila Resource Area pursuant to the Federal Land Policy and Management Act of 1976 (90 Stat. 2744; 43 U.S.C. 1701) as implemented by 43 CFR part 3809. This FEIS: (1) Analyzes the environmental consequences of implementing the proposed mine as described in the Plan of Operations, other reasonable alternatives, and the No Action Alternative; (2) identifies significant effects and cumulative impacts; and (3) specifies appropriate mitigation actions.

DATES: Comments on the FEIS will be accepted until January 19, 1993.

ADDRESSES: 711 14th Avenue, Safford, Arizona 85546.

FOR FURTHER INFORMATION CONTACT: Larry Thrasher, Project Manager, Safford District Office, 711 14th Avenue, Safford, Arizona 85546. Telephone (602) 428–4040.

SUPPLEMENTARY INFORMATION: The Plan of Operations calls for mining the Sanchez copper orebody, located on 581 unpatented lode and millsite claims at the southeast end of the Gila Mountains, about 10 miles east-northeast of the city of Safford, Graham County. The orebody will be mined using conventional open pit mining techniques and mining equipment. The planned ore mining rate is 10 million tons per year. Waste rock and alluvium will be mined at an average rate of about 13 million tons per year. The expected life of the mining operation is 17 years. The pit ultimately will measure about 4,000 feet in diameter and about 1,200 feet deep.

Ore from the pit will be transported to a crushing and screening plant prior to being conveyed to a leach pad. The crushed ore in the leach pad will be treated with a sulfuric acid solution. The resulting pregnant leach solution will be piped to a solvent extraction-electrowinning plant, where the copper will be extracted and concentrated.

Reclamation will involve minimizing public safety hazards and restoring the site to a condition consistent with planned long-term use. The Bureau of Land Management will require a

reclamation bond prior to any surface disturbance.

Complete records of all phases of the environmental compliance process are available for public review at the Safford District Office.

Dated: December 14, 1992

William T. Civish,

District Manager.

[FR Doc. 92-31082 Filed 12-22-92; 8:45 am]

BILLING CODE 4310-32-M

[WY-920-41-5700; WYW112348]

Proposed Reinstatement of Terminated Oil and Gas Lease

December 15, 1992.

Pursuant to the provisions of 30 U.S.C. 188(d), and 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW112348 for lands in Converse County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination. The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW112348 effective August 1, 1992, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Eileen Peterson,

Acting Supervisory Land Law Examiner.

[FR Doc. 92-31083 Filed 12-22-92; 8:45 am]

BILLING CODE 4310-22-M

[OR-943-4210-06; GP3-068; OR-48432(Wash)]

Partial Termination of Proposed Withdrawal; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Army, Corps of Engineers, has canceled its application in part to withdraw certain lands for the Yakima Firing Center expansion in Kittitas County. This action will terminate a portion of the proposed withdrawal and will open the land to mineral leasing. The land is included in another existing withdrawal and will remain closed to surface entry and mining.

EFFECTIVE DATE: January 22, 1993.

FOR FURTHER INFORMATION CONTACT: Donna Kauffman, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208-2965, 503-280-7162.

SUPPLEMENTARY INFORMATION: The notice of the U.S. Department of the Army, Corps of Engineers, application OR-48432(Wash) for withdrawal was published as FR Doc. 92-14309 of the issue of June 18, 1992. The purpose of the proposed withdrawal is to expand the Yakima Firing Center. The applicant agency has determined that a portion of the proposed withdrawal is no longer needed and has canceled the application insofar as it effects the following described land:

Williamette Meridian

Surface and Mineral Estates

T. 16 N., R. 23 E.,
Sec. 18, that portion of the E½SE¼ lying easterly of the westerly right-of-way of Huntzinger Road;

The area described contains approximately 15 acres in Kittitas County.

Pursuant to the regulation 43 CFR 2310.2-1(c), at 8:30 a.m., on January 22, 1993, the proposed withdrawal will be terminated in part and the land described above will be opened to the operation of the mineral leasing laws. The land will remain closed to surface entry and mining under an existing withdrawal.

The lands remaining in withdrawal application OR-48432(Wash) are described and amended to read as follows:z

Willamette Meridian

Surface and Mineral Estates

T. 17 N., R. 20 E.,
Sec. 22, S½;
Sec. 24, S½SW¼ and that portion of the E½ lying south of the Interstate Highway 90 right-of-way;
Sec. 26.
T. 16 N., R. 21 E.,
Sec. 4, SW¼SW¼;
Sec. 12, SE¼;
Sec. 18, lots 1, 2, 3, and 4, E½, and E½W½.
T. 17 N., R. 21 E.,
Sec. 30, lots 3 and 4;
Sec. 32, NE¼SE¼.
T. 16 N., R. 22 E.,
Sec. 2, lots 1, 2, 3, and 4, S½N½ and S½;
Sec. 4, lots 1, 2, 3, and 4, S½N½ and S½;
Secs. 10 and 14;
Sec. 20, SE¼SW¼;
Sec. 22;
Sec. 26, N½;
Sec. 28, N½.
T. 16 N., R. 23 E.,
Sec. 18, lots 3 and 4, E½SW¼, W½SE¼, and that portion of the E½SE¼ lying westerly of the westerly right-of-way line of Huntzinger Road;
Sec. 20, that portion of the SW¼ lying westerly of the easterly right-of-way line of the railroad;
Sec. 30, lots 1 and 2, NE¼ and E½NW¼.

Mineral Estate

T. 16 N., R. 20 E.,
Sec. 12;
Sec. 18, lot 4 and SE¼;
Sec. 20, S½.
T. 16 N., R. 21 E.,
Sec. 4, lots 1, 2, 3, and 4, and S½NE¼;
Sec. 8.
T. 16 N., R. 22 E.,
Sec. 12.
T. 17 N., R. 21 E.,
Sec. 32, S½SE¼;
Sec. 34, W½.

The areas described aggregate approximately 9,730.82 acres in Kittitas County.

Dated: December 9, 1992.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 92-31079 Filed 12-22-92; 8:45 am]

BILLING CODE 4310-33-M

Fish and Wildlife Service

Intent to Prepare an Environmental Impact Statement on the Master Plan for Bayou Sauvage National Wildlife Refuge in Orleans Parish, LA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Fish and Wildlife Service (FWS) intends to gather information necessary for the preparation of an Environmental Impact Statement (EIS) for the Master Plan for management and development of the 22,770 acre Bayou Sauvage National Wildlife Refuge. Plans and development will be in the form of physical facilities, and programs designed to be responsive to the purposes for which the refuge was established.

The purpose for which the refuge was established are:

(1) To enhance the population of migratory, shore, and wading birds;

(2) To encourage natural diversity of fish and wildlife species;

(3) To protect endangered and threatened species, and to provide for the conservation of fish and wildlife;

(4) To fulfill the international treaty obligations of the United States respecting fish and wildlife;

(5) To protect the archaeological resources;

(6) To provide opportunities for scientific research and environmental

education, with emphasis being given to the ecological and other values of wetlands; and

(7) To provide opportunities for fish- and wildlife-oriented public use and recreation in an urban setting.

The area of impact will be in the New Orleans metropolitan area. The second public meeting regarding proposal and preparation of the EIS will also be held January 13, 1993. This meeting will be to review the scope of the project, the primary project goals, and the major issues expected to arise from project goals. At this meeting public input is requested.

This notice is being furnished as required by the National Environmental Policy Act (NEPA) Regulations (40 CFR 1501.7) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation at this Scoping Meeting are solicited.

DATES: Written comments should be received by February 13, 1993. A public meeting will be held Wednesday, January 13, 1993, at 7 p.m. at the Sarah T. Reed High School, 5316 Michoud Blvd., New Orleans, LA 70126.

ADDRESSES: Comments should be addressed to: Cashio Cochran, Torree/Design Consortium Ltd., 5005 Magazine Street, New Orleans, LA 70115.

FOR FURTHER INFORMATION CONTACT: Dan Tabberer, Wildlife Biologist, 1010 Gause Blvd., Bldg. 936, Slidell, LA 70458, (506) 646–7579.

SUPPLEMENTARY INFORMATION: James W. Pulliam, Jr., is the primary author of this document. The document is being prepared under contract by the consulting firm of Cashio, Cochran, Torre/Design Consortium Ltd., N.Y. Associates, Inc., and Coastal Environment, Inc., 5005 Magazine Street, New Orleans, LA 70115.

The FWS, Department of the Interior, proposes to develop and evaluate four alternatives. The alternatives will be in the form of a Master Plan/EIS detailing and discussing the intended Program for Bayou Sauvage National Wildlife Refuge pursuant to governing laws and regulations. The Plan will detail and discuss the existing natural and socioeconomic environment; the management objectives and strategies; rationale for selecting management objectives and strategies; and anticipated results from achievement of management objectives. Management of the natural environment for fish and wildlife conservation, public use, research, and environmental education shall be discussed in detail in a Master Plan. The Plan will detail the concept, location on a map, general size, capacity for handling Program needs, and order of magnitude cost of physical facilities.

Bayou Sauvage National Wildlife Refuge is in custodial status without a Refuge Management Plan. No alternatives have been identified. Significant issues to be covered through the scoping and planning process are habitat preservation, fish and wildlife conservation, public use, environmental education, endangered species protection, research, and development of physical facilities.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 et. seq.), NEPA Regulations (40 CFR 1500–1508), other appropriate Federal regulations, and FWS procedures for compliance with those regulations.

We estimate DEIS will be made available to the public by September 15, 1993.

Dated: December 10, 1992.

James W. Pullman, Jr.,

Regional Director.

[FR Doc. 92–31102 Filed 12–22–92; 8:45 am]

BILLING CODE 4310–55–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–632–635 (Preliminary)]

Certain Cordage Products From Costa Rica, Korea, Mexico, and Portugal; Institution and Scheduling of Preliminary Antidumping Investigations

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–632–635 (Preliminary) under section 733(a) of the Tarifff 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 Costa Rica, the Republic of Korea (Korea), Mexico, and Portugal of certain cordage products,[1] provided for in subheadings 5607.41, 5607.49, 5607.50, 5607.90, 5608.19, 5608.90, 5609.00, and 6002.43 of the Harmonized Tariff Schedule of the United States (HTS), 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 January 29, 1993.

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: December 15, 1992.

FOR FURTHER INFORMATION CONTACT: Douglas Corkran (202–205–3177), 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 letter filed on December 15, 1992, by counsel on behalf of the Cordage Institute, Hingham, MA. In this letter, counsel on behalf of the Cordage Institute simultaneously withdrew its petition and addenda in antidumping investigations Nos. 731–TA–628–631 (Preliminary) and filed an identical petition and addenda for the instant antidumping investigations.

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 207.10 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.

[1] For purposes of these investigations, the term "certain cordage products" includes twine, rope or cable, and fish netting, constructed from synthetic fibers, regardless of the percentage of such fibers, however blended or composed, and however assembled. Such products do not include wire rope, finished fishing nets, raw materials for the production of cordage, or natural fiber cordage.

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 these investigations for 9:30 a.m. on January 5, 1993, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Douglas Corkran (202–205–3177) not later than December 30, 1992, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in 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 January 8, 1993, 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: December 7, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92–31176 Filed 12–22–92; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 731–TA–628–631 (Preliminary)]

Certain Cordage Products From Costa Rica, Korea, Mexico, and Portugal; Withdrawal of Petition in Antidumping Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice of withdrawal of petition in antidumping investigations.

SUMMARY: On December 15, 1992, the U.S. Department of Commerce and the U.S. International Trade Commission received a letter from petitioner in the subject investigations (the Cordage Institute, Hingham, MA) withdrawing its petition. Commerce has not initiated investigations as provided in section 732(c) of the Tariff Act of 1930 (19 U.S.C. 1673a(c)). Accordingly, the Commission gives notice that its antidumping investigations concerning certain cordage products from Costa Rica, Korea, Mexico, and Portugal (investigations Nos. 731–TA–628–631 (Preliminary)) are discontinued.

EFFECTIVE DATE: December 15, 1992.

FOR FURTHER INFORMATION CONTACT: Douglas E. Corkran (202–205–3177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained 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.

Issued: December 17, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92–31175 Filed 12–22–92; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–331]

Commission Determination Not To Review Initial Determinations Terminating the Investigation as to Two Respondents on the Basis of Settlement Agreements and Granting Complainant's Motion To Withdraw Its Complaint as to the Last Remaining Respondent; Termination of Investigation

In the Matter of: Certain Microcomputer Memory Controllers, Components Thereof and Products Containing Same.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review three initial determinations (IDs) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation. The ALJ granted motions terminating respondents OPTi Computer, Inc. (OPTi) and ETEQ Microsystems, Inc. (ETEQ) on the basis of settlement agreements. The ALJ also granted the motion of complainant Chips and Technologies, Inc. (Chips) to withdraw its complaint against Elite Microelectronics, Inc. (Elite), the only remaining respondent. Although withdrawal of Chips' complaint against Elite results in termination of the investigation, the Commission has retained jurisdiction over the administrative protective order while it considers issues of post-termination document retention.

ADDRESSES: Copies of the nonconfidential versions of the IDs and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3104. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: On September 12, 1991, Chips filed a complaint with the Commission alleging violations of section 337 of the Tariff Act of 1930 in the Importation and sale of certain microcomputer memory controllers covered by various claims of

several U.S. patents owned by Chips. The Commission instituted an investigation of Chips' complaint on October 17, 1991. 56 FR 52058.

On October 23, 1992, Chips and respondent OPTi Computer, Inc. filed a joint motion to terminate the investigation as to OPTi on the basis of a settlement agreement. On November 6, 1992, Chips and respondent ETEQ Microsystem Inc. filed a joint motion to terminate the investigation as to ETEQ on the basis of a settlement agreement. On October 20, 1992, Chips filed a motion to withdraw its complaint as to the final respondent, Elite Microelectronics, Inc. All three motions were supported by the Commission investigative attorney. On November 16, 1992, the ALJ issued IDs granting all three motions, provided that the terminations be with prejudice to Chips filing future section 337 complaints against the same parties on the same facts, and further provided that OPTi's motions for summary determination of invalidity and unenforceability of the patents in issue, which were pending at the time of termination, be retained in the Commission's public files. ALJ Order No. 27 terminated the investigation as to OPTi on the basis of a settlement agreement. ALJ Order No. 28 terminated the investigation as to ETEQ on the basis of a settlement agreement. ALJ Order No. 29 granted the motion of Chips to withdraw its complaint against the only remaining respondent, Elite.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.53 of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.53).

Issued: December 17, 1992.

By Order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92–31177 Filed 12–22–92; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–323]

Commission Decisions To Lift Suspension and To Grant a Joint Motion To Terminate the Investigation on the Basis of a Settlement Agreement

In the Matter of: Certain Monoclonal Antibodies used for therapeutically treating humans having gram-negative bacterial infections.

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to lift the suspension of the above-captioned investigation and to grant a joint motion to terminate the investigation on the basis of a settlement agreement.

ADDRESSES: Copies of the joint motion, the Commission investigative attorney's response, the Commission's order, and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 4:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3104. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: On December 20, 1990, Xoma Corp. of Berkeley, California filed a complaint with the Commission alleging violations of section 337 of the Tariff Act of 1930 in the importation and sale of certain monoclonal antibodies covered by claims 6 and 7 of U.S. Letters Patent 4,918,163 owned by Xoma. The Commission instituted an investigation of Xoma's complaint on January 30, 1991. 56 FR 3484–85. The Commission's notice of institution named Centocor, Inc. and Centocor Partners II, L.P., both of Malvern, Pennsylvania, and Centocor B.V. of Leiden, The Netherlands (collectively, Centocor) as respondents. On June 11, 1991, the Commission suspended its investigation in order to avoid conflicts with U.S. district court litigation between Xoma and Centocor. 56 FR 28172 (June 19, 1991).

On September 11, 1992, the private parties to the Commission investigation filed a joint motion to terminate the investigation on the basis of a settlement agreement. On September 21, 1992, the parties filed an amendment to their joint motion. On September 23, 1992, the Commission investigative attorney responded in support of the motion to terminate. On October 16, 1992, the appropriate federal agencies were served with notice of receipt of the joint motion to terminate. On October 22, 1992, notice of receipt of the joint motion was published in the **Federal Register**. 57 FR 48239. No agency or public comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.51 of Commission's Rules of Practice and Procedure (19 CFR 210.51).

Issued: December 17, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92–31178 Filed 12–22–92; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

Release of Waybill Data

The Commission has received a requested from the ALK Associates Inc. for permission to use certain data from the 1991 ICC Waybill Sample.

A copy of the of the request (WB405–12/9/92) may be obtained from the ICC Office of Economics.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data [Ex parte 385 (Sub-No. 2)] are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 927–6196.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–31146 Filed 12–22–92; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32132]

Steuben County Industrial Development Agency and Champagne Railroad, Inc. (Acquisition and Operation Exemption); Line of Consolidated Rail Corp.

Steuben County Industrial Development Agency (SCIDA), a noncarrier, and Champagne Railroad, Inc. (Champagne) have filed an amended notice of exemption for SCIDA to acquire from Consolidated Railroad Corporation and for Champagne to operate a 2.7-mile line of railroad in Steuben County, NY. The line is a portion of the Bath Industrial Track identified as line code 6352 situated in the Village and Town of Bath, NY, extending between ± milepost 285.1 and ± milepost 287.8. The transaction was expected to be consummated after the December 7, 1992 effective date of the exemption.

Any comments must be filed with the Commission and served on: James

Griffin, 25 West Steuben Street, P. O. Box 393, Bath, NY 14810.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab inito*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: December 15, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–31148 Filed 12–22–92; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32151]

The Wheeling & Lake Erie Railway Co. (Acquisition and Operation Exemption); A Line of CSX Transportation, Inc.

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, *et seq.*, the purchase and operation by the Wheeling & Lake Erie Railway Company (W&LE) of an 8.4-mile line of railroad of CSX Transportation, Inc. (CSXT), between Benwood, WV, and Martins Ferry, OH, where the line of CSXT joins the current rail line of W&LE, subject to standard labor protective conditions.

DATES: This exemption is effective on December 30, 1992. Petitions to stay must be filed December 28, 1992. Petitions to reopen must be filed by January 12, 1993.

ADDRESSES: Send pleadings referring to Finance Docket No. 32151 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423,
and
(2) Petitioners' representatives: Kevin M. Sheys, Suite 400, 1020 Nineteenth St., NW., Washington, DC 20036,
and
Charles M. Rosenberger, 500 Water Street J150, Jacksonville, FL 32202.

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, 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: December 15, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons and Phillips.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–31147 Filed 12–22–92; 8:45 am]

BILLING CODE 7035–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Community Development Revolving Loan Program for Credit Unions; Applications

AGENCY: National Credit Union Administration.

ACTION: Notice of application.

SUMMARY: The National Credit Union Administration ("NCUA") will accept applications for participation in the Community Development Revolving Loan Program for Credit Unions (the "Program") through March 31, 1993. Application procedures are set forth in part 705 of NCUA's Rules and Regulations ("Community Development Revolving Loan Program for Credit Unions").

ADDRESSES: Applications to participate in the Program should be submitted to: NCUA, Community Development Revolving Loan Program for Credit Unions, 1776 G Street, NW., Washington, DC 20456.

DATES: Applications must be received by March 31, 1993.

FOR FURTHER INFORMATION CONTACT: Ron Lewandowski at the above address or telephone (202) 682–9780.

SUPPLEMENTARY INFORMATION: Part 705 of NCUA's Regulations implements the Community Development Revolving Loan Program for Credit Unions. The purpose of the Program is to make reduced rate loans to both federally and state-chartered credit unions serving low-income communities so that the credit unions may provide needed financial services and help to stimulate the economy in the communities they serve.

This Notice is published pursuant to § 705.9 of NCUA's Regulations (12 CFR 705.9) stating that NCUA will provide notice in the **Federal Register** when funds in the program are available for loans, and the time period during which applications for participation in the Program will be accepted. Funds are currently available for loans. Applications for participation in the Program will be accepted through March 31, 1993. Credit unions wishing to participate in the Program should refer to part 705 of NCUA's Regulations for application procedures and Program requirements. Only credit unions currently in existence may apply.

By the National Credit Union Administration Board on December 15, 1992.

Hattie M. Ulan,

Acting Secretary, NCUA Board.

[FR Doc. 92–31142 Filed 12–22–92; 8:45 am]

BILLING CODE 7535–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Media Arts Advisory Panel; Meetings

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 Media Arts Advisory Panel (American Film Institute Section) to the National Council on the Arts will be held on January 8, 1993 from 10 a.m.–5 p.m. in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 2 p.m.–2:30 p.m. for general discussion.

The remaining portions of this meeting from 10 a.m.–2 p.m. and 2:30 p.m.–5 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 24, 1992, 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: December 17, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92–31101 Filed 12–22–92; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–315 and 50–316]

Indiana Michigan Power Company, Donald C. Cook Nuclear Plant Units 1 and 2; Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–58 and DPR–74, issued to Indiana Michigan Power Company (the licensee), for the operation of the D.C. Cook Nuclear Plant, Units 1 and 2, in Berrien County, Michigan.

Identification of Proposed Action

The amendment would consist of changes to the Technical Specifications (TS) that would authorize an increase of the storage capacity of the spent fuel pool from 2050 to 3613 fuel assemblies.

The amendment to the TS is responsive to the licensee's application dated July 26, 1991, as supplemented by letters dated June 7, 1991, February 4, April 1, and October 26, 1992. The Commission's staff has prepared an Environmental Assessment of the Proposed Action dated December 14, 1992.

Need for Proposed Action

If the amendment were not approved, the licensee would be unable to continue operations beyond 1995, due to reaching the storage capacity of the current spent fuel pool.

Environmental Impacts of the Proposed Action

The "Final Generic Environmental Impact Statement (FGEIS) on Handling and Storage of Spent Light Water Power Reactor Fuel" (NUREG–0575), Volumes 1–3, concluded that the environmental impact of the interim storage of spent fuel was negligible and the cost of the various alternatives reflects the advantage of continued generation of nuclear power with the accompanying spent fuel storage. Because of the differences in design, the FGEIS recommended evaluating spent fuel pool expansions on a case-by-case basis.

For D.C. Cook, the expansion of the storage capacity of the spent fuel pool will not create any significant additional radiological effects or non-radiological environmental impacts.

The additional whole body dose that might be received by an individual at the site boundary and the estimated dose to the population within an 80 kilometer radius is believed to be too small to have any significance when compared to the fluctuations in the annual dose this population receives from exposure to background radiation. The occupational radiation dose for the proposed operation of the expanded spent fuel pool is estimated to be less than one percent of the total annual occupational radiation exposure for this facility.

The only non-radiological impact affected by the spent fuel pool expansion is the waste heat rejected. The total increase in heat load rejected to the environment will be small compared to the amount of total heat currently being released. There is no significant environmental impact attributed to the waste heat from the plant due to this very small increase.

The staff has reviewed the proposed spent fuel pool expansion to the facility relative to the requirements set forth in 10 CFR part 51. Based on this assessment, the staff concludes that there are no significant radiological or non-radiological impacts associated with the proposed action and that the issuance of the proposed amendment to the license will have no significant impact on the quality of the human environment.

With regard to potential non-radiological impacts, the proposed change to the TS involves a change in the installation or use of a facility component located within the restricted areas as defined by 10 CFR part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environment effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Commission's Final Environmental Statement, dated August 1973, in connection with D.C. Cook, Units 1 and 2.

Agencies and Persons Consulted

The staff reviewed the licensee's request. No other agencies or persons were consulted.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment. Therefore, pursuant to 10 CFR 51.31, no environmental impact statement needs to be prepared for this action.

For further details with respect to this action, see (1) the application for amendment to the Technical Specifications dated July 26, 1991, as supplemented by letters dated June 7, 1991, February 4, April 1, and October 26, 1992, (2) the FGEIS on Handling and Storage of Spent Light Water Power Reactor Fuel (NUREG–0575), (3) the Final Environmental Statement for D.C. Cook, Units 1 and 2, dated August 1973, and (4) the Environmental Assessment dated December 14, 1992.

These documents are available for public inspection at the Commission's Public Document Room, 2121 L Street, NW., Washington, DC 20555 and at the local public document room located at the Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Rockville, Maryland, this 14th day of December 1992.

For the Nuclear Regulatory Commission.

William M. Dean,

Acting Director, Project Directorate III–1, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92–31099 Filed 12–22–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–423]

Northeast Nuclear Energy Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment

to Facility Operating License No. NPF–49 issued to Northeast Nuclear Energy Company, et al. (the licensee), for operation of the Millstone Nuclear Power Station, Unit No. 3 located in New London County, Connecticut.

Identification of the Proposed Action

The proposed amendment would revise the Technical Specifications to extend the required surveillance testing for the emergency diesel generators on a one-time basis so that they are required to be tested by the 1993 refueling outage, but no later than September 30, 1993, rather than by December 25, 1992, which is now required.

The proposed amendment is in accordance with Northeast Nuclear Energy Company's application dated October 22, 1992.

Need for the Proposed Action

The proposed change to the Facility Operating License is needed to extend the interval for diesel generator surveillance because the currently required interval would require an unscheduled outage of the plant.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to Technical Specification Section 4.8.1.1.2.g.1. The proposed revision would extend the required surveillance testing of the emergency diesel generators on a one-time basis so that they are required to be tested by the 1993 refueling outage, but no later than September 30, 1993, rather than by December 25, 1992, which is now required.

Based on its review, the Commission concludes that the proposed change is acceptable. The staff has determined that the proposed change does not alter any initial conditions assumed for the design basis accidents previously evaluated nor change operation of safety systems utilized to mitigate the design basis accidents.

The proposed change does not increase the probability or consequences of accidents. No changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that the proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed change involves components in the plant which are located within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impacts. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Alternatives to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed actions, any alternatives with equal or greater environmental impacts need not be evaluated.

Alternative Use of Resources

The action would involve no use of resources not previously considered in the Final Environmental Statement (FES) for the Millstone Nuclear Power Station, Unit 3.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment. Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated October 22, 1992, 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 located at the Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Dated at Rockville, Maryland, this 16th day of December 1992.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92–31092 Filed 12–22–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–336]

Northeast Nuclear Energy Company, Millstone Nuclear Power Station, Unit No. 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a license amendment to Northeast Nuclear Energy Company, (the licensee) for the Millstone Nuclear Power Station, Unit No. 2, located at the licensee's site in New London County, Connecticut.

Environmental Assessment

Identification of the Proposed Action

The proposed amendment would modify the Millstone 2 Technical Specifications (TS) in the area of Tables 3.3–3, 3.3–4 3.3–5 and 4.3–2, of Section 4.8.1.1.2 and of the Bases Section 3/4.3, to add the high containment pressure signal as an input to main steam isolation (MSI) and to reduce the feed isolation portion of MSI from 60 seconds to 14 seconds.

The Need for the Proposed Action

The license amendment is needed to correct an error found in the original Main Steam Line Break (MSLB) analysis. On reanalysis of the MSLB accident it was determined that an over pressurization and high temperature of the containment would exist due to three new postulated single failure modes for the steam line break inside the containment. Two postulated failures are the failure of the feedwater regulation and block valve and the feedwater regulation bypass valve to terminate flow to the affected steam generator. The third is the failure of the vital busses to fast transfer to the Reserve Station Services Transformer.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TS. The impact of the above change has been evaluated in the licensee's proposal for amendment dated October 28, 1992, as supplemented November 20, 1992, and December 4, 1992, which has been evaluated by the staff using NRC-approved methodology. The proposed amendment will not increase the probability or consequences of accidents. No changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. In addition, the proposed amendment described is a refinement, rather than a substantial

change in the operation of the facility. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment.

With regard to potential nonradiological impacts, the proposed amendment does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological impacts associated with the proposed amendment.

Alternatives to the Proposed Action

It has been concluded that there is no measurable impact associated with the proposed amendment; any alternatives to the amendment would have either essentially the same or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources different from or beyond the scope of resources used during normal plant operation, which were assessed in the Final Environmental Statement relating to plant operation.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment. Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for license amendment dated October 28, 1992, as supplemented November 20, 1992, and December 4, 1992, which 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 located at the Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Dated at Rockville, Maryland, this 16th day of December 1992.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92–31093 Filed 12–22–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–336]

Northeast Nuclear Energy Company, Millstone Nuclear Power Station, Unit No. 2: Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a license amendment to Northeast Nuclear Energy Company, (the licensee) for the Millstone Nuclear Power Station, Unit No. 2, located at the licensee's site in New London County, Connecticut.

Environmental Assessment

Identification of the Proposed Action

The proposed amendment would modify the Millstone 2 Technical Specifications (TS) in the area of TABLE 3.3–3, Engineered Safety Feature Actuation System Instrumentation (Page 3/4.3–13), the Table Notation, page 3/4.3–16 and the Action Statements, Action 4, page 3/4.3–17. The license amendment is relative to proposed Sump Recirculation Actuation Signal (SRAS) and Engineered Safety Features Actuation System (ESAS) logic design modifications. The current two out of four SRAS logic would be modified to be a selective logic that only considers four of the original six combinations.

The Need for the Proposed Action

The change is needed to prevent the generation of a premature SRAS, as a result of a design basis single active failure, such as the loss of DC Bus 201A or B, (without considerating non-safety related backup sources). Also, the proposed change to the ESAS would eliminate the two combinations of Refueling Water Storage Tank (RWST) level sensing which would initiate an SRAS should a failure of either vital DC bus occur.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TS. The impact of the above change has been evaluated in the licensee's proposal for amendment dated October 28, 1992, supplemented by letter dated November 25, 1992, which has been evaluated by the staff using NRC-approved methodology. The proposed amendment will not increase the probability or consequences of accidents. No changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. In addition, the proposed amendment described is a refinement, rather than a substantial change in the operation of the facility. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment.

With regard to potential nonradiological impacts, the proposed amendment does involve features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological impacts associated with the proposed amendment.

Alternatives to the Proposed Action

It has been concluded that there is no measurable impact associated with the proposed amendment; any alternatives to the amendment would have either essentially the same or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources different from or beyond the scope of resources used during normal plant operation, which were assessed in the Final Environmental Statement relating to plant operation.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment. Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for license amendment dated October 28, 1992, supplemented by letter dated November 25, 1992, as supplemented December 8, 1992, 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 located at the Learning Resources Center, Thames Valley

State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Dated at Rockvile, Maryland, this 16th day of December 1992.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92–31094 Filed 12–12–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–423]

Northeast Nuclear Energy Company, Millstone Nuclear Power Station, Unit No. 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a license amendment to Northeast Nuclear Energy Company, (the licensee) for the Millstone Nuclear Power Station, Unit No. 3, located at the licensee's site in New London County, Connecticut.

Environmental Assessment

Identification of the Proposed Action

The proposed amendment would revise the Technical Specifications (TS) to increase the surveillance test interval for the 4 kV bus undervoltage scheme so that associated logic and alarm relays are actuated once per 18 months rather than monthly.

The Need for the Proposed Action

The license amendment is needed to remove an unnecessary testing requirement which could result in plant shutdown.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TS. The impact of the above change has been evaluated in the licensee's proposal for amendment dated October 30, 1992, which has been evaluated by the staff using NRC-approved methodology. The TS change will not increase the probability or consequences of accidents. No changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. In addition, the TS change described is a refinement, rather than a substantial change in the operation of the facility. Therefor, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed TS amendment.

With regard to potential nonradiological impacts, the proposed amendment does involve features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological impacts associated with the proposed amendment.

Alternatives to the Proposed Action

It has been concluded that there is no measurable impact associated with the proposed amendment; any alternatives to the amendment would have either essentially the same or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources different from or beyond the scope of resources used during normal plant operation, which were assessed in the Final Environmental Statement relating to plant operation.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request that supports the proposed amendment. The staff did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this action, see the request for license amendment dated October 30, 1992, 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 located at the Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Dated at Rockville, Maryland, this 17th day of December 1992.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92–31098 Filed 12–22–92; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Planning and Procedures; Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on January 6, 1993, room P–422, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance, with the exception of a portion that will be closed to discuss the qualifications of candidates nominated for appointment to the ACRS. This session will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6). The purpose of this meeting will be to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

The agenda for the subject meeting shall be as follows:

Wednesday, January 6, 1993—3 p.m. Until 5:30 p.m.

The Subcommittee will discuss proposed ACRS activities, practices and procedures for conduct of Committee business, and related matters. Qualifications of candidates nominated for appointment to the ACRS will also be discussed.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Mr. Raymond F. Fraley (telephone 301/492–4516) between 7:30 a.m. and 4:15 p.m., E.S.T. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: December 15, 1992.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 92–31089 Filed 12–22–92; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Advanced Reactor Designs; Meeting

The ACRS Subcommittee on Advanced Reactor Designs will hold a meeting on January 6, 1993, room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, January 6, 1993—8:30 a.m. Until the Conclusion of Business

The Subcommittee will discuss the key policy issues that the NRC staff has identified for the MHTGR, PIUS, PRISM, and CANDU 3 advanced nuclear power plant designs. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will hear presentations by and hold discussions with the NRC staff, its consultants, industry representatives, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Dr. Medhat El-Zeftawy (telephone 301/492–9901) between 7:30 a.m. and 4:15 p.m. (E.S.T.). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc. that may have occurred.

Dated: December 16, 1992.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 92–31090 Filed 12–22–92; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, of the ACNW, and the ACNW Working Groups, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings that have been scheduled and meetings that have been postponed or cancelled since the last list of proposed meetings was published November 25, 1993 (57 FR 55574). Those meetings that are firmly scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS and ACNW full Committee meetings designated by an asterisk (*) will be closed in whole or in part to the public. The ACRS and ACNW full Committee meetings begin at 8:30 a.m. and ACRS Subcommittee and ACNW Working Group meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS and ACNW full Committee meetings, and when ACRS Subcommittee and ACNW Working Group meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the January 1993 ACRS and ACNW full Committee meetings can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committees (telephone: 301/492–4600 (recording) or 301/492–7288, Attn: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., Eastern Time.

ACRS Subcommittee Meetings

Control and Electrical Power Systems, January 6, 1993, Bethesda, MD—CANCELLED.

Advanced Reactor Designs, January 6, 1993, Bethesda, MD. The Subcommittee will discuss the key policy issues that the NRC staff has identified for the MHTGR, PIUS, PRISM, and CANDU 3 advanced nuclear power plant designs.

Planning and Procedures, January 6, 1993, Bethesda, MD (3 p.m.–5:30 p.m.). The Subcommittee will discuss proposed ACRS activities and related matters. Qualifications of candidates nominated for appointment to the ACRS will also be discussed. Portions of this meeting will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

Computers in Nuclear Power Plant Operations, February 9, 1993 (tentative), Bethesda, MD. The Subcommittee will discuss current and proposed methods used to evaluate software for safety-critical applications, including the use of risk-based criteria.

Advanced Pressurized Water Reactors, February 10, 1993, Bethesda, MD. The Subcommittee will begin its review of the NRC staff's Draft Safety Evaluation Report (NUREG–1462) for certification of the ABB CE System 80+ Design.

Planning and Procedures, February 10, 1993, Bethesda, MD (3 p.m.–5:30 p.m.). The Subcommittee will discuss proposed ACRS activities and related matters. Qualifications of candidates nominated for appointment to the ACRS will also be discussed. Portions of this meeting will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

Joint Materials and Metallurgy/ Structural Engineering, March 10, 1993, Bethesda, MD. The Subcommittees will discuss: (1) The status of the NRC staff's concerns regarding steam generator tube degradation, and (2) the industry proposal on piping design improvements to reflect current technical knowledge for ALWR plants.

ACRS Full Committee Meetings

393rd ACRS Meeting, January 7–9, 1993, Bethesda, MD. Items are tentatively scheduled.

A. *Performance Indicator Report*—Briefing by and discussion with members of the NRC staff regarding proposed revisions to the NRC performance indicator report. Representatives of the nuclear industry will participate, as appropriate.

B. *Key Policy Issues for Advanced Reactor Designs*—Review and report on key policy issues applicable to MHTGR, PIUS, PRISM, and CANDU 3 advanced reactor designs. Representatives of the

nuclear industry will participate, as appropriate.

C. *Replacement of Analog Instrumentation with Digital Instrumentation*—Briefing by and discussion with representatives of the NRC staff regarding the staff's proposed generic letter on the replacement of analog instrumentation with digital instrumentation in operating plants. Representatives of the nuclear industry will participate, as appropriate.

*D. *Annual Report to the U.S. Congress on the NRC Safety Research Program and Budget*—Discuss the annual ACRS report to Congress on the NRC safety research program and budget. Portions of this session will be closed as necessary to discuss information the premature disclosure of which would be likely to significantly frustrate proposed agency action.

E. *Atomic Safety and Licensing Board Panel (ASLBP) Activities*—Briefing by and discussion with a representative of the ASLBP regarding current and anticipated activities of the ASLBP.

F. *Reactor Operating Experience*—Briefing by and discussion with representatives of the NRC staff regarding reactor operating events and occurrences, including an incident at the Barseback Nuclear Plant in Sweden which involved dislodging of thermal insulation material inside containment and resulting in partial clogging of two of five ECCS strainers. Representatives of the nuclear industry will participate, as appropriate.

G. *ACRS Subcommittee Activities*—Hear and discuss reports of designated subcommittees regarding the status of assigned activities, including conduct of ACRS business by the Planning and Procedures Subcommittee. Representatives of the NRC staff will participate, as appropriate.

H. *Future ACRS Activities*—Discuss topics proposed for consideration by the full Committee.

I. *Implementation of ACRS Reports and Recommendations*—Discuss replies from the NRC staff regarding staff reaction to recent recommendations of the Committee.

J. *Generic Issue 120, Online Testability of Protection Systems*—Complete review and report on the proposed resolution of this generic issue. Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

K. *Miscellaneous*—Discuss miscellaneous matters related to the conduct of Committee activities and complete discussion of topics that were not completed during previous meetings as time and availability of information permit.

394th ACRS Meeting, February 11–13, 1993, Bethesda, MD. Agenda to be announced.

395th ACRS Meeting, March 11–13, 1993, Bethesda, MD. Agenda to be announced.

ACNW Full Committee and Working Group Meetings

50th ACNW Meeting, January 27–28, 1993, Bethesda, MD. Items are tentatively scheduled.

A. Review the development of an NRC staff Branch Technical Position on guidance for performance assessment in low-level waste regulation.

B. Review the scope of a regulatory impact survey for fuel cycle and materials licensees.

C. Review the activities of the Center for Nuclear Waste Regulatory Analyses, specifically the use of natural analogues in model development.

D. Explore the creation of a performance indicator or event reporting system that would monitor the current status of the management and disposal of low-level radioactive waste.

E. Review and comment on the NRC staff's analysis of the issues that the National Academy of Sciences will be addressing as a result of the Energy Policy Act of 1992 and the impacts this Act will have on NRC's high-level waste program.

F. Prepare the next four-month plan of ACNW activities for the period February–May 1993.

G. Discuss anticipated and proposed Committee activities, future meeting agenda, administrative, and organizational matters, as appropriate. Also, discuss matters and specific issues that were not completed during previous meetings as time and availability of information permit.

Joint Meeting of the ACNW Working Group/ACRS Subcommittee on Occupational and Environmental Protection Systems, February 5, 1993, Bethesda, MD. The Working Group/Subcommittee will review the following proposed final regulatory guides related to the implementation of the revised 10 CFR part 20:

(1) DG–8006, "Control of Access to High and Very High Radiation Areas in Nuclear Power Plants,"

(2) DG–8009, "Interpretation of Bioassay Measurements," and

(3) DG–8005, "Assessing External Radiation Doses from Airborne Radioactive Materials."

51st ACNW Meeting, February 24–25, 1993, Bethesda, MD. Agenda to be announced.

52nd ACNW Meeting, March 24–25, 1993, Bethesda, MD. Agenda to be announced.

Dated: December 17, 1992.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 92–31091 Filed 12–22–92; 8:45 am]

BILLING CODE 7590–01–M

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 November 28, 1992, through December 11, 1992. The last biweekly notice was published on December 9, 1992 (57 FR 58243).

Notice of Consideration of Issuance of Amendment To Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed 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 January 22, 1993, 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.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: August 10, 1992

Description of amendment request: The proposed amendment would revise the technical specification (TS) surveillance requirements for the station batteries. The present TS Section 4.9.A.2 requires a rated load discharge test be performed on the station batteries once-per-cycle. The proposed change consists of replacing the rated load discharge test with a Service Discharge Test once-per-cycle and a Performance Discharge Test every five years in place of the service test that would normally occur within that time frame. The proposed change clarifies and expands the discharge testing requirement to be consistent with the manufacturer's recommended testing, current industry practices, and the testing specified in ANSI/IEEE-450 - 1987. This change will increase plant safety by increasing battery availability and minimize test-related degradation of the batteries. The proposed change is consistent with amendments previously approved for Vermont Yankee Nuclear Power Station (Amendment No. 125, dated August 23, 1990) and Duane Arnold Energy Center (Amendment 179, dated March 2, 1992).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) Operation of PNPS in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated because the requested revisions do not affect previous analyses involving these systems.

The proposed revisions affect only the surveillance requirements for the station batteries to make them conform with the manufacturer's recommendations and current industry guidance. The proposed change will require testing in a way more representative of use of the batteries by applying the design load (i.e., present load plus margin) for the time period required. This test retains the capability of detecting a degraded cell or battery and reduces the time required for the batteries to recharge, thereby increasing the overall availability of safety-related batteries.

2) Operation of PNPS in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated because there is no equipment or design change associated with this proposed amendment. The proposed amendment only changes the surveillance requirements for the batteries to conform to the current industry guidance.

3) Operation of PNPS in accordance with the proposed amendment will not involve any reduction in a margin of safety because the station batteries will still be available to supply power to the associated safety-related loads. The amendment only revises the surveillance requirements such that the Performance Discharge Test (rated amp-hour discharge) will be performed less frequently (every 5 years) increasing the useful life of the batteries while still maintaining a capacity profile. In addition, a Service Discharge Test (load profile) is being added and will be performed each cycle a Performance Discharge Test is not performed. The Service Discharge Test will demonstrate each battery's ability to supply the required loads for the time required.

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: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esquire, Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: Walter R. Butler

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: August 17, 1992

Description of amendment request: The proposed amendment would change the low pressure isolation signal from the HPCI steam inlet piping to the reactor vessel as sensed by the Analog Trip System.

Changing to the reactor vessel pressure signal ensures a divisional single failure-proof isolation logic design that is an improvement when compared to the existing HPCI steam inlet pressure isolation logic. The modification will upgrade the circuitry to provide valve position indication in the Control Room in accordance with our Regulatory Guide 1.97 program implementation.

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 operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The HPCI steam line low pressure signal is an operational interlock that trips the HPCI turbine and closes system valves to shutdown the HPCI system when inadequate steam pressure is available to run the HPCI system with the closure of the HPCI vacuum breakers by eliminating the potential for a situation where HPCI is running and the vacuum breakers are closed. Therefore, using the Reactor Low Pressure signal (100≤P≤50 psig) to initiate a Group 4 HPCI isolation is equivalent to using the HPCI Steam Line Low Pressure signal (100≤P≤50 psig) and does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Replacing HPCI Steam Line Low Pressure with Reactor Low Pressure on Tables 3.2.B and 4.2.B does not affect the instrument functional test or calibration frequency of the Analog Trip System. The valve functional and system operability test frequencies remain unchanged.

2. The operation of Pilgrim Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated because HPCI will continue to operate as designed and the HPCI Steam Line Low Pressure and Reactor Low Pressure signals are functionally equivalent Group 4 initiation signals. The change does not affect the HPCI system's ability to shutdown and isolate when required. This change improves the coordination of the shutdown of the HPCI system with the closure of the HPCI vacuum breakers by eliminating the potential for a situation where HPCI is running and the vacuum breakers are closed.

3. The operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The proposed amendment does not involve a significant reduction in a margin of safety because the new Group 4 isolation initiation signal is functionally equivalent to the existing initiation signal. This change does not affect the HPCI system's ability to shutdown and isolate when required. This change improves the coordination of the shutdown of the HPCI system with the

closure of the HPCI vacuum breakers by eliminating the potential for a situation where HPCI is running and the vacuum breakers are closed.

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: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esquire, Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: Walter R. Butler

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: October 30, 1992

Description of amendment request: The proposed amendment would create a new section in the Technical Specifications (TS) specifying limiting conditions of operations and surveillance requirements for in service code testing. The amendment also incorporates the term "Refueling Interval" in definitions to specify the interval between designated ASME Code Section XI surveillance and revises the definition of surveillance interval period of twenty-four months.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

This proposed change does not alter any equipment configuration or operation at Pilgrim.

Current Technical Specifications require testing at the same frequency specified in the PNPS IST Program for Scram Discharge Volume and Primary Containment Isolation Valves. This change requires testing at the same frequency and has not changed the intended surveillance requirement; therefore, it does not involve a significant increase in the probability or consequences of an accident previously evaluated. Testing will be performed in accordance with the 1986 Edition of the ASME Boiler and Pressure Vessel Code, Section XI except where relief has been granted by the Commission per 10 CFR 50.55(a)(g)(6)(ii).

Frequency of testing will be changed for pump and MOV operability from monthly to quarterly for the following Core and Containment Cooling Systems; Core Spray, Low Pressure Coolant Injection, Reactor Core Isolation Cooling, and High Pressure Coolant Injection. This change reduces excessive testing of safety-related system pumps and valves and conforms the PNPS Technical Specification to the IST Program. Monthly testing of pumps and valves results in increased testing without providing a significant increase in safety. The proposed change requires testing to the latest industry standards which exceed the existing technical specification surveillance requirements by specifying test methods that establish operability and establishes parameters for monitoring degradation to predict future equipment performance and failures. The proposed surveillance frequency does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Test frequencies for Scram Discharge Volume Drain and Vent valves, Standby Liquid Control System (SLC) relief valves and explosive valves, Safety and Relief Valves and Primary Containment Vacuum Breaker and Instrument Line Flow Check Valve specified as once-per-cycle or during a refueling outage are being revised to once during a refueling interval. This change adds the term REFUELING INTERVAL to Section XI, IWP and IWV surveillance requirements of at least once every 24 months.

This change in frequency from once during each refueling outage to once each refueling interval as applied to testing of the Scram Discharge Volume Vent and Drain valves and the Primary Containment Vacuum Breakers provides a limiting time for performing surveillance. Current technical specifications do not provide a limiting time between surveillance; hence, the length of an operating cycle or refueling outage can delay tests beyond the proposed interval of two years. Therefore, the proposed amendment enhances safety by providing a limiting time between surveillance; therefore, it does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The testing frequency for SLC relief valves is being changed to once each refueling interval as specified in Section 1.0 of PNPS Technical Specifications. This change conforms the technical specifications to the PNPS IST program which requires testing in accordance with ASME/ANSI OM-1. Testing the explosive valves once-per-cycle is being changed to once-each-refueling interval as specified in Section 1.0 of PNPS Technical Specifications. This surveillance test checks explosion of the charge associated with the tested loop and the operation of the SLC system. Pump and valve operability is verified quarterly in accordance with the PNPS IST program. Manual initiation of the SLC system once-per-refueling interval verifies the system by checking for proper operation of switches and circuit continuity. Performing this test at a frequency of once-per-refueling interval tests the explosive valves in accordance with ASME B&PV Code, Section XI. The circuit and switches required for system actuation are reliable and testing once-per-refueling interval meets the intended surveillance requirement of testing during refueling outages. Testing to the latest industry standards provides assurance of operability by testing using prescribed methods at frequencies recognized by the NRC as appropriate. A testing frequency of once-per-refueling interval returns the intent of the technical specification to test during refueling outages, but imposes a restriction by providing a limiting time of two years. This change does not involve a significant increase in the probability or consequences of an accident previously analyzed.

The setpoint of the SLC system relief valves is being changed to the manufacturer's stamped setting of 1425 psig + 43 psig. The current technical specifications allow a range of 1275 to 1800 psig. This reflects past test practices. Current test procedures remove relief valves from the system for bench testing allowing accurate determination of the setpoint. Testing to the manufacturer's stamped setpoint enhances safety by detecting drift and degradation of the relief valve as well as assuring operability. The past test practices ensured the design intent of the system to prevent the loss of sodium pentaborate via lifting of the relief valve at too low a pressure and protecting the system from overpressure. Testing to the latest industry standards and to the manufacturer's stamped setpoint enhances safety by providing a means to assess the condition of the relief valve as well as their operational readiness; hence, this change does not involve a significant increase in the probability or consequences of an accident previously analyzed.

An editorial change is also being made to clarify the explanation of the surveillance test that initiates the SLC system and pumps demineralized water into the reactor vessel. The explanation describes the components that are tested and changes the word "operability" to "capacity" where the pump test is described. This change is editorial in nature, provides a better description of the test, and does not impact the probability or consequences of an accident previously evaluated.

Safety and Relief Valve testing is being revised to test in accordance with the PNPS IST Program. Testing to the ASME/ANSI OM-1 criteria requires valves to be tested to the current industry standards. The test frequency is changed from once-per-operating cycle to once-per-refueling interval. The frequency for once-per-operating cycle testing is 18 months instead of the 24 months imposed by refueling interval testing. Testing to the ASME/ANSI OM-1 criteria requires the relief/safety valves to be tested prior to resuming operation of the station. It provides an alternative to this testing by allowing the replacement of all relief/safety valves within 12 months. These requirements provide assurance of operational readiness and, coupled with prescriptive corrective action, ensures failure is quickly identified. This benefits safety offsetting the increased test interval and does not cause a significant increase in the probability or consequences of an accident previously evaluated.

Reactor Coolant System instrument Line Flow Check Valves testing is currently

required once-per-cycle. This is being revised to test in accordance with the PNPS IST Program at a frequency of once per refueling interval. This change has already been reviewed by the NRC in the Technical Evaluation Report (TER) for the PNPS IST Program Relief Request RV-22 (TAC No. M74785). This change will conform the PNPS Technical Specifications to the PNPS IST Program and is in accordance with an approved relief request. Testing at a frequency coinciding with refueling outages does not significantly lengthen the test interval and does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Refueling outage testing of the drywell-pressure suppression chamber vacuum breakers is being revised to allow testing during each refueling interval. A refueling interval test frequency of two years satisfies the intent of the technical specifications to perform the testing during refueling outages while ensuring the intended frequencies are not exceeded by limiting the time that could elapse between tests. Refueling outages currently occur on a frequency coinciding with the proposed change; therefore, this change does not effectively increase the test interval between tests. This change conforms the PNPS Technical Specifications to the PNPS IST Program and does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The requirement to perform as-found testing of safety relief valves during Cycle 6 and Cycle 7 is obsolete and is being deleted. This change is editorial because the requirements are no longer in force, and it does not increase the probability or consequences of an accident previously evaluated.

Adding a new section to specify Limiting Conditions of Operation and Surveillance Requirements for ASME Code Class 1, 2, and 3 components imposes established requirements and does not increase the probability or consequences of an accident previously evaluated.

2. The operation of Pilgrim Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes which revise testing frequencies and/or perform testing in accordance with the IST Program do no alter the design or change the operation of Pilgrim Station and, therefore, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Adding the term Refueling Interval to the definitions and incorporating this term where applicable provides a method of specifying test intervals associated with ASME Section XI IWP and IWV requirements. This conforms the PNPS technical specifications to the PNPS IST Program and does not create the possibility of a new or different kind of accident previously evaluated.

Revising the setpoint for testing the Standby Liquid Control System from a range of 1275 to 1800 psig to the manufacturer's stamped setting of 1425 psig 1B 43 psig results in testing the standards. It also provides more conclusive results for tracking degradation and drift; thus, the proposed change is inherently conservative and will not create the possibility of a new or different kind of accident previously analyzed.

Editorial changes to more clearly describe surveillance requirements and deleting an obsolete requirement do not change technical specification requirements;, therefore, these changes do not create the possibility of a new or different kind of accident previously analyzed.

Adding a new section to the technical specifications to specify limiting conditions of operation and surveillance requirements imposes further limits, hence, the change does not create the possibility of a new or different kind of accident previously

3. The operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant reduction in the margin of safety.

The current technical specifications were written prior to the development of ASME Section XI resulting in the test requirements and frequencies being based on limited industry experience. The current industry standards reflect practical requirements and provide assurance equipment is capable of performing its safety function when required.

Revising test intervals from once-per-cycle to once each refueling interval extends the time between tests by six months. Testing will be performed in accordance with and at intervals specified in PNPS IST Program that meets the requirement of the ASME B&PV Code Section XI except where relief has been granted by the Commission as allowed by 10 CFR 50.55(a)(g)(6)(i).

This change also changes the testing frequency for Core and Containment Cooling system pumps and motor operated valves from monthly to quarterly conforming the technical specification to the PNPS IST Program and current industry standards. Industry experience has demonstrated this frequency assures the operational readiness of ASME Code Class 1, 2, and 3 pumps and valves. As discussed under (1) above the proposed test frequencies provide adequate assurance of system operability. Therefore, the proposed amendment does not involve a significant reduction in the margin of safety.

Adding the term Refueling Interval to the definitions of technical specifications requires testing at a frequency of once per refueling interval instead of once per refueling outage. Refueling outages currently occur approximately every two years but could extend beyond two years if the unit is in an extended outage. When refueling outages occur at a frequency of approximately 2 years, changing the frequency to refueling interval having a frequency not to exceed two years does not involve a reduction in the margin of safety. However, when the time between refueling outages extends beyond two years changing to a frequency of refueling interval limits the period between surveillance tests irrespective of when refueling outages occur and in this case is conservative. Changing the frequency of refueling outage to refueling interval for the applicable components does not involve a significant reduction in the margin of safety.

Changing the criteria for testing the SBLC system relief valve from a range of 1275 to 1800 psig to the manufacturer's stamped setpoint of 1425 psig + 43 psig is conservative and reflects the current industry standard. Therefore, this proposed change does

not involve a significant reduction in the margin of safety.

Removing an obsolete surveillance requirement, reformatting the text and other editorial changes do not change the technical specification requirements; therefore, these changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 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: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esquire, Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: Walter R. Butler

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: November 12, 1992

Description of amendment request: The amendment request would modify the Technical Specifications to eliminate the requirement to test an alternate train when one train is inoperable. In the case of the Emergency Diesel Generators (EDGs), the alternate train testing would be eliminated only when the inoperability is due to planned maintenance and testing.

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 involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

The proposed changes to the technical specification sections delineated above seek to remove an unnecessary requirement to demonstrate operability of redundant equipment if one of the trains becomes inoperable, and in the case of the EDGs only when the inoperability is due to planned maintenance and testing. The current technical specifications contain requirements beyond those necessary to adequately demonstrate system operability. As noted

previously, existing periodic testing requirements not impacted by this effort provide adequate assurance that remaining redundant systems are operable and capable of fulfilling their respective design functions. Further, for ESF [engineered safety features] systems, the current opposite train testing requirements create unnecessary operating limitations in a scenario where both trains are declared inoperable (i.e., one due to failure and the other due to surveillance testing). The proposed amendment will serve to ensure that a train of safety equipment is always available to perform upon demand. It will enhance this capability by reducing the probability of equipment failure because of a lower number of demands for performance.

The proposed changes to the Technical Specification for the EDGs offer similar benefits. Excessive testing has been found to result in a degradation of the EDGs. As noted previously a scheduled EDG maintenance or testing neither affects the remaining EDGs reliability and availability nor is it indicative of a potential failure in the remaining EDGs. The benefit of a positive demonstration that a loss of safety function had not occurred by performing a special test is therefore not sufficient to justify the potential adverse consequences.

For the proposed changes, demonstration of operability for the redundant systems or components is an administrative check that will assure their availability. The proposed amendment will therefore not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

As noted above, the proposed amendment will enhance the availability and reliability of the systems/components impacted. It reduces unnecessary challenges to safety systems/components and will not adversely affect their ability to perform as designed. As the proposed amendment will not adversely impact the design bases of the systems/components, the possibility of a new or different kind of accident from any previously evaluated will not be created.

3. There has been no reduction in the margin of safety.

The proposed amendment will preserve the Technical Specification requirements of the system/components impacted while reducing the unnecessary challenges to a safety system/component. The changes proposed for the EDGs are consistent with the Standard Technical Specification requirements. The proposed changes will enhance equipment reliability and availability and eliminates a potential for a loss of safety function. Consequently no significant reduction in the margin of safety for any system/component is involved.

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: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Project Director: Robert A. Capra

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: November 12, 1992

Description of amendment request: The amendment request would change the Technical Specifications to revise the schedule for visual inspection of snubbers in accordance with Generic Letter (GL) 90-09, "Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Actions."

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:

In applying the standards of 10 CFR 50.92, we have concluded that the proposed Technical Specification change would not involve a significant hazards consideration based on the answers to the following questions:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response:

Operation of Indian Point 2 in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. As stated in NRC Generic Letter 90-09, the proposed revised schedule maintains the same confidence level as the existing schedule. The proposed change does not result in any physical change to the plant which could cause an increase in the probability or consequences of any previously evaluated accident.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response:

Operation of Indian Point 2 in accordance with the proposed license amendment does not create the probability of a new or different kind of accident from any accident previously evaluated.

The proposed amendment does not alter any plant operations, maintenance requirement, system design or functions other than the snubber visual inspection interval. The NRC staff has determined that the alternate visual inspection interval maintains the same confidence level of snubber operability (GL 90-09). Con Edison [Consolidated Edison Company] agrees with this determination. Therefore, no possibility of creating a new or different type of accident would result from the proposed amendment.

3. Does the proposed license amendment involve a significant reduction in the margin of safety?

Response:

Operation of Indian Point 2 in accordance with the proposed license amendment does not involve a significant reduction in a margin of safety. As stated above, the proposed amendment incorporates the alternate Technical Specification requirement for visual inspection of snubbers. These requirement were evaluated by NRC staff in Generic Letter 90-09. The NRC staff has determined that the alternate visual inspection interval maintains the same confidence level of snubber operability as the current requirements. Con Edison agrees with this determination. Therefore, the proposed license amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 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: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Project Director: Robert A. Capra

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of amendment request: September 30, 1992

Description of amendment request: The amendment revises the Technical Specifications (TS) for the limit of reactor coolant system (RCS) unidentified leakage rate of change applicable in Operational Condition 1; revises the surveillance interval for monitoring RCS unidentified and identified leakage in Operational Condition 1; and changes the related bases for the TS. These changes are designed to conform to the NRC staff position on leak detection contained in Generic Letter (GL) 88-01 and it's supplement.

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:

This amendment:

1) Does not involve a significant increase in the probability or consequences of an

accident previously evaluated. This amendment does not alter the design, function, or operation of the RCS or the RCS leakage detection system. The proposed changes for the RCS unidentified leakage rate of change limit and the drywell floor drain sump level monitoring interval proposed for Operational Condition 1 are based on the NRC staff positions in GL 88-01 and GL 88-01, Supplement 1. Limiting the applicability of the GL 88-01 based RCS unidentified leakage rate of change limit to Operational Condition 1 ensures that the reactor is not unnecessarily shut down if the increase in unidentified leakage experienced during routine plant startups temporarily exceeds the 2 gpm over 24 hour limit. The proposed RCS unidentified leakage rate of change limit for Operational Conditions 2 and 3 maintains the current limit and ensures that the RCS is monitored for IGSCC related failures throughout the reactor startup. The proposed TS ensures that, when the unit is in Operational Condition 1, action is taken to identify and correct RCS leaks in austenitic stainless steel piping earlier because the proposed limit is one-sixth of the current limits. In GL 88-01, Supplement 1, the NRC found that a 4 hour monitoring interval (the current interval in Fermi 2 TS) creates an unnecessary hardship for the plant operators. The NRC has determined that the once per shift, not to exceed 12 hours monitoring interval is an acceptable alternative that facilitates the implementation of GL 88-01 leak detection requirements. The proposed 12 hour surveillance interval for Operational Condition 1 meets both the once per shift and the 12 hour maximum surveillance interval requirements of GL 88-01, Supplement 1, because it is in accordance with the shift surveillance interval definition in Fermi 2 TS. The proposed changes also ensure that the 12 hour surveillance interval for Operational Condition 1 cannot be extended by incorporating the requirement that TS 4.0.2 is not applicable. The current 4 hour surveillance interval in Operational Conditions 2 and 3 is retained and is more conservative than the requirements of GL 88-01, supplement 1. The proposed change to the primary containment sump flow rate monitoring interval in Operational Condition 1 does not change the total leakage limit in TS 3/4.4.3.2 and is consistent with the proposed drywell floor drain sump level monitoring interval. The current primary containment sump [flow rate] monitoring interval in Operational Conditions 2 and 3 is not changed. The proposed changes to the TS Bases reference GL 88-01 and GL 88-01, Supplement 1 as the basis documents for the RCS unidentified leakage rate of change limit and unidentified leakage monitoring interval in Operational Condition 1 and, therefore, reflect the proposed LCO and Surveillance Requirements discussed above.

2) Does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed amendment does not alter the configuration of the facility, plant operations, or the accident analysis assumptions. The proposed amendment does not change the methods by which RCS unidentified leakage is measured. In Operational Condition 1, action to identify and correct RCS leakage in austenitic stainless piping is taken for a smaller rate of change in RCS unidentified leakage. In Operational Conditions 2 and 3, the current Fermi 2 TS unidentified leakage rate of change limit is maintained. As stated above, the NRC has determined that the once per shift, not to exceed 12 hours monitoring interval for unidentified RCS leakage is an acceptable alternative that facilitates the implementation of GL 88-01. As stated above, the proposed 12 hour surveillance interval for Operational Condition 1 is equivalent to the NRC staff position in GL 88-01, Supplement 1. The current 4 hour surveillance interval in Operational Conditions 2 and 3 is retained and remains more conservative than the GL 88-01, supplement 1 requirements. The proposed primary containment sump flow rate monitoring interval for Operational Condition 1 does not change the limit for total leakage in TS 3/4.4.3.2 and is consistent with the proposed drywell floor drain sump level monitoring interval. The current 4 hour surveillance interval for Operational Conditions 2 and 3 is not changed. The proposed changes to the TS Bases reference GL 88-01 and GL 88-01, Supplement 1, as the basis documents and therefore reflect the LCO and Surveillance Requirements proposed in this amendment request.

3) Does not involve a significant reduction in the margin of safety. For Operational Condition 1, the proposed amendment incorporates the more stringent RCS unidentified leakage rate of change limit required by GL 88-01. This limit is one-sixth of the current TS limit and is, therefore, more conservative. For Operational Conditions 2 and 3, the proposed change maintains the current Fermi 2 TS unidentified leakage rate of change limit. The proposed amendment also incorporates a drywell floor drain sump level monitoring surveillance interval for Operational Condition 1 that is equivalent to the interval found acceptable by the NRC in GL 88-01, Supplement 1. The current 4 hour surveillance interval in Operational Conditions 2 and 3 is retained and is more conservative than the requirements of GL 88-01, supplement 1. The proposed change to the primary containment sump flow rate monitoring interval in Operational Condition 1 does not change the limit for total leakage in TS 3/4.4.3.2 and is consistent with the proposed drywell floor drain sump level monitoring interval. The current primary containment sump [flow rate] monitoring interval for Operational Conditions 2 and 3 is not changed. The proposed changes to the TS Bases reference GL 88-01 and GL 88-01, Supplement 1, as the basis documents for the RCS unidentified leakage rate of change limit and unidentified leakage monitoring interval in Operational Condition 1 and, therefore, reflect the proposed LCO and Surveillance Requirements discussed 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: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226

NRC Project Director: L. B. Marsh

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: December 2, 1992

Description of amendment request: In the initial licensing Safety Evaluation Report (SER), NUREG-0954, Supplement No. 5, Section 7.5.2, the NRC staff noted that the licensee had been requested by Generic Letter 82-33 to report on how the post-accident monitoring instrumentation meets the guidelines of Regulatory Guide (RG) 1.97, Revision 2. The NRC staff reviewed the response and found that the licensee had justified deviations from the guidance of RG 1.97 except for accumulator tank level and pressure instrument qualification. The licensee's position was that these are not key variables for any design-basis events which result in a harsh environment and that the corresponding Category 2 level of qualification was not required for accumulator tank level and pressure instrumentation. The NRC staff did not agree with that position in SER Supplement 5 and indicated that conditions would be placed in the license to address this issue. Accordingly, Condition 2.C.(12)(a) in Unit 1 License NPF-35, as amended, and Condition 2.C.(8)(a) in Unit 2 License NPF-52, as amended, were included to read as follows: Unit 1, "Prior to startup following theseventh refueling outage, Duke Power Company shall provide qualified accumulator discharge instrumentation," and Unit 2, "Prior to startup following the sixth refueling outage, Duke Power Company shall provide qualified accumulator discharge instrumentation."

In a subsequent letter to the licensee and a safety evaluation (SE) dated April 8, 1992, the NRC staff noted that numerous plants had requested relaxation of the requirements from Category 2 to a Category 3 level of environmental qualification. The SE also noted that the qualification criteria for instrumentation was based on the safety function of the monitored system. The selection criteria for RG 1.97 variables qualification category is based upon whether monitoring of system parameters is needed during and

following an accident, and whether subsequent operator action in the operating procedures are dependent on the information provided by this information.

As a result of its review, the NRC staff found that the accumulator instrumentation does not perform a safety function during, or in, a post-accident environment and operator actions to mitigate the effects of an accident do not depend on the information provided by the accumulator instrumentation. Additionally, successful performance of core cooling systems can be inferred from environmentally qualified instrumentation. The staff concluded that the post-accident monitoring of the accumulator volume and pressure does not perform a safety function and no operator action is based on the information that will require Category 2 qualification of the instrumentation. Accordingly, the staff concluded that in lieu of Category 2 qualification, Category 3 qualification of this instrumentation is acceptable. As stated in its letter of April 8, 1992, the NRC staff found that, since the requirements of the license conditions had been met, these conditions cold be removed from their respective licenses. Accordingly, the licensee's application dated December 2, 1992, proposed to amend the licenses by deleting these conditions.

Basis for proposed no significant hazards consideration determination: With respect to 10 CFR 50.91(a) regarding the issue of no significant hazards consideration, the NRC staff proposes that: (a) The proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. The accumulator level and pressure instrumentation performs a monitoring function only; it does not automatically initiate system responses. It does not perform a safety function during, or in, a post-accident environment and operator actions to mitigate the consequences of an accident do not depend on the information provided by this information; (b) The proposed change to the license does not cause changes in the construction, design, or operation of the plant. On this basis and for the reasons stated in (a) above, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated; and (c) On the bases that there is to be no change in the qualification level of the instrumentation installed in the plant (RG 1.97, Category 3) and it does not perform a safety function, nor is operator action based on it, the proposed change would not cause a significant reduction in a margin of safety.

On the bases stated above, it appears that the three standards of 10 CFR 50.92(c) are satisfied and the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: October 28, 1992

Description of amendment request: The proposed amendments revise and subsequently remove Table 4.4-5, "Reactor Vessel Material Surveillance Program-Withdrawal Schedule," from the McGuire Technical Specifications in accordance with NRC Generic Letter 91-01.

Basis for proposed no significant hazards consideration determination: s 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 revision to TS Table 4.4-5 will update the reactor vessel surveillance capsule withdrawal schedule which identifies the disposition of capsules and future capsule withdrawal dates. Updating the capsule removal schedule and subsequently removing it from TS will not involve a significant increase in the probability or consequences of an accident previously evaluated, nor will it create the possibility of a new or different kind of accident from any previously evaluated, nor will the margin of safety be reduced because this revision complies with ASTM E185-82, "Standard Practice for Conducting Surveillance Test for Light Water Cooled Nuclear Powered Reactor Vessels" which is approved by the NRC as described in 10 CFR 50 Appendix H, "Reactor Vessel Material Surveillance Program Requirements" and Generic Letter 91-01, "Removal of the Schedule for the Withdrawal of Reactor Vessel Material Specimens from Technical Specifications".

As discussed above, we have determined the proposed amendment requests do not involve a significant hazards consideration as defined by 10 CFR 50.92.

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: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: May 19, 1992, supplemented on November 30, 1992.

Description of amendment request: The proposed amendment deletes portions of the TMI-1 Radiological Environmental Technical Specifications (RETS) and relocates them to controlled programs in accordance with the guidance contained in NRC Generic Letter 89-01, dated January 31, 1989. The November 30, 1992, supplement requested an additional change to implement a recent change to 10 CFR 50.36(a)(2) but did not change the overall scope of the original amendment request. The notice pertaining to the May 19, 1992 letter was published in the **Federal Register** on October 14, 1992 (57 FR 47137).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed supplement would not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated.

The proposed changes to TSCR 194 allow reporting of effluent releases pursuant to 10 CFR 50.36(a)(2) on an annual basis rather than semi-annually. This proposal simplifies the radiological effluent Tech. Specs. (RETS), meets the regulatory requirements for radioactive effluent and radiological environmental monitoring, and is considered a line-item improvement of the Tech. Specs. Thus, this change does not increase the probability of occurrence or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed supplement would not

create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to TSCR 194 allow reporting of effluent releases pursuant to 10 CFR 50.36(a)(2) on an annual basis rather than semi-annually. Future changes to procedural details in the ODCM and the PCP will be handled under the administrative controls for changes to these documents. Therefore, this change has no affect on the possibility of creating a new or different kind of accident from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed supplement would not involve a significant reduction in a margin of safety.

The proposed changes to TSCR 194 allow reporting of effluent releases pursuant to 10 CFR 50.36(a)(2) on an annual basis rather than semi-annually. Therefore, it is concluded that operation of the facility in accordance with the proposed amendment does not involve a significant reduction in a margin of safety.

The Commission has provided guidelines on the application of the three standards by listing specific examples in 45 FR 14870. The proposed changes are considered to be in the same category as example (vi) of amendments that are considered not likely to involve significant hazards consideration in that the proposed change conforms the Tech. Specs. to changes made to 10 CFR 50.36 (a)(2).

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: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: November 12, 1992

Description of amendment request: The proposed change would revise the Three Mile Island, Unit 1 (TMI-1) Technical Specifications (TS) to reflect changes that have evolved in Section XI of the ASME Code and in the NRC's regulations and Revised Standard Technical Specifications (RSTS). The most significant of these changes is a revision to the operational testing frequency for the emergency feedwater (EFW) system pumps from monthly to quarterly as specified in the current editions of the ASME Code and the RSTS. The two other proposed changes are (1) redefinition of how the 10-year inservice inspection interval is to be divided into 3 subintervals and(2) separation of the inservice inspection requirements from the inservice testing requirements to reflect a similar recent change in 10 CFR 50.55a.

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 of occurrence or the consequences of an accident previously evaluated.

The EFW Pumps will continue to be tested quarterly to the same standards applied to safety related pumps as defined by the ASME Section XI Code. Satisfactory completion of testing in accordance with the Code is accepted as verification that safety related pumps will be available to perform their intended function. Therefore the proposed amendment will not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

2. Create a possibility of a new or different kind of accident from any previously evaluated.

(10 CFR 50.92(c)(2))

This change affects only the frequency of testing the EFW pumps. No changes to plant hardware or EFW System operation are involved. Nor will there be any change in the method of testing the EFW System, or additional tests. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. Involve a significant reduction in margin of safety.

(10 CFR 50.92(c)(3))

Extension of the testing frequency to quarterly will not affect the operation of any system or equipment. Completion of EFW pump testing quarterly in accordance with the criteria specified in the ASME Section XI Code provides assurance that the EFW pumps are capable of performing their intended function. Therefore, the proposed amendment will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 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: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station,Nemaha County, Nebraska

Date of amendment request: September 2, 1992.

Description of amendment request: The proposed amendment would revise the technical specifications (TS) for the Cooper Nuclear Station (CNS) to increase the minimum amount of diesel fuel oil capacity required to be available in the on-site diesel fuel oil storage tanks, and update the standard to which the fuel oil quality is tested to a more recent edition of the same standard.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed license amendment will increase the minimum amount of diesel fuel available in the diesel fuel oil storage tanks to 48,000 gallons. This proposed increase in the on-site diesel fuel oil storage requirements in no way causes an increase in the probability of an accident previously evaluated. The proposed amendment will continue to ensure that sufficient fuel is stored on-site for seven days of operation of one Diesel Generator unit under postulated accident conditions. The on-site fuel oil requirement is being increased to provide an expanded reserve margin of available diesel fuel oil, and also to allow for any future loading additions that could be powered by the diesel generator during LOCA/LOOP [loss-of-coolant accident/loss of offsite power] events. Operation of the diesel generators and its auto-start signals are [sic] not altered with this proposed change. The ability of the diesel generators to meet their Safety Design Basis as contained in the Updated Safety Analysis Report (USAR) is not affected by this change. The diesels will remain able to perform their accident mitigative actions as described in the USAR so that the consequences of a previously evaluated accidents [sic] remain bounding. Therefore, the probability or consequences of previously evaluated accidents has not significantly increased.

The administrative change, updating the edition of the standard specified for diesel generator fuel oil quality surveillance testing to a newer edition of the same standard will not result in any reduction in quality for the diesel fuel oil and, hence in the ability of the

Diesel Generators to perform their intended safety function. The addition of the phrase "for those fuel oil properties directly related to engine performance" will not result in any reduction in quality for the diesel fuel oil. The quality testing of diesel fuel oil properties will remain as currently performed, the inclusion of the subject phrase reiterates what Standards D975-89a and D975-68 currently state. Thus, it is concluded that there is no significant increase in the probability or consequences of previously evaluated accident [sic].

2. Does the proposed License Amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed Technical Specification - revision will increase the amount of on-site diesel fuel oil required by the Technical Specifications to further ensure continued diesel generator operation during a seven day post-accident event. There is no new plant mode of operation created by this revision, nor does it involve any design modification to existing plant structures, systems, or components. This proposed revision will not change the operation or function of the diesel generators or any accident analyses that involve the diesel generators as described in the USAR. Therefore, the proposed Technical Specification revision does not create the possibility of a new or different kind of accident.

The use of a newer edition of the same standard for quality testing of the diesel fuel oil, as specified in Standard D975-89a and the inclusion of the phrase "for those fuel oil properties directly related to engine performance", will not reduce the quality of the fuel oil, and as a result, will not affect the operation of the diesel generators. Therefore, updating to a newer edition of the same standard for fuel oil quality, and including the phrase "fuel oil properties directly related to engine performance" will not create the possibility of any new accident or malfunction.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

The proposed Technical Specification revision will increase the minimum amount of on-site diesel fuel oil storage required by the CNS Technical Specifications to 48,000 gallons. This proposed change is being made to further ensure there is sufficient margin in on-site fuel available for seven days of diesel generator operation, by expanding the reserve margin of on-site diesel fuel oil available. All safety functions and safety analyses concerning the diesel generators are not altered in any way, only the amount of available fuel on-site is affected by this change. The proposed change does not allow any new change to plant operating parameters, nor does it affect any plant setpoints. Therefore, raising the amount of required on-site diesel fuel oil storage does not result in a significant reduction in the margin of safety.

Updating the edition of the standard specified for diesel generator fuel oil quality surveillance testing to a newer edition of the same standard, and specifying that the quality testing is for those properties that are directly related to engine performance, will not result in any reduction in quality for the diesel fuel oil. Thus, this update does not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68602-0499

NRC Project Director: John T. Larkins

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: September 9, 1992

Description of amendment request: The proposed amendment would make administrative changes to the Cooper Nuclear Station (CNS) Technical Specifications (TS) to (1) revise TS Table 3.1.1, "Reactor Protection System Instrumentation Requirements," to indicate that the Main Steam Line Isolation Valve Closure scram is only required while in the RUN mode, (2) add bases for the instrumentation settings for the Core Spray and Residual Heat Removal Systems to the Core Standby Cooling System Bases section of the TS, (3) replace references in the TS to "Reactor Building Closed Cooling Water System" with the term "Reactor Equipment Cooling System," (4) replace references in the TS to "Main Control Room Ventilation Isolation System," "Main Control Room Ventilation System," and "Control Room Air Treatment System" with the term "Control Room Emergency Filter System," (5) clarify in the TS that only one control room emergency bypass fan exists in the Emergency Filter System, and (6) correct several typographical errors in the TS.

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 involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes correct administrative errors and do not change the design or operation of the nuclear facility. The proposed change to Table 3.1.1 to note that the Main Steam Isolation Valve (MSIV) Closure trip is only required while in the RUN mode will make the table consistent with the plant modifications previously approved by Amendment Number 83. The proposed change to the Core Spray and Residual Heat Removal (Low Pressure Coolant Injection mode) system instrumentation bases will refer to the previously approved basis for the instrument settings. The proposed change to LCO [limiting condition for operation] 3.12.A.2.c simply clarifies that only one emergency bypass fan exists, which reflects the current configuration of the plant.

The proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes correct administrative errors and do not modify the design of the nuclear facility or create any new mode of plant operation. The proposed change to Table 3.1.1 to specify that the MSIV Closure trip is only required during the RUN mode will make the table consistent with the plant modifications previously evaluated and approved by Amendment Number 83. The proposed change to the instrument bases section does not make any changes to the plant instruments or their settings as it only refers to the Updated Safety Analysis Report (USAR) section for the basis of the instrumentation settings. The proposed change to LCO 3.12.A.2.c is editorial in nature, and simply reflects the current configuration of the plant.

The proposed changes will not create a significant reduction in the margin of safety. The proposed changes correct administrative errors and do not modify the design or operation of the nuclear facility. The proposed change to Table 3.1.1 reflects the plant modifications approved by Amendment Number 83. The proposed change to the instrumentation bases section will refer to the USAR section which contains the bases for the instrument settings for the Core Spray and Residual Heat Removal (Low Pressure Coolant Injection mode) systems, and does not change any current settings. The proposed change to LCO 3.12.A.2.c is editorial in nature, and simply reflects the current configuration of the plant.

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: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68602-0499

NRC Project Director: John T. Larkins

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station,Nemaha County, Nebraska

Date of amendment request: October 8, 1992

Description of amendment request: The proposed amendment would change the Cooper Nuclear Station (CNS) Technical Specifications (TS) to revise the onsite organizational structure by creating new site management positions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The change in the onsite management reporting relationships will provide for increased senior management attention and oversight of each of the functional areas in the Cooper Nuclear Station (CNS) onsite organization. In particular, the Plant Manager will be able to devote day-to-day attention to those onsite activities directly related to operations, maintenance, engineering, and radiological controls, which are important to the continued safe operation and maintenance of the plant. The Senior Manager of Site Support will be able to devote day-to-day attention to those onsite activities directly related to supporting operation of the plant, such as station security, outage and modification coordination, training, and administrative support. The Site Manager will have overview and coordination responsibility to ensure safe and efficient unit operation, and maintains responsibility for all onsite activities, necessary for safe operation and support of the Cooper Nuclear Station. Additionally, this change is expected to have a positive impact on safety by enhancing the ability of the Plant Manager, and the Senior Manager of Site Support to effectively carry out their primary responsibilities and by improving the consistency and continuity of managerial oversight for CNS.

Changes in the onsite organizational structure do not affect plant design or operation, nor does it affect the way any systems, structures, or components are operated or maintained. All individuals filling these positions are qualified to perform the assigned tasks and responsibilities. These organizational changes are expected to improve the implementation of effective and comprehensive work practices that will enhance the overall efficiency, and safety of the plant. Therefore, this proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed License Amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed Technical Specification revision enhances the organizational structure for onsite management, which will provide for increased senior management attention to each of the functional areas in the CNS onsite organization. These changes do not affect the design or operation of any system, structure, or component in the plant, and are considered to be administrative changes which will enhance the performance of the onsite organization to respond to plant transients or emergencies. Therefore, this proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

This proposed change to the Technical Specifications is in the Administrative Controls Section, specifically the organizational structure for onsite management. All responsibilities as described in the Technical Specifications for onsite management activities will continue to be performed by qualified individuals. These changes are expected to improve the safe operation and support of the plant and, do not affect any plant safety parameters or setpoints, and therefore, do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68602-0499

NRC Project Director: John T. LarkinsNiagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of amendment request: November 24, 1992

Description of amendment request: The proposed amendment would revise the Administrative Controls section of the Nine Mile Point Nuclear Station Unit No. 1 (NMP1) Technical Specifications (TS). The proposed revisions would incorporate changes in the composition, alternates, and quorum requirements of the Station Operation Review Committee. The Safety Review and Audit Board (SRAB) quorum requirements would be revised to require a majority of the actual membership rather than only the Chairman or the Chairman's designated alternate and at least three members. A reference to a no longer existent "Appendix A" to 10 CFR Part 55 would be deleted from TS 6.4.1. A new requirement would be added requiring the retraining and replacement training program to include "familiarization with relevant industry operational experience."

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 operation of NMP1, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to Technical Specification 6.5.1 are consistent with STS [Standard Technical Specifications] guidelines regarding number of members associated with a "Unit Review Group", designated at NMP1 as the "Station Operations Review Committee (SORC)". Proposed changes to the SORC quorum requirements incorporate STS guidelines combined with later operating BWR [Boiling Water Reactor] plant provisions regarding establishment of a SORC Vice-Chairman position. The SORC Vice-Chairman position, with duties, responsibilities and qualifications similar to those of the SORC Chairman, is adopted from later operating BWR plant provisions found acceptable to the NRC. In addition, the authority presently granted to the SORC Chairman to appoint alternate SORC members and to convene SORC, is extended to the Vice-Chairman.

These changes provide a flexibility in the implementation of the SORC review process which should enhance the timeliness of response to routine activities as well as to emerging circumstances requiring SORC review. During SORC Chairman absence, the Vice-Chairman position assures the continuity required for effective implementation of the day-to-day SORC functions. Continued technical adequacy of the process is assured by retention of existing procedural controls requiring verification that SORC members or alternates present have appropriate technical background necessary for an adequate safety review of agenda items, as well as the requirements to designate other personnel, as necessary, for attendance at meetings where additional information or expertise is needed.

The SORC function of advising the Plant Manager on all matters related to nuclear safety, as stated in TS 6.5.1.1, remains unchanged. Similarly, the specific SORC responsibilities detailed in TS 6.5.1.6 are not affected by the proposed changes. The number of alternates permitted by TS 6.5.1.3 remains unchanged thereby maintaining the present condition that there always be at least a majority at each SORC meeting who are permanent SORC members.

The proposed change to the SRAB quorum meets the requirements of ANSI [American National Standards Institute] N18.7-1976 Sections 4.3.2.1 and 4.3.2.3. These require

that the committee consist of no less than five (5) persons and that the quorum consist of not less than a majority of the principles or duly appointed alternates. This will ensure membership continuity during scheduled meetings. The proposed changes are consistent with STS guidelines, ANSI N18.7-1976 and the SRAB charter.

The proposed changes do not affect any accident precursors and do not alter or modify existing limitations on the function, use of alternates, and responsibilities of the SORC. Addition of STS and later operating BWR plant provisions applicable to NMP1 assures retention of an adequate level and quality of review of matters related to nuclear safety, and therefore does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The operation of NMP1, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes for NMP1 Technical Specification Section 6.0 are based on STS guidelines and on later operating BWR plant provisions found acceptable to the NRC. These proposed changes have been reviewed for acceptability at NMP1 considering similarity of NMP1 nuclear safety review processes versus the STS and later operating BWRs. No new conditions of operation are introduced by the proposed changes. The proposed changes do not modify existing setpoints or design assumptions for system operation.

Since the proposed changes do not alter the functions and responsibilities of SORC and SRAB to review matters related to nuclear safety, and do not modify the present level of plant system operability, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The operation of NMP1, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The proposed changes to Technical Specification Section 6.0 represent a combination of present requirements, STS guidelines and provisions that have been found acceptable for use on other operating BWRs with review processes similar to those at NMP1. The proposed SORC changes are intended to provide the flexibility required for continued timely SORC review of routine activities as well as review of emergent conditions, without compromising the technical adequacy of the process. The proposed SRAB quorum requirements will ensure membership continuity during scheduled SRAB meetings.

Existing procedural administrative controls requiring verification that SORC members or alternates present have appropriate technical background necessary for an adequate safety review of agenda items, as well as the requirements to designate other personnel, as necessary, for attendance at meetings where additional information or expertise is needed, remain in effect.

Since the proposed changes are based on STS guidelines and NRC accepted provisions at other operating plants that are applicable at NMP1, and since procedural administrative controls remain in place to assure presence of adequate technical expertise during the SORC review process, the proposed changes do not involve a significant reduction in a margin of safety.Therefore, based on the above evaluation, Niagara Mohawk has concluded that these changes do not involve significant hazards consideration.

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: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502.

NRC Project Director: Robert A. Capra

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of amendment request: November 24, 1992

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 1.0, "Definition;" TS Figure 2.1.1 and its corresponding Bases; TS 2.1.2, "Fuel Cladding Integrity," and its corresponding Bases; TS 2.2.2, "Reactor Coolant System," and its corresponding Bases; TS 3.1.7 and 4.1.7, "Fuel Rods;" TS 3.6.2 and 4.6.2, "Protective Instrumentation;" TS Table 3.6.2a, "Instrumentation that Initiates Scram;" TS Table 3.6.2g, "Instrumentation that Initiates Control Rod Withdrawal Block;" and TS 6.9.1f, "Core Operating Limits Report." The proposed changes would incorporate use of the "3D Monicore" computer software. Use of the "3D Monicore" software is being proposed in the proposed amendment for calculating various limits in the affected 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 operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of any accident previously evaluated.

The APRM [average power range monitors] flow biased scram and rod block Limiting Safety System Settings provide a high level of assurance that plant response to abnormal operational transients will not violate fuel safety limits. The proposed changes to these settings do not alter any accident initiators or precursors and do not affect the probability of any accident. The proposed limiting safety system settings provide a level of safety equivalent to or greater than that provided by the currently specified settings and therefore will not increase the consequences of any accident.

Newer GE [General Electric Co.] fuel designs have different combinations of enriched uranium and gadolinia at various axial node points in the bundle. Thus, these fuel bundle types have MAPLHGRs [Maximum Average Planar Linear Heat Generation Rates] that vary axially along the length of the bundle as well as with fuel burnup. By determining and limiting the allowed APLHGR [Average Planar Linear Heat Generation Rate] at each axial node for each bundle, peak cladding temperature during the design basis loss-of-coolant accident will be significantly less than 2200°F, thus assuring that plant response to a design basis loss-of-coolant accident remains within previously assessed limits.

In addition, operating limits are now calculated by Fraction of Rated Thermal Power (FRTP) and Core Maximum Fraction of Limiting Power Density (CMFLPD) in lieu of Maximum Total Peaking Factor. Deletion of the Maximum Total Peaking Factor (MTPF) value for each fuel bundle design from the Core Operating Limits Report is therefore administrative only. Finally, the editorial changes contained herein correct errors and do not alter the intent of the Technical Specifications. Editorial changes do not, by their nature, affect the probability or consequences of accidents. Therefore, operation in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change will not alter the physical characteristics of any plant systems or components and all safety-related systems and components remain within their applicable design limits. Thus, system and component performance is not adversely affected by this change, thereby assuring that the design capabilities of those systems and components are not challenged in a manner not previously assessed so as to create the possibility of a new or different kind of accident.

The proposed parameters are based on the same design criteria as current Technical Specifications, thereby assuring that the reactor response to previously analyzed accidents remains within previously assessed limits of temperature and pressure. In addition, operating limits are now calculated by Fraction of Rated Thermal Power (FRTP) and Core Maximum Fraction of Limiting Power Density (CMFLPD) in lieu of

Maximum Total Peaking Factor. Deletion of the Maximum Total Peaking Factor (MTPF) value for each fuel bundle design from the Core Operating Limits Report is administrative only. Finally, the editorial changes contained herein do not alter plant configurations or operating modes. Editorial changes do not, by their nature, create the possibility of a new or different kind of accident. Therefore, operation in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

Currently, when calculated peaking factors exceed design values, scram setpoints are reduced to maintain a margin of safety equivalent to that provided at 100% power. In the proposed amendment, in lieu of monitoring peaking factors, the scram and rod block settings will be adjusted by a setdown factor "T" (the ratio of the Fraction of Rated Thermal Power to Core Maximum Fraction of Limiting Power Density) whenever that factor is less than one. The Fraction of Limiting Power Density is the LHGR [Linear Heat Generation Rate] existing at a given location divided by the specified LHGR limit for that bundle type. The core Maximum Fraction of Limiting Power Density is the highest value of the FLPD which exists in the core. Thus, when the ratio of actual LHGR to design LHGR for any bundle exceeds the ratio of actual thermal power to rated thermal power, scram and rod block setpoints will be reduced accordingly to maintain an equivalent margin of safety.

The proposed Technical Specifications will result in the same operating power distribution limits and safety margins as the current Technical Specifications. Limiting and monitoring APLHGR at different axial locations provides adequate assurance that, in the event of a design basis loss-of-coolant accident, peak cladding temperature will stay well below 2200°F. Using the limiting APLHGR in a bundle during hand calculations minimizes the probabilities of error.

In addition, operating limits are now calculated by Fraction of Rated Thermal Power (FRTP) and Core Maximum Fraction of Limiting Power Density (CMFLPD) in lieu of Maximum Total Peaking Factor. Deletion of the Maximum Total Peaking Factor (MTPF) value for each fuel bundle design from the Core Operating Limits Report is administrative only. Finally, the editorial changes contained herein do not alter the intent of the Technical Specifications. The limiting conditions for operation and surveillances requirements are not impacted. Editorial changes do not, by their nature, affect the margins of safety.

Therefore, operation of NMP1 in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment 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: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502.

NRC Project Director: Robert A. Capra

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of amendment request: December 4, 1992

Description of amendment request: The proposed amendment would revise Technical Specifications (TS) 3.6.2 and 3.6.11 and associated Bases. The proposed revisions would increase the surveillance test intervals and add allowable out-of-service times for various instruments. The proposed changes would be in accordance with General Electric Company Licensing Topical Reports (LTRs) which have been reviewed and approved by the NRC staff. Also, the allowable out-of-service times would be clarified in accordance with the most recently approved Boiling Water Reactors Owners Group letters which were used in the development of NUREG-1433, "Improved Standard Technical Specifications." The proposed changes would permit specified instrument channel functional tests to be performed quarterly rather than weekly or monthly.

The proposed amendment would also make editorial corrections on TS page 192 (reinsert a previously omitted word "upscale") and on TS page 199 (insert the symbol "°F," two places). Furthermore, a footnote on TS page 210 which involved a 1986 licensing condition would be deleted since it is no longer applicable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The generic analysis contained in Licensing Topical Report NEDC-30851P-A assessed the impact of changing SCRAM (RPS) [Reactor Protection System] surveillance test intervals (STIs) and adding allowable out-of-service times (AOTs) on the SCRAM (RPS) failure frequency, the scram frequency and equipment cycling. Specifically, Section 5.7.4, "Significant Hazards Assessment," of NEDC-30851P-A states that:

≥Fewer challenges to the safeguards system, due to less frequent testing of the RPS, conservatively results in a decrease of approximately one percent in core damage frequency. This decrease is based upon the following:

•Based on the plant-specific experience presented in Appendix J, the estimated reduction in scram frequency (0.3 scrams/yr) represents a 1 to 2 percent decrease in core damage frequency based on the BWR plant-specific Probabilistic Risk Assessments (PRAs) listed in Table 5-8.

•The increase in core damage frequency due to less frequent testing is less than one percent. This increase is even lower (less than 0.01 percent) when the changes resulting from the implementation of the Anticipated Transients Without Scram (ATWS) rule are considered. Therefore, this increase is more than offset by the decrease in CDF [Core Damage Frequency] due to fewer scrams.

•The effect of reducing unnecessary cycles on RPS equipment, although not easily quantifiable also results in a decrease in core damage frequency.

•The overall impact on core damage frequency of the changes in allowable out-of-service is negligible."

From this generic analysis, the BWR [Boiling Water Reactors] Owners' Group concluded that the proposed changes do not significantly increase the probability or consequences of an accident previously evaluated, namely the increase in probability of a scram failure due to SCRAM (RPS) unavailability is insignificant, and the overall probability of an accident is actually decreased as the time the SCRAM (RPS) Instrumentation logic operates as designed is increased resulting in less inadvertent scrams during testing and repair. Furthermore, the proprietary plant-specific analysis contained in this submittal demonstrates that although NMP1 differs from the generic model analyzed in Licensing Topical Report NEDC-30851P-A, the net effect of the plant-specific differences do not alter the generic conclusions. Also, the BWROG [Boiling Water Reactors Owners Group] 92102 letter clarifications used in the development of NUREG 1433, "Improved Standard Technical Specifications," for AOTs which enhanced wording to ensure "loss of function" does not occur, results in no significant increase in the probability or consequences of an accident previously evaluated."The generic analysis contained in Licensing Topical Reports NEDC-30851P-A Suppl [Supplement] 2/ NEDC-31677P-A assessed the impact of changing STIs and AOTs for BWR Isolation Instrumentation common/not common to SCRAM (RPS) and ECCS [Emergency Core Cooling System] instrumentation. Specifically, Section 4.0, "Summary of Results," of NEDC-30851P-A Supp1 2 states that:

≥The results indicate that the effects on probability of failure to initiate isolation are very small and the effects on probability or frequency of failure to isolate are negligible in nearly every case. In addition, the results indicate that increasing the AOT to 24 hours for tests and repairs has a negligible effect on the probability of failure of the isolation function. These combined with changes to the testing intervals and allowed out-of-service times for RPS and ECCS instrumentation provide a net improvement to plant safety and operations."and Section 5.6, "Assessment of Net Effect of Changes," of NEDC-31677P-A states that:

≥A reduction in core damage frequency (CDF) of at least as much as estimated in the ECCS instrumentation analysis can be expected when the isolation actuation instrumentation STIs are changed from one month to three months. The chief contributor to this reduction is the channel functional tests for the MSIVs [Main Steamline Isolation Valves]. Inadvertent closure of the MSIVs will cause an unnecessary plant scram. This reduction in CDF more than compensates for any small incremental increase (10% or 1.0E-07/year) in calculated isolation function failure frequency when the STI is extended to three months."

From this generic analysis, the BWR Owners' Group concluded that the proposed changes do not significantly increase the consequences of an accident previously evaluated, namely the increase in probability of an isolation failure due to isolation instrumentation unavailability is insignificant, and the overall probability of an accident is actually decreased as the time the SCRAM (RPS) Instrumentation logic operates as designed is increased resulting in less inadvertent scrams during testing and repair. Also, the BWROG 0690-579-32A letter clarifications used in the development of NUREG 1433, "Improved Standard Technical Specifications," for AOTs which enhanced wording to ensure "loss of function" does not occur, results in no significant increase in the probability or consequences of an accident previously evaluated.

The generic analysis contained in Licensing Topical Report NEDC-30936P-A (Parts 1 and 2) assessed the impact of changing STIs and AOTs for all BWR ECCS Actuation Instrumentation. Specifically, Section 4.0, "Technical Assessment of Changes," of NEDC-30936P-A (Part 2) states that:

≥The results indicate an insignificant (less than 5E-7 per year) increase in water injection function failure frequency when STIs are increased from 31 days to 92 days, AOTs for repair of the ECCS actuation instrumentation are increased from one hour to 24 hours, and AOTs for surveillance testing are increased from two to six hours. For all four BWR models the increase represents less than 4% increase in failure frequency. However, when other factors which influence the overall plant safety are considered, the net result is judged to be an improvement in plant safety."

From this generic analysis, the BWR Owners' Group concluded that the proposed changes do not significantly increase the probability or consequences of an accident previously evaluated, namely the increase in probability of a water injection failure due to ECCS instrumentation unavailability is insignificant and the net result is judged to be an improvement in plant safety. Furthermore, the proprietary plant-specific analysis contained in this submittal demonstrates that although NMP1 differs from the generic model analyzed in Licensing Topical Report NEDC-30936P-A, the net affect of the plant-specific differences do not alter the generic conclusions.

The generic analysis contained in Licensing Topical Report NEDC-30851P-A Suppl 1, assessed the impact of changing Rod Block STIs on Rod Block failure frequency. Specifically, Section 5 (BNL's Tech. Eval. Report - Attach. 2 to the NRC SER) [Brookhaven National Laboratory's Technical Evaluation Report - Attachment 2 to the NRC Safety Evaluation Report] of NEDC-30851P-A Supp 1 states that:

≥The BWR Owners' Group proposed changes to the Technical Specifications concerning the test requirements for BWR control rod block instrumentation. The changes consist of increasing the surveillance test intervals from one to three months. These test interval extensions are consistent with the already approved changes to STIs for the reactor protection system. The technical analysis reviewed and verified as documented herein indicates that there will be no significant changes in the availability of the control rod block function if these changes are implemented. In addition, there will be a negligible impact on the plant core melt frequency due to the decreased testing."

From this generic analysis, the BWR Owners' Group concluded that the proposed changes do not significantly increase the probability of an accident previously evaluated or consequences of an accident previously evaluated.

Bases contained in GE Topical Report GENE-770-06-1 assessed the impact of changing STIs and AOTs on selected systems failure frequency. Specifically, Section 2.0, "Summary," of GENE-770-06-1 states that:

≥Technical bases are provided for selected proposed changes to the instrumentation STIs and AOTs that were identified in the BWROG Improved BWR Technical Specification activity. These STI and AOT changes are consistent with approved changes to the RPS, ECCS, and isolation actuation instrumentation. These proposed changes do not result in a degradation to overall plant safety."

From these Bases, the BWR Owners' Group concluded that the proposed changes do not significantly increase the probability of an accident previously evaluated or consequences of an accident previously evaluated.

Also, NMPC [Niagara Mohawk Power Corporation] concluded the editorial items do not involve a significant increase in the probability or consequences of an accident previously evaluated. These changes do not alter the meaning or intent of any requirements.

2. The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change will not alter the physical characteristics of any plant systems or components and all safety-related systems and components remain within their applicable design limits. Thus, system and component performance is not adversely affected by this change, thereby assuring that the design capabilities of those systems and components are not challenged in a manner not previously assessed so as to create the possibility of a new or different kind of accident.

The addition of allowable out-of-service times (AOTs) and the increase in surveillance test intervals (STIs) does not alter the function of the SCRAM (RPS), ECCS, Isolation, Rod Block, and Selected Instrument Systems nor involve any type of plant modification and no new modes of plant operation are involved with these changes. Also, the editorial changes contained herein do not alter plant configurations or operating modes. Editorial changes do not, by their nature, create the possibility of a new or different kind of accident. Finally, the approved BWR Owners' Group clarifications are enhancements to allowable out-of-service times (AOTs) and do not create the possibility of a new or different kind of accident. Therefore, operation in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed and approved the generic studies contained in the GE Topical Reports (LTRs) and has concurred with the BWR Owners' Group that the proposed changes do not significantly affects the availability of the SCRAM (RPS), ECCS, Isolation, Rod Block, or Selected Instrument Systems. The proposed addition of allowable out-of-service times (AOTs) for the instruments addressed in the LTRs provides reasonable time for making repairs and performing tests. The lack of sufficient AOTs in the current Technical Specifications (TS) creates a hurried atmosphere during repairs and tests which could cause an increased risk of error. Also, placing an individual channel in a tripped condition because no AOT exists, as in the current TS, increases the potential of an inadvertent scram. The proposed AOTs provide realistic times to complete the required actions without increasing the overall instrument failure frequency. Therefore, there is no significant reduction in the margin of safety.

The incorporation of extended surveillance test intervals (STIs) does not result in significant changes in the probability of instrument failure, as demonstrated by the LTRs. Also, the calibration frequencyhas not changed, therefore assurance exists that the setpoints will not be affected by drift. These changes, when coupled with the reduced probability of test-induced plant transients and equipment failures, result in an overall increase in the margin of safety.Also, the BWR Owners' Group clarification items do not alter the meaning or intent of any

requirements, therefore does not affect 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 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: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502.

NRC Project Director: Robert A. Capra

North Atlantic Energy Service Corporation, Docket No. 50-443, SeabrookStation, Rockingham County, New Hampshire

Date of amendment request: October 22, 1992

Description of amendment request: The proposed amendment would change the acceptance value for the sum of Residual Heat Removal (RHR) System injection line flow rates in the plant 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:

(1) The proposed revision does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to Technical Specification Surveillance Requirement 4.5.2h.3 revises the acceptance value of the sum of the injection line flow rates with a single pump running to conform with the value used in the Seabrook Station Emergency Core Cooling System (ECCS) analysis performed by Westinghouse. This revised acceptance value is more conservative than the current Technical Specification value.

The Residual Heat Removal (RHR) System provides the low head ECCS flow necessary in the event of a Loss of Coolant Accident (LOCA). ECCS flow must be sufficient to remove the stored heat and fission product decay heat from the reactor core to prevent fuel damage that might impair effective cooling of the core.

The Seabrook Station ECCS analysis is based on the calculated flow rate down three of the four RHR injection lines since the fourth line is assumed to spill to containment. The calculated flow rate down three of the four injection lines in this analysis is 2828.4 gpm. The calculated total pump flow rate down all four injection lines is 3868.4 gpm. Since the actual values used in the analysis for the total flow rate down three and four injection lines are 2712 gpm and 3828 gpm, respectively, the proposed value of 3869 gpm, which includes an allowance of 5% for pump degradation, is conservative.

Technical Specification Surveillance Requirement 4.5.2h.3 is performed as part of a flow balance test during shutdown when modifications to the ECCS subsystems have been made that alter the subsystem flow characteristics. This surveillance requirement verifies that after the modification the total ECCS flow to the reactor core is equal to or greater than the flow assumed in the ECCS analysis.

The proposed change to Technical Specification Surveillance Requirement 4.5.2h.3 does not alter the design of the RHR system or any other plant system. The RHR system design parameters and operation are not changed. The proposed change is necessary to correct an error in the Technical Specifications whereby the acceptance value for the flow rate through three injection lines was inadvertently used instead of the correct flow rate value through four injection lines. In addition, the revised acceptance value in the proposed change is more conservative than the existing value. Therefore, this proposed change does not increase the probability of an accident previously evaluated nor will it increase the consequences of any accident.

(2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to Technical Specification Surveillance Requirement 4.5.2h.3 does not affect the design, function or operation of the RHR system. As a subsystem of the Seabrook Station ECCS, the RHR system will continue to be capable of injecting low pressure cooling water in the event of a LOCA to remove stored and fission product decay heat and maintain effective core cooling. The acceptance value for the sum of the RHR injection line flow rates with a single pump running is more conservative than the value being replaced and meets the value used in the design basis Seabrook Station ECCS analysis.

There are no new failure modes introduced by this proposed change. Its intent is to correct an error in the existing Technical Specifications whereby the acceptance value for the sum of the flow rates in three injection lines was used instead of the value for the sum of four injection lines. Therefore, the possibility of a new or different kind of accident than those already evaluated is not created by this proposed change.

(3) The proposed change does not result in a significant reduction in the margin of safety.

The Technical Specification Bases state that the purpose of the surveillance requirement for flow balance testing following modifications to ECCS subsystems that might alter the subsystem flow characteristics is to verify that proper ECCS flow will be maintained in the event of a LOCA. Proper ECCS flow is defined by the design basis ECCS analysis. The Seabrook Station ECCS analysis used a calculated flow rate value for the sum of the four injection line flow rates of 3868.4 gpm. The acceptance value for the sum of the four injection line flow rates which is currently in Technical Specification Surveillance Requirement 4.5.2h.3 is less than 3868.4 gpm. The proposed change revises the acceptance value in the surveillance requirement to 3869 gpm. Since the proposed change is revising the acceptance value to a more conservative value which is bounded by the design basis ECCS analysis, the change will not reduce 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 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire, 03833.

Attorney for licensee: Thomas Dignan, Esquire, Ropes & Gray, One International Place, Boston, Massachusetts 02110-2624.

NRC Project Director: Walter R. Butler

North Atlantic Energy Service Corporation, Docket No. 50-443, SeabrookStation, Rockingham County, New Hampshire

Date of amendment request: November 3, 1992

Description of amendment request: The proposed amendment would change the technical specifications (TSs) to relax the requirement for the Operations Manager to hold a Senior Reactor Operator (SRO) license. Instead, the Operations Manager would be required to either hold, or have held an SRO license at Seabrook Station. The Assistant Operations Manager would still be required to maintain an SRO license at Seabrook Station.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change affects only an administrative control, which was based on the existing industry guidance in ANSI/ANS 3.1-1978, that recommended the Operations Manager hold a senior reactor operator license. The current guidance in ANSI/ANS 3.1-1987 recommends, as one option, that the Operations Manager have held a license on a similar unit with the Operations Middle

Manager holding a senior reactor operator license. The proposed change in this License Amendment Request is consistent with the current guidance.

The proposed change does not alter the design of any system, structure, or component. It does not change the way any plant systems are operated. It does not reduce the knowledge, qualifications, or skills of any watchstander, and does not affect the way the Operations Department is managed other than to allow the Operations Manager to focus his efforts on maintaining the effective performance of his personnel and to ensuring the plant is operated safely and in accordance with the requirements of the Operating License.

The proposed change does not detract from the Operations Manager's ability to perform his primary responsibilities. By having previously held a senior reactor operator license he will have gained the necessary training, skills, and experience to fully understand the operation of plant equipment and the requirements for proper watchstanding.

The proposed change does not weaken the supervisory chain that presently exists in the Operations Department. All Control Room operators will continue to be supervised by NRC licensed personnel.

The proposed change is intended to improve the ability of the Operations Manager to provide the plant oversight required of his position. It does not have any affect on the probability or consequences of any previously evaluated accident.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to Technical Specification 6.2.2 does not affect the design or function of any plant system, structure, or component. It does not affect in any way the performance of NRC licensed operators, nor does it change the way any plant equipment is operated. Operation of the plant in conformance with Technical Specification and other license requirements will continue to be supervised by personnel who hold an NRC senior reactor operator license. The proposed change does not introduce any new failure modes.

The proposed change is intended to remove an administrative requirement which adds a significant burden to the Operations Manager without significantly contributing to his effectiveness in managing plant operation and ensuring that the plant is operated safely and in accordance with the requirements of the Operating License.

3. The proposed change does not result in a significant reduction in the margin of safety.

The proposed change involves only an administrative control which is not related to the margin of safety as defined in the Technical Specifications. The proposed change does not reduce

the level of knowledge or experience required of an individual who fills the Operations Manager position, nor does it affect the conservative manner in which the plant is operated. All Control Room operators will continue to be supervised by personnel who hold a senior reactor operator license. This includes the Assistant Operations Manager, who will continue to be required to hold a senior reactor operator license.

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: Exeter Public Library, 47 Front Street, Exeter, New Hampshire, 03833.

Attorney for licensee: Thomas Dignan, Esquire, Ropes & Gray, One International Place, Boston, Massachusetts 02110-2624.

NRC Project Director: Walter R. Butler:

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: November 18, 1992

Description of amendment request: The amendment requests that Technical Specification surveillance requirements be changed to extend the maximum interval between containment Type B and Type C tests from the present 24 months to 34 months for this fuel cycle only.

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 involve a significant hazards consideration because the change would not:

1. Involve a significant increase in the probability of occurrence or consequences of an accident previously analyzed.

The past Millstone Unit No. 3 LLRT data, in general, demonstrated good leak rate results. Specifically, during the last refueling outage, the total Type B and Type C leakage rate was 37.4 percent of the technical specification limit. In addition, the last Millstone Unit No. 3 ILRT test completed on July 7, 1989, indicated that the "As-Left" leakage ILRT rate is 44.6 percent of the technical specification limit. This demonstrates that the overall leak tightness of containment and its protective boundaries is maintained. No operations are known to have occurred which would suggest a significant degradation of containment integrity.

The change does not increase the probability of any accident, since a design basis accident is not a function of surveillance test intervals.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The containment isolation features limit the consequences of any accident. The addition of 8 to 10 months to the test schedule should have no impact on this. The proposed change does not alter the testing criteria or any acceptance criteria, it only extends the time period between the test performance. Since there are no changes in the way the plant is operated, the potential for an unanalyzed accident is not created. No new failure modes are introduced.

3. Involve a significant reduction in margin of safety.

As discussed above, the past Type B and Type C and the containment ILRT results demonstrate that the overall leak tightness of the containment and its protective boundaries is maintained. Also, since the change does not affect the consequences of an accident previously analyzed, there is no reduction in the margins of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: October 9, 1992

Description of amendment request: The licensee commenced operating on a 24-month fuel cycle, instead of the previous 18-month fuel cycle, with fuel cycle 9. Fuel cycle 9 started in August 1992. In order to accommodate operation on a 24-month cycle, the licensee requested a Technical Specifications (TS) amendment to incorporate the changes listed below:

(1) The licensee proposed changing the frequency of containment fan cooler unit filtration system testing (specified in TS Section 4.5.A.4) to accommodate operation on a 24-month cycle.

(2) The licensee proposed changing the frequency of central control room filtration system testing (specified in TS Section 4.5.A.5) to accommodate operation on a 24-month cycle.

(3) The licensee proposed changing the frequency of containment vent isolation valve mechanical stop verification (specified

in TS Section 4.13.A) to accommodate operation on a 24-month cycle.

These proposed changes follow the guidance provided in Generic Letter 91-04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle," as applicable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Consistent with the requirements of 10 CFR 50.92, the enclosed application is judged to involve no significant hazards based on the following information:

(1)Does the proposed license amendment involve a significant increase in the probability or consequences of any accident previously evaluated?

Response:

The proposed changes do not involve a significant increase in the probability or consequences of any accident previously analyzed. These changes propose extending the surveillance intervals for ventilation system testing. The changes do not involve any physical changes to the plant, nor do they alter the way any equipment functions. An evaluation of past equipment performance and other system testing (e.g., quarterly tests) provides assurance that the longer surveillance intervals will not degrade system performance. Regarding the probability of equipment malfunctions:

•These tests can be safely extended with the longer fuel cycle because a review of surveillance test records and a review of operating occurrence reports substantiates the reliability of these systems. Also, since filtration systems are generally operated intermittently, the operating time between tests would not be increased significantly with the longer operating cycle. With the exception of the containment FCU [fan cooler unit] filtration system, the other filtration systems are inspected or tested monthly to ensure that each system is operating according to specifications. The FCU filtration system may be inspected only during cold shutdown with the fans operational.

•The Technical Specifications require that any time fire, chemical releases or work done on the filters could alter their integrity or after 720 hours of charcoal adsorber use since their last test, the CCR [central control room] filtration system parameters must be demonstrated to meet the required specifications. The Technical Specifications also require each of these systems to be operated for 15 minutes each month.

•In addition, the Technical Specifications (4.13.A.2) require that the operability of the mechanical stops on the containment vent isolation valves be verified each refueling outage. This is accomplished by local observation of stroke testing (currently required by ASME Section XI every 2 years) and quarterly verification of valve stroke times.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response:

The proposed changes extend surveillance test intervals. The proposed changes do not change the manner in which the ventilation systems function. An evaluation of past equipment performance and a study of on-line testing show the longer surveillance test intervals will not degrade ventilation system equipment. Therefore, the proposed changes do not create any new failure modes or a new accident.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response:

The proposed changes do not reduce the margin of safety as defined in the basis for any Technical Specification. The proposed changes extend surveillance test intervals. Evaluation of the past performance of the equipment indicates that the effects of extending the surveillance test intervals would not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 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: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of amendment request: November 18, 1992

Description of amendment request: The proposed request would change Technical Specifications 6.9.1.8, "Semiannual Radioactive Effluent Release Report," and 6.14, "Offsite Dose Calculation Manual," following the provisions provided in 10 CFR 50.36a. This proposed change would extend the Radioactive Effluent Release Report submittal frequency from semiannual to annual.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

This change is administrative in nature and makes the TSs consistent with the amended requirement of 10 CFR 50.36a(a)(2). There is no change to plant design, operation, or configuration. Therefore, there is no significant increase in the probability or consequences of an accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different type of accident from any accident previously evaluated?

Response: No

This change is administrative in nature and makes the TSs consistent with the amended requirement of 10 CFR 50.36a(a)(2). There is no change to plant design, operation, or configuration. Therefore, this change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No

This change is administrative in nature and makes the TSs consistent with the amended requirement of 10 CFR 50.36a(a)(2). There is no change to plant design, operation, or configuration. Therefore, there is no 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: Main Library, University of California, P. O. Box 19557, Irvine, California 92713

Attorney for licensee: James A. Beoletto, Esquire, Southern California Edison Company, P. O. Box 800, Rosemead, California 91770

NRC Project Director: Theodore R. Quay

TU Electric Company, Docket No. 50-445, Comanche Peak Steam Electric Station, Unit 1, Somervell County, Texas

Date of amendment request: April 2, 1991

Brief description of amendment: The proposed amendment would add action requirements to Technical Specification (TS) Table 3.3-2 for the engineered safety features actuation system instrumentation loss of power function to provide direction consistent with TS 3.8.1.1 and 3.8.3.1 in the event two undervoltage relay channels on a bus become inoperable. The action statements in Technical Specification (TS) Table 3.3-2 currently require entry into in TS 3.0.3 when two undervoltage

relay channels are declared inoperable. The proposed change would revise the action statements to allow an outage time consistent with that allowed in TS 3.8.1.1 and 3.8.3.1 for inoperable AC sources and inoperable AC emergency busses, respectively.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

1. The proposed changes do not involve a significant increase in the probability or consequences of a previously evaluated accident.

The proposed changes do not affect operation of the undervoltage protection relay channels or the protection they provide. Although the change would increase the allowed outage time beyond that currently allowed by TS Table 3.3-2, the proposed changes do not increase the out-of-service time beyond that currently established in TS 3.8.3.1 and 3.8.1.1 for the associated busses. Therefore, the NRC staff concludes that the proposed changes will not cause a significant increase in the probability or consequences of a previously evaluated accident.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve system hardware or circuit changes and do not change the manner in which the undervoltage relay channels operate or provide plant protection. Since no physical, electrical, or functional changes are made to the undervoltage relay channels, no new failure modes are introduced. Therefore, the proposed changes do not create the possibility of a new or different kind of accident.

3. The proposed changes do not involve a significant reduction in the margin of safety.

As stated above, the proposed changes increase the allowed outage time beyond that currently allowed by TS Table 3.3-2, but do not increase the out-of-service time beyond that currently established in the TS for the associated busses. Therefore, the NRC staff concludes that the proposed changes do not involve a significant reduction in the margin of safety.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019.

Attorney for licensee: George L. Edgar, Esq., Newman and Holtzinger, 1615 L Street, NW., Suite 1000, Washington, DC 20036.

NRC Project Director: Suzanne C. Black

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: October 26, 1992

Description of amendment request: The proposed amendments to the Technical Specifications (TS) would increase the limit for the intermediate range high flux reactor trip setpoint, eliminate a redundant stipulation that predicted critical rod position be above the zero power insertion limit, and establish an allowed outage time for the source range nuclear instruments when reactor power is below a specified 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:

1. The proposed changes will not increase either the probability of occurrence of any of the UFSAR [Updated Final Safety Analysis Report] accidents or their potential consequences. The Intermediate Range High Flux trip provides backup trip protection for the Power Range High Flux trip (low setpoint) during reactivity accidents (power excursions) from low power initial conditions. The proposed revision to the Intermediate Range High Flux trip setpoint will not increase the probability of any UFSAR accident because the actuation of a reactor trip is not considered an accident initiator. Further, the proposed revisions should decrease the probability of unnecessary Intermediate Range trips. The proposed revision does not alter the consequences of any UFSAR accident because the Intermediate Range trip functions as a backup trip and is not credited for mitigation within the UFSAR analysis for any accident. Hence, the revision of a backup trip setpoint does not impact the sequence of events considered for an accident, and will not alter the consequences of the accident as analyzed.

The establishment of an allowed outage time for the Source Range channel at power levels below P-6 also does not increase the probability of any UFSAR accident or its consequences, because the required action of this new requirement (i.e., open the reactor trip breakers at a power level below P-6) has been previously evaluated in the safety analysis.

The deletion of TS 3.12.A.4, which governs the predicated critical rod position at subcritical conditions, does not increase either the probability of occurrence or the potential consequences of any of the UFSAR accidents. TS 3.12.A.2 and startup procedures ensure equivalent conditions to TS 3.12.A.4 above permissive P-6 (i.e., ensure that the control rods are above the zero power insertion limit at criticality). Below permissive P-6, reactor protection against reactivity insertion transients is provided by the Source Range channel, which is automatically activated below permissive P-6.

2. The proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated. The Intermediate Range trip setpoint revision simply alters the time during an accident at which reactor trip actuation would occur, if assumed to be actuated by the Intermediate Range protective action. Such a change in reactor trip actuation time has previously been evaluated and found not to create new or different kinds of accidents.

The establishment of an allowed outage time for the Source Range channel at power levels below P-6 also does not create the possibility of new or different kinds of accidents, because the required action of this new requirement (i.e., open the reactor trip breakers at a power level below P-6) has been previously evaluated.

The deletion of TS 3.12.A.4, which governs the predicted critical rod position at subcritical conditions, does not create the possibility of a new or different kind of accident from any accident previously evaluated. TS 3.12.A.2 and startup procedures ensure equivalent conditions to TS 3.12.A.4 above permissive P-6. Below permissive P-6, allowable normal operation operating conditions are effectively restricted by other governing Technical Specifications, and accident operating conditions are restricted by the protective action of the Source Range channel. The deletion of TS 3.12.A.4 does not create an allowable operating mode or core operating condition which could create a new or different kind of accident from those previously evaluated.

3. The proposed changes will not involve a significant reduction in a margin of safety. As stated above, the Intermediate Range High Flux trip provides backup protection for the Power Range High Flux trip (low setpoint). Because a backup trip function is not assumed within the UFSAR accident analysis, no explicit margin of safety is dependent upon the actuation of the backup trip protective action. Accordingly, a revision in a backup trip setpoint will not alter any explicit margin of safety. The proposed changes do alter the Technical Specification basis to explicitly state that the functional capability of the Intermediate Range High Flux trip at the specified trip setting is required to enhance the overall reliability of the Reactor Protection System. The proposed Intermediate Range High Flux trip setpoint revision has been evaluated and determined to maintain the functional capability of the trip at the proposed revised setpoint. Thus, any margins inferred by this proposed basis change are maintained by the proposed Intermediate Range trip setpoint revision.

The establishment of an allowed outage time for the Source Range channel at power levels below P-6 also does not involve a

significant reduction in a margin of safety, because the required action of this new requirement (i.e., open the reactor trip breakers at a power level below P-6) has been previously evaluated.

The deletion of TS 3.12.A.4, which governs the predicted critical rod position at subcritical conditions, does not involve a significant reduction in margin of safety. TS 3.12.A.2 and startup procedures ensure equivalent conditions to TS 3.12.A.4 above permissive P-6 (i.e., ensure that the control rods are above the zero power insertion limit at criticality). Below permissive P-6, reactor protection against reactivity insertion transients is provided by the Source Range channel. The deletion of TS 3.12.A.4 does not cause the results of any existing accident analyses to become more limiting. The margin of safety as defined in the bases of applicable Technical Specifications is not reduced.

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: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Project Director: Herbert N. Berkow

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: July 8, 1992, as superseded August 20, 1992

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.4, "Steam and Power Conversion System," TS 4.8, "Auxiliary Feedwater System," and the respective bases. The changes incorporate a NRC staff recommendation regarding the required minimum condensate storage tank inventory, additional restrictions on the operation of the auxiliary feedwater system, and revisions to the surveillance requirements for the turbine driven auxiliary feedwater pump. In addition, administrative changes have been proposed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

The proposed changes would not involve a significant increase in the probability or consequences of an accident previously evaluated. The accidents of interest include loss of main feedwater, flooding, loss of offsite power, and a small break loss of coolant accident. The probabilities of occurrence of these accidents are independent of the proposed changes. In addition, the consequences of these accidents are not significantly increased by any of these changes. The condensate storage tank minimum level is being increased and the auxiliary feedwater pump allowed outage time is being decreased, both conservative changes. In addition, the potential for unnecessary plant transients is being reduced. Finally, auxiliary feedwater system redundancy and separation are maintained while operability of the turbine driven auxiliary feedwater pump is demonstrated, consistent with staff guidance.

The proposed changes would not create the possibility of a new or different kind of accident from any accident previously evaluated, because the changes would not alter the plant configuration, the operational parameters, or plant performance.

The proposed changes would not involve a significant reduction in a margin of safety. The proposed changes in minimum condensate storage tank level and auxiliary feedwater pump allowed outage time are both conservative, enhancing the margin of safety. The potential for unnecessary plant transients is also reduced. In addition, limiting conditions for operation consistent with staff guidance are maintained to ensure the margin of safety is not significantly reduced.

The proposed administrative changes also would not involve a significant increase in the probability or consequences of an accident previously evaluated, would not create the possibility of a new or different kind of accident from any accident previously evaluated, and would not involve a significant reduction in a margin of safety. These changes do not alter the intent or the interpretation of the Technical Specifications.

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: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: David Baker, Esq., Foley and Lardner, P. O. Box 2193 Orlando, Florida 31082.

NRC Project Director: John N. Hannon.

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: November 5, 1992

Description of amendment request: The proposed amendment modifies Technical Specification 4.2.1.1 associated with monitoring and logging of axial flux difference (AFD). The proposed change eliminates the increased surveillance frequencies following the restoration of the AFD monitor alarm and periods of inoperability greater than 24 hours.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed removal of the requirement for monitoring the AFD once per hour for the first 24 hours after restoring the AFD Monitor Alarm to operable status is essentially administrative in nature. The requirement is a vestige of a method of power distribution control, the CAOC method, that is no longer used at WCGS [Wolf Creek Generating Station].

Because this requirement is not part of the current power distribution control methodology, its deletion will have no impact on the consequences of any accidents previously evaluated. Also, the power distribution Technical Specifications are intended to assure that the assumptions used in transient and accident analyses are satisfied should an accident or transient occur; and the proposed changes do not involve plant modifications or the imposition of new performance requirements on plant systems or components. Therefore, changes to these Technical Specifications would have no impact on the probability of occurrence of a previously evaluated accident.

The proposed removal of the 30-minute monitoring and logging requirement after the first 24 hours of operation with an inoperable AFD Monitor Alarm would not involve an increase in the consequences of an accident previously evaluated because the monitoring and logging activity would still be required to be performed once per hour. Continuing the monitoring and logging functions on an hourly schedule after the first 24 hours would continue to provide the same assurance that power distribution limits were maintained in accordance with the accident analyses. Therefore, the consequences of previously evaluated accidents would not be

increased. Also, as noted in the previous paragraph, changes to the AFD Technical Specifications would have no effect on the probability of occurrence of a previously evaluated accident.

2. Do the proposed changes create the possibility of a new or different kind of accident from any previously evaluated.

The Technical Specification requirements for power distribution limits are intended to assure that the assumptions used in the accident and transient analyses are satisfied should an accident or transient occur. These requirements are of a monitoring nature, and corrective actions are specified if the monitored conditions exceed established limits. The proposed amendment does not involve design changes, hardware modifications nor changes to the method by which any safety-related plant system performs its safety function. Therefore, changes to these Technical Specifications would not create the possibility of a new or different accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in the margin of safety.

The proposed removal of the requirement to monitor the indicated AFD once per hour for the first 24 hours after restoring the AFD Monitor Alarm to operable status would not reduce a margin of safety because the analyses that were performed in support of the implementation of RAOC at WCGS showed that the AFD limits under RAOC provide an acceptable margin of safety and, once the AFD

Monitor Alarm is operable, the plant operators will be warned if that margin is degraded. The RAOC method of power distribution control does not require 24 hours of monitoring of indicated AFD in order to provide this warning. An AFD Monitor Alarm that is "operable" in accordance with the Technical Specification definition is capable of performing its specified function and has all of its necessary support systems capable of providing their necessary functions.

The proposed removal of the 30-minute frequency for monitoring and logging indicated AFD after the first 24 hours of operation with an inoperable AFD Monitor Alarm would not result in a significant reduction of a margin of safety because the requirement to monitor and log on an hourly frequency would provide the same margin to safety as available during the first 24 hours. A reduction in the frequency of monitoring indicated AFD would represent a decrease in the time margin available to the operator to prevent AFD from approaching the RAOC limits; however, the decrease is not significant because the margin available during the first 24 hours, using the hourly frequency, would not be 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 Locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Suzanne C. BlackPreviously Published Notices of Consideration of Issuance Of Amendments ToOperating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity of a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: November 12, 1992, supplemented November 12, and 18, 1992.

Description of amendment request: The proposed amendment would temporarily modify the definition of operability of the charging pump for cycle 4 operation only, to recognize that with outside temperature below 17°F, the operability of the charging pump will rely upon a temporary heat source. The licensee has requested this temporary definition because equipment changes made to correct recently-identified design deficienicies also resulted in removing the plant's ability to automatically regulate ambient temperature around the charging pump. Use of a temporary heat source became necessary to assure charging pump operability at outside temperatures below 17°F.

Date of publication of individual notice in **Federal Register:** November 24, 1992 (57 FR 55288) corrected December 2, 1992 (57 FR 57081).

Expiration date of individual notice: December 24, 1992

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

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: November 20, 1992

Description of amendment request: The proposed amendment to Technical Specification (TS) requested changes to Technical Specification 3.0.D and the associated Bases which incorporate recommendations provided in NRC Generic Letter 87-09 regarding mode changes.

Date of publication of individual notice in **Federal Register:** November 27, 1992 (57 FR 56430)

Expiration date of individual notice: December 28, 1992

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.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, 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 Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: February 21, 1992, as supplemented August 24, 1992, September 4, 1992, and October 28, 1992.

Brief description of amendments: The amendments revise the refueling platform overload cutoff setpoint and the refueling platform loaded interlock setpoint for the fuel grapple hoist to accomodate the use of a new General Electric Model NF500 main hoist grapple mast to replace the existing NF400 mast.

Date of issuance: November 27, 1992

Effective date: November 27, 1992

Amendment Nos.: 158, 189

Facility Operating License Nos. DPR-71 and DPR-62. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** April 1, 1992 (57 FR 11102)The August 24, 1992, September 4, 1992, and October 28, 1992, submittals provided clarifying information and corrected Technical Specification pages respectively, and did not change the initial proposed no significant hazards consideration. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 21, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: August 25, 1992.

Brief description of amendments: The amendments change the Technical Specifications (TS) to increase the acceptable limits for control rod average scram insertion times from 0.040 to 0.049 seconds for each of the rod positions listed in TS 3.1.3.3. and 3.1.3.4. In addition, the values of mu, sigma and tau $_A$ specified in TS 3.2.2.2 would be revised.

Date of issuance: December 4, 1992

Effective date: December 4, 1992

Amendment Nos.: 159, 190

Facility Operating License Nos. DPR-71 and DPR-62. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** September 30, 1992 (57 FR 45077)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 4, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: February 21, 1992, as supplemented August 7, 1992.

Brief description of amendment: The amendment revises the fire protection license condition and deletes fire protection Technical Specifications consistent with the guidance of Generic Letters 86-10 and 88-12.

Date of issuance: December 7, 1992

Effective date: December 7, 1992

Amendment No.: 142

Facility Operating License No. DPR-23. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** April 1, 1992 (57 FR 11103)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 7, 1992.No significant hazards consideration comments received: No The August 7, 1992, letter provided an updated TS page that did not change the initial proposed no significant hazards consideration determination.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535

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: April 2, 1991, as supplemented June 2, 1992

Brief description of amendments: The approved Technical Specification amendments would eliminate the required use of the Rod Sequence Control System (RSCS), and reduce the Low Power Setpoint (LPSP) initiation for the turnoff of the Rod Worth Minimizer (RWM) from twenty (20) percent of rated power to ten (10) percent of rated power.

Date of issuance: December 4, 1992

Effective date: December 4, 1992

Amendment Nos.: 88 and 73

Facility Operating License Nos. NPF-11 and NPF-18: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 12, 1991 (56 FR 27038) The June 2, 1992, submittal provided additional clarifying information that did not change the initial proposed no significant hazards consideration determination.The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 4, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: May 29, 1992, and July 29, 1992, as supplemented by letters dated October 23, 1992, November 3, 1992, November 5, 1992, November 25, 1992, and December 9, 1992.

Brief description of amendment: The amendment revises the definition of a "Refueling Interval," "R," to 24 months consistent with a 24-month fuel cycle and revises all existing references in Section 4.0, "Surveillance Requirements" to "R" or "at least once every Refueling Interval." It also revises specific surveillance intervals. The remainder will be changed based on future amendment requests by the license. The amendment deletes the required NRC approval for steam generator operation beyond 8 equivalent

months of operation or 1 calendar year. Several administrative errors are also corrected.

Date of issuance: December 10, 1992
Effective date: December 10, 1992
Amendment No.: 159
Facility Operating License No. DPR-26: Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** July 8, 1992 (57 FR 30242) and September 30, 1992 (57 FR 45080), respectively. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 10, 1992. No significant hazards consideration comments received: No
Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: February 7, 1990, as supplementedMay 7, 1990, June 8 and October 8, 1992
Brief description of amendments: The amendments revise the Technical Specifications (TSs) to incorporate programmatic controls for radiological effluents and radiological monitoring in the Administrative Controls section of the TSs consistent with the requirements of 10 CFR 20.106, 40 CFR Part 190, 10 CFR 50.36a and Appendix I to 10 CFR Part 50. In addition, procedural details of the Radiological Effluent Technical Specifications (RETS) are transferred from the TSs to Chapter 16 of the Final Safety Analysis Report (FSAR).
Date of issuance: December 9, 1992
Effective date: To be implemented 30 days from the date of issuance.
Amendment Nos.: 103 and 97
Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** August 8, 1990 (55 FR 32325)The June 8 and October 8, 1992, letters provided clarifying information and corrections which were not outside the scope of the original Federal Register notice and did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 9, 1992. No significant hazards consideration comments received: No.
Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Mississippi Power & Light Company, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: September 14, 1992
Brief description of amendment: The amendment deleted various lists of components from the Technical Specifications (TS) in accordance with the requirements of Generic Letter 91-08. The lists removed from the TS are incorporated into plant procedures subject to the administrative controls of TS 6.8 and 6.5.3.
Date of issuance: December 3, 1992
Effective date: December 3, 1992
Amendment No: 102
Facility Operating License No. NPF-29. Amendment revises the Technical Specifications.
Date of initial notice in **Federal Register:** October 14, 1992 (57 FR 47130)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 3, 1992. No significant hazards consideration comments received: No
Local Public Document Room location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Mississippi Power & Light Company, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County,Mississippi

Date of application for amendment: May 30, 1991

Brief description of amendment: The amendment requested 1) an increase in the allowed outage time for the drywell and containment hydrogen concentration analyzers and monitors, 2) increasing the time limit for reporting certain inoperable accident radiation monitors, and 3) revising the technical specification ACTIONS for accident monitoring instrumentation in Table 3.3.7.5-1 to be consistent with the guidance provided in Generic Letter 83-36.
Date of issuance: December 9, 1992
Effective date: December 9, 1992
Amendment No: 103
Facility Operating License No. NPF-29. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** September 4, 1991 (56 FR 43808)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 9, 1992. No significant hazards consideration comments received: No
Local Public Document Room location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120.

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendments: February 12, 1990
Brief description of amendments: These amendments to the St. Lucie Units 1 and 2 Technical Specifications revise the requirement to determine control element assembly (CEA) operability at least once per 31 days to once per 92 days. Additionally, the surveillance interval for the performance of the functional test of the CEA block circuit, which is performed as part of the CEA operability test, is revised to be performed on a quarterly basis, rather than the existing monthly basis.
Date of issuance: December 2, 1992
Date of issuance: December 2, 1992
Effective date: December 2, 1992
Amendment Nos.: 117, 59
Facility Operating License Nos. DPR-67 and NPF-16: Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** January 8, 1992 (57 FR 710) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 2, 1992.No significant hazards consideration comments received: No.
Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

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: October 12, 1990, as supplemented by letter dated January 24, 1991; and superseded by letters dated October 25, 1991 and June 16, 1992.
Brief description of amendments: The amendments change the Technical Specifications by deleting Table 5.7-1 (Component Cycle or Transient Limits).

Cyclic/transient occurrences identified in the Updated Final Safety Analysis Report, Table 3.9-8, which include those components listed in TS Table 5.7-1, would be tracked through administrative procedures. The change is intended to resolve discrepancies between Table 5.7-1 and the Updated Final Safety Analysis Report.

Date of issuance: November 24, 1992

Effective date: November 24, 1992, to be implemented within 7 days of issuance.

Amendment Nos.: Amendment Nos. 46 and 35

Facility Operating License Nos. NPF-76 and NPF-80: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: December 26, 1990, December 26, 1991, and October 14, 1992 (55 FR 53072, 56 FR 66920, 57 FR 47140). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 24, 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.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of application for amendment: November 20, 1990, as superseded February 7, 1992

Brief description of amendment: This amendment is in partial response to the licensee's application submitted February 7, 1992. The amendment revises Table 3.3.4 of Technical Specification 3.3.4 to require closure of the drywell and suppression chamber vent and purge isolation valves on a high radiation signal from the stack radiation monitor. This change is consistent with the requirements of Item II.E.4.2 of NUREG-0737.

Date of issuance: December 3, 1992

Effective date: December 3, 1992

Amendment No.: 134

Facility Operating License No. DPR-63: Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: February 6, 1991 (56 FR 4868) and renoticed April 1, 1992 (57 FR 11111).The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 3, 1992.No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

North Atlantic Energy Service Corporation, Docket No. 50-443, SeabrookStation, Rockingham County, New Hampshire

Date of application for amendment: September 30, 1992 as supplemented October 14, 1992

Brief description of amendment: This amendment changes the Seabrook Station Technical Specifications to increase the temperature limit for the cooling tower basin water from the current 67.3*F to 70.0*F and permit the cooling tower fans and sprays to be manually operated following a cooling tower actuation.

Date of issuance: November 27, 1992

Effective date: November 27, 1992

Amendment No.: 18

Facility Operating License No. NPF-86: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: October 28, 1992 (57 FR 48822) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 27, 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. 50-423, MillstoneNuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: May 1, 1992, as supplemented June 23, 1992

Brief description of amendment: The amendment revises the visual inspection surveillance requirements associated with the snubbers so that the first interval determined using the surveillance criterion approved in License Amendment No. 62 is based on the results of inspections performed during Millstone Unit No. 3's third refueling outage.

Date of issuance: December 2, 1992

Effective date: December 2, 1992

Amendment No.: 71

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: June 24, 1992 (57 FR 28203) The June 23, 1992, 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 December 2, 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.

Portland General Electric Company, et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: September 25, 1992, and supplemented October 14, 1992

Brief description of amendment: This amendment deletes License Condition 2.C.(11), "Fuel Assemblies," from Facility Operating License NPF-1. This is an administrative change since the license condition is no longer necessary at Trojan Nuclear Plant. This submittal was designated by the licensee as LCA-216.

Date of issuance: December 4, 1992

Effective date: December 4, 1992

Amendment No.: 188

Facility Operating License No. NPF-1: The amendment revised the Facility Operating License.

Date of initial notice in Federal Register: October 28, 1992 (57 FR 48824)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 4, 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

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: November 9, 1992 (TS 92-15)

Brief description of amendments: The amendments provide an alternate method for satisfying the response time requirements of the engineered safety features actuation system (ESFAS) for the feedwater instrumentation channels when the feedwater line is isolated.

Date of issuance: December 8, 1992

Effective date: December 8, 1992

Amendment Nos.: 165 - Unit 1; 155 - Unit 2

Facility Operating License Nos. DPR-77 and DPR-79: Amendments revised the technical specifications.

Public comments requested as to proposed no significant hazards consideration: Yes (57 FR 54865 dated November 20, 1992). That notice

provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by December 21, 1992, but indicated that if the Commission makes a final no significant hazards consideration determination, any such hearing would take place after issuance of the amendment. The Commission's related evaluation of the amendments, finding of exigent circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated December 8, 1992.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Toledo Edison Company, Centerior Service Company, and The ClevelandElectric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear PowerStation, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: May 1, 1992

Brief description of amendment: The amendment revised Technical Specification 3/4.1.1.2 "Reactivity Control Systems-Boron Dilution," and its Bases. The revision allows the addition of water of lower boron concentration that the reactor coolant system (RCS) during refueling with the RCS flow rate less than 2800 gpm, provided that the boron concentration of the water to be added is greater that the boron concentration corresponding to the more restrictive condition specified in TS 3.9.1, "Refueling Operations - Boron Concentration."

Date of issuance: December 8, 1992

Effective date: December 8, 1992

Amendment No. 176

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 2, 1992 (57 FR 40222). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 8, 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

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: April 10, 1992, as supplemented May 20, 1992

Brief description of amendment: The amendment modifies the bases and ACTION statement for TS 3.4.3.1, "Leakage Detection Systems" and the limiting condition for operation (LCO), bases, ACTION statement and surveillance requirements for TS 3.4.3.2, "Operational Leakage." These changes assure that the sections of the TS related to leak detection are in conformance with the NRC staff positions stated in Generic Letter 88-01, "NRC Position on IGSCC in BWR Austenitic Stainless Steel Piping" and Supplement 1 to this Generic Letter.

Date of issuance: December 9, 1992

Effective date: December 9, 1992

Amendment No.: 111

Facility Operating License No. NPF-21: The 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 December 9, 1992.No significant hazards consideration comments received: No.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352Notice 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, 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 January 22, 1993, 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).

Northeast Nuclear Energy Company, et al., Docket No. 50-423, MillstoneNuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: November 12, 1992, with supporting information provided by letters dated November 12, 1992 and November 18, 1992.

Brief description of amendment: The amendment temporarily modifies the definition of operation of the charging pump for cycle 4 operation only, to recognize that with outside temperatures below 17oF, the operability of the charging pump will rely upon a temporary heat source.

Date of issuance: December 9, 1992

Effective date: December 9, 1992

Amendment No.: 72

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration:Yes. (57 FR 55288 dated November 24, 1992). That notice

provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by December 24, 1992 (correction dated December 2, 1992, 57 FR 57081), but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment.The Commission's related evaluation of the amendment, finding of exigent circumstances, and the final no significant hazards consideration determination are contained in a Safety Evaluation dated December 9, 1992.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Dated at Rockville, Maryland, this 15th Day of December

For the Nuclear Regulatory Commission

Steven A. Varga, Director,

Division of Reactor Projects - I/IIOffice of Nuclear Reactor Regulation

[Doc. 92–31029 Filed 12–22–92; 8:45 am]

BILLING CODE 7590–01–F

NUREG: Issuance, Availability

The Nuclear Regulatory Commission has issued NUREG–1435, Supplement 2, Status of Safety Issues at Licensed Power Plants, TMI Action Plan (TMI) Requirements, Unresolved Safety Issues (USIs), Generic Safety Issues (GSIs) and Other Multiplant Actions (MPAs). The document covers the status of implementation and verification of these issues at licensed operating plants.

This NUREG has been prepared to provide a comprehensive description of the implementation and verification status of TMI, USI, GSI and other MPAs at licensed operating plants and to make this information available to other interested parties, including the public.

Copies of the Report have been placed in the NRC's Public Document Room, 2120 L Street, NW., Lower Level, Washington, DC 20555. Copies of the Report may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082. GPO deposit account holders may charge their order by calling 202/275–2060. Copies are also available from the National Technical Information Service, Springfield, Virginia 22161.

Dated at Rockville, Maryland, this 3rd day of December, 1992.

For the Nuclear Regulatory Commission.

Frank P. Gillespie,

Director, Program Management, Policy Development and Analysis Staff, Office of Nuclear Reactor Regulation.

[FR Doc. 92–31100 Filed 12–22–92; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Salary Council; Meetings

AGENCY: Office of Personnel Management.

ACTION: Notice of meetings.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the President's Pay Agent will meet with the Federal Salary Council at the time and place shown below. The purpose of this meeting will be the discussion of salary surveys to be conducted from June 1993 through May 1994. The meeting will be open.

DATES: January 6, 1993, beginning at 2 p.m.

ADDRESSES: Office of Personnel Management, 1900 E Street, NW., room 5A06A, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth O'Donnell, Chief, Salary Systems Division, Office of Personnel Management, 1900 E Street, NW., room 6H31, Washington, DC 20415–0001. Telephone number: (202) 606–2838.

For The President's Pay Agent.

Douglas A. Brook,

Acting Director.

[FR Doc. 92–31143 Filed 12–22–92; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–31616; File No. SR–AMEX–92–27]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange, Inc. Relating to the Number of Consecutive Terms Which an Exchange Governor May Serve

December 17, 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 November 25, 1992, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization.[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 Exchange is proposing to amend Article II, Section 1(e) of its Constitution to increase, from two to three, the number of consecutive elected terms which a governor may serve under certain circumstances.

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Article II, Section 1(e) of the Exchange Constitution currently provides that a governor who has served all or part of two consecutive terms shall not be eligible for election again except after an interval of two years for a governor who is a member, or one year for a public governor. Many, but not all, of the other securities self-regulatory organizations

[1] On November 25, 1992, the Amex submitted this proposed rule change, File No., Amex–92–27, as a substitute to a proposed rule change the Amex had submitted to the Commission on August 13, 1992, also File No. SR–Amex–92–27. Accordingly, the Commission withdrew the proposed rule change submitted on August 13, 1992, and replaced it with the proposal filed on November 25, 1992. The August 13, 1992, submission is substantially similar to the November 25, 1992, proposal, except the latter limits the number and type of governors who may simultaneously serve a third consecutive term, and makes members' independent nominations subject to the same requirements placed on the Nominating Committee with regard to nominating a governor for a third consecutive term in office. *See* letter from Linda Tarr, American Stock Exchange, Inc. to Diana Luka-Hopson, Esq., Securities and Exchange Commission, dated November 24, 1992.

have some restriction as to the number of consecutive terms of office a governor (or the equivalent position) may serve. For example, while the New York Stock Exchange limits members of its Board to three two-year terms, the Chicago Board Options Exchange and the Philadelphia Stock Exchange have no term limitation on their Board members. The Boston Stock Exchange permits four two-year terms, the Pacific and Midwest Stock Exchanges limit member governors to two three-year terms, but do not limit public governor terms.

While the current Amex term limitation probably does force a greater number of members to become involved in the governance of the Exchange, thereby attracting new talent and ideas, it also has several disadvantages. It can deprive the Exchange of the services of an effective governor who is making a significant contribution to the Board. Further, as the Exchange's affairs become increasingly complex, it is important to maintain a sense of continuity on the Board. Regulatory and competitive concerns which the Board must address often require years to resolve, and similar issues tend to recur. Governors who have extensive involvement in important matters may be forced by the six-year limitation to leave the Board while these matters are still pending, and while their expertise is still needed.

Therefore, the Exchange has determined to amend Article II, Section 1(e) of its Constitution to provide the Exchange's Nominating Committee with discretion to nominate an incumbent governor for a third term in situations where there is a consensus among Committee members that the individual has made an extraordinary contribution during his terms on the Board and the Committee determines that the interest of the Exchange will best be served by permitting such person to stand for reelection. Similarly, a group of members making the same finding would be able to nominate an incumbent governor to a third term by independent nomination (requiring the endorsement of at least twenty-five regular members).

However, at any one time, no more than four members of the Board can be serving a third term, and of the four, no more than two can be public governors and no more than two can be members, only one of which can be a member who spends a substantial part of his time on the Floor of the Exchange and one of which can be an upstairs member.

This modest change to the existing two-term limitation should provide the Nominating Committee and the membership with added flexibility to assure that the Exchange is served by the best people available.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(3) in particular in that it assures a fair representation of its members in the selection of its directors and administration of its affairs.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.[2]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–92–27 and should be submitted by January 13, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–31162 Filed 12–22–92; 8:45 am]

BILLING CODE 8010–01–M

[2] The proposed rule change was approved by the Exchange's Board on June 11, 1992 and the Exchange's regular members on July 24, 1992.

[Release No. 34–31610; File No. SR–Amex–92–34]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Procedures for Handling and Executing Market-on-Close Orders

December 16, 1992.

I. Introduction

On September 11, 1992, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19B–4 thereunder,[2] a proposed rule change to: (1) extend, until December 15, 1992, the pilot program amending Rule 109[3] to provide that the procedures currently used to execute market-on-close ("MOC") orders[4] in certain stocks on expiration Fridays[5] be made applicable to all MOC orders in all Amex-listed stocks on every trading day; and (2) obtain permanent approval for the pilot program prior to its expiration on December 15, 1992. The Exchange also has submitted a report to the Commission evaluating the effects of the MOC procedures during the pilot program.

[1] 25 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] This pilot program was approved by the Commission for a one-year period beginning on June 14, 1991 and expiring on June 14, 1992. See Securities Exchange Act Release No. 29312 (June 14, 1991), 56 FR 28583 (June 21, 1991) (File No. SR-Amex-90-32) ("1991 Approval Order"). The Commission approved a three-month extension to the pilot program, expiring September 15, 1992, on June 15, 1992. See Securities Exchange Act Release No. 30812 (June 15, 1992), 57 FR 27991 (June 23, 1992) (File No. SR-Amex-92-19) ("June 1992 Approval Order").

[4] A MOC order is a market order that is to be executed on the stock's closing transaction.

[5] Expiration Friday is the one trading day each month when stock index futures, stock index options and options on stock index futures expire or settle concurrently.

The proposed rule change was noticed in Securities Exchange Act Release No. 31182 (September 15, 1992), 57 FR 43990 (September 23, 1992). At the same time, the Commission granted accelerated partial approval to that part of the proposal which requested an extension of the pilot program until December 15, 1992.[6] No comments were received on the proposal.

II. Description of the Proposal

In June, 1991, the Commission approved, on a one-year pilot basis, an Exchange proposal to amend Amex Rule 109 to provide that the procedures used to execute MOC orders on every trading day be the same as those procedures currently used to execute MOC orders on expiration Fridays in stocks that are components of a stock index on which an option and/or stock contract is traded (*e.g.*, the Standard and Poor's 500 Composite Stock Price Index).[7]

The procedures, in place since June 1991, require that all buy and sell MOC orders be paired-off against each other, and if there is an imbalance, that the imbalance would be executed against the closing bid if it is on the sell side and against the closing offer if it is on the buy side. The paired-off orders are executed at the same price as the imbalance. If there is no imbalance, the paired-off orders are executed at the price of the last sale on the Exchange prior to the close of trading in that stock. Thus, this procedure assures that all MOC orders in a particular stock will be executed at the same price. In addition, those orders that are paired-off in implementing the procedure are reported as "stopped stock." so that customers with unexecuted limit orders on the specialist's book will know that the MOC transaction was executed outside the regular auction market, and that for this reason their orders may have not participated.[8]

In its original proposal, the Exchange noted that the procedures developed for use on expiration Fridays were implemented because many trading strategies involving stock indices require the unwinding of positions in the component stocks at the closing price on expiration Friday, since this is the price upon which index options and some future contracts base their settlement.[9] The Exchange, however, became aware that a number of trading techniques and strategies used by institutional investors have been developed which call for a single closing price on a daily basis, not just expiration Fridays. The Exchange, therefore, proposed to implement a one year pilot program to amend Amex Rule 109 to extend the expiration Friday procedures for MOC orders to all Amex listed stocks on every trading day.

In its 1991 Approval Order, the Commission asked the Exchange to develop criteria to evaluate the effects of the MOC procedures. In particular, the Commission requested that the Amex focus on any changes in stock market volatility or order flow during the last hour of trading (*i.e*, between 3:00 and 4:00 p.m.). The Commission also requested that the Amex examine the use of MOC procedures for Amex stocks that are not included in indexes underlying standardized options and determine how MOC orders are being used for these stocks. The Commission believed that the report would help it determine whether the MOC pilot program should be extended beyond its expiration or, in the alternative, granted permanent approval.

The pilot program was temporarily extended from June 15, 1992 until September 15, 1992,[10] and again from September 15, 1992 to December 15 1992,[11] so that the Commission could receive and review reports from the Amex indicating the effects of the pilot on market volatility and order flow.

III. Discussion

After careful consideration, the Commission has concluded, for the reasons set forth below, that the proposed rule change to approve permanently the pilot program procedures is consistent with Section 6 of the Act[12] and the rules and regulations applicable to a national securities exchange. In particular, the Commission believes that the proposal is consistent with the Section 6(b)(5) requirement that the rules of an exchange be designed to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

As noted above, the Commission first approved the use of the pilot program in June, 1991. During the course of the pilot, the Commission requested that the Amex report to the Commission the effects of the pilot program. As noted above, in its 1991 Approval Order, the Commission requested that the Amex review changes in stock volatility or order flow during the last hour of trading, examine the use of MOC procedures for Amex stocks not included in indices underlying standardized options and determine how MOC orders are being used for these stocks. Most recently, in the September 1992 Approval order, the Commission requested that the Amex continue to monitor the closing MOC procedures and report to the Commission any increased volatility or order flow during the last hour of trading. The Commission also requested that the Amex supply the following information concerning the operation of the pilot program: 1) whether there have been any complaints regarding the operation of the pilot; 2) whether the Amex has taken any disciplinary or performance action against any member due to the operation of the pilot; 3) the extent to which the pilot has been used on the Amex; and 4) the impact of the pilot on volatility and order flow. The Commission also requested that the report examine the use of MOC procedures in Amex stocks other than on expiration Fridays, in addition to analyzing the use of MOC procedures on expiration Fridays in stocks that are not components of an index.

In response, the Amex submitted three reports to the Commission on June 10, 1992, September 11, 1992, and November 10, 1992, which detail the Amex's experience with the pilot procedures for the execution of MOC orders.[13] The June and September reports provided analyses of MOC transactions on expiration Fridays. The June and September reports indicate that, during the periods studied (June 1991 through March 1992, and July through August, 1992, respectively), the MOC procedures for expiration Fridays did not, in the Amex's view, result in an

[6] See Securities Exchange Act Release No. 31182 (September 15, 1992), 57 FR 43990 (File No. SR-Amex-92-34) ("September 1992 Approval Order").

[7] See *supra* note 3.

[8] Prior to the implementation of the pilot program, the procedures for handling MOC orders on a daily basis (other than on expiration Fridays) required that, when the closing spread is no wider than the minimum fractional change in which the stock grades, MOC orders to buy be executed against the offer, and MOC orders to sell be executed against the bid. The former procedures, therefore, assured that one type of order would not receive the final closing price. See 1991 Approval Order, *supra* note 3.

[9] See 1991 Approval Order, *supra* note 3.

[10] See *supra* note 3.

[11] See *supra* note 6.

[12] 15 U.S.C. 78f (1988).

[13] See letter from Claire P. McGrath, American Stock Exchange, to Mary Revell, Esq., Branch Chief, Exchange Regulation, Securities and Exchange Commission, dated June 10, 1992 ("June report"). See also letter from Claire P. McGrath, American Stock Exchange, to Diana Luka-Hopson, Esq., Branch Chief, Exchange Regulation, Securities and Exchange Commission, dated September 11, 1992 ("September report"). See also letter from Claudia Crowley, American Stock Exchange, to Diana Luka-Hopson, Esq., Branch Chief, Exchange Regulation, dated November 6, 1992 ("November report").

increase in volatility and only on three occasions was there an increase in order flow during the final hour of trading on the Exchange. An analysis of the trading in those stocks which experienced an increase in order flow did not, Amex believes, reveal an effort to manipulate the closing price.

The Amex's November 1992 report discusses MOC orders entered on non-expiration Fridays from July 1992 through October 1992. According to the Exchange, 3,975 MOC orders were entered on the Amex during that period.[14] The report concentrates on those instances which involved seven MOC orders or more per stock.

The Amex report states that, during the four months studied, there were 28 instances of seven MOC orders or more per stock on non-expiration Fridays, of which three involved stocks that were not components of a stock index in which an option or a future is traded. These instances occurred on nine days during the study period. The report details the last hour of trading in each of these 28 instances in terms of price range, whether there was any increase in volatility or order flow in the security during that hour, and whether there was satisfactory continuity and depth in the subject security during that period. Of the 28 instances where there were 7 or more MOC orders in the security, the Exchange reported 21 instances where securities showed no increase in volatility or order flow during the last hour of trading, 11 of which traded within ⅛ point or less, 5 traded within ¼ point, 4 traded within ⅜ point, and one traded with no variation in price. The Amex reported that the remaining 7 instances involved large buyers or sellers or sell programs entering the market during the last hour of trading. In the 7 instances of large buyers or sellers or sell programs, the Amex reported that the market in each subject security exhibited satisfactory continuity and depth, and the widest trading range during the last hour of trading was ⅝ point. The Amex report contains no indication that the pilot program has had any negative effect on volatility, continuity, or liquidity in the marketplace. Finally, the report states that the Exchange did not receive any complaints about the operation of the pilot, and that the Exchange did not take or initiate any disciplinary action against any member resulting from the operation of the pilot.

[14] The Amex reports that all MOC executions (executions involving seven or more MOC orders per stock) which occurred on expirations Fridays were in component stocks of an index underlying an option or a future.

The Amex proposal is substantially similar to a New York Stock Exchange ("NYSE") proposal which was originally approved by the Commission as a pilot program [15] and subsequently approved by the Commission on a permanent basis.[16] The Commission is aware that the use of composite-asset trading techniques and strategies has increased substantially over the past several years, prompting a growing need to establish greater price certainty at the close. The Amex proposal is yet another attempt to respond to the demand of customer and member firms to engage in index-related trades.

The Commission believes that, because the Amex pilot procedures were used successfully over the past eighteen months, and because of the anticipated benefits of the procedures, it is appropriate to approve the MOC pilot program procedures on a permanent basis. In addition, the Amex has reported that it has found no instances of abuse with regard to the operation of the pilot program, and the Commission is confident that the Amex will continue to surveil the closing procedures to ensure against potential manipulations of the close through the use of MOC transactions. The surveillance procedures should also help to deter as well as detect any possible abuses.

Although the Amex reported limited participation in the pilot program, particularly in stocks that are not components of an index upon which an option and/or future contract is traded, the Commission believes that the Amex procedures may facilitate investor participation at the Amex closing price while accurately reflecting the balance of supply and demand at the close by printing one closing price in which both buy and sell MOC orders participate. As a result, the MOC procedures should provide customers with additional flexibility in order execution without posing the potential for abuse, thereby facilitating transactions in securities consistent with Section 6(b)(5) of the Act.[17] Moreover, the Commission believes that the proposal should provide some certainty to member firms without any discernible negative effect on the quality of the Exchange's market, as evidenced by the data contained in the Amex's report.

[15] *See* Securities Exchange Act Release Nos. 28167 (June 29, 1990), 55 FR 28117 (July 9, 1990) (File No. SR–NYSE–89–10); 29293 (July 1, 1991), 56 FR 30954 (July 8, 1992) (File No. SR–NYSE–91–22) and 29761 (September 30, 1991), 56 FR 50743 (October 8, 1991) (File No. SR–NYSE–91–34).

[16] *See* Securities Exchange Act Release No. 30004 (November 27, 1991), 56 FR 63533 (December 4, 1991) (File No. SR–NYSE–91–35) where the Commission approved amendments to NYSE Rules 13, 116.40 and 123A.43 on a permanent basis and extended the NYSE's pilot program permitting the entry and execution of matched MOC orders. The Amex proposal is similar to the NYSE proposal with regard to making the procedures used for the execution of MOC orders on expiration Fridays applicable to every trading day in every stock.

[17] 15 U.S.C. 78f(b)(5) (1988).

IV. Conclusion

It therefore is ordered, pursuant to section 19(b)(2) of the Act,[18] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–31052 Filed 12–22–92; 8:45 am]

BILLING CODE 8010–01–M

[18] 15 U.S.C. 78s(b)(2) (1988).

[19] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 34–31618; File No. SR–CBOE–92–29]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Listing Options on the CBOE Environmental Index

December 17, 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 the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), on September 18, 1992, filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE requests approval to list and trade index options on the CBOE Environmental Index (the "Environmental Index" or "Index"). The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included

[1] The proposal was amended on September 28, 1992, to clarify that options on the Environmental Index will be A.M. settled options subject to the provisions of Exchange Rule 24.9(e).

statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. the self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

General

Pursuant to Exchange Rule 24.2, the CBOE proposes to list and trade cash-settled, European-style stock index options on an industry index, the CBOE Environmental Index.

The Environmental Index represents a segment of the U.S. equity market that is not currently represented in the derivative markets and, as such, will offer investors a low-cost means to achieve diversification or to tilt a portfolio toward or away from the environmental industry. The Index will provide retail and institutional investors with a means to benefit from their forecasts of that industry's market performance. Options on the Index also can be utilized by portfolio managers and investors to provide a performance measure and evaluation guide for passively or actively managed environmental industry funds, as well as a means of hedging the risks of investing in the environmental industry.

Index Description

Design. The CBOE Environmental Index is based on fifteen environmental industry stocks. Eleven of those stocks currently trade on the New York Stock Exchange; one currently trades on the American Stock Exchange; and three currently trade through the facilities of the National Association of Securities Dealers Automated Quotation System. The Index is price-weighted, and will be calculated on a real-time basis using last-sale prices.

The Index is composed of stocks that ranged in capitalization from $89 million to $17.7 billion as of September 16, 1992. The median capitalization as of that date was $663 million. The largest stock accounted for 13.7% of the total weighting of the Index, while the smallest accounted for 2.1%. Fourteen of the fifteen component stocks (accounting for 96.2% of the Index) presently have options listed on them.

Calculation. The Index will be calculated continuously by the CBOE or its designee and will be disseminated every 15 seconds by the CBOE. If a component stock is not currently being traded, the most recently traded price will be used in the Index calculation.

Similar to the CBOE BioTech Index and the Dow Jones Industrial Average, the Environmental Index is price-weighted and reflects changes in the prices of the component stocks relative to the base date. The Index is calculated by adding the prices of the components stocks and then dividing the sum by a divisor that is equal to the number of stocks in the Index.

Maintenance. The Index will be maintained by the CBOE. To maintain continuity in the Index following an adjustment to a component security, the divisor will be adjusted. Changes which may result in divisor changes include, but are not limited to, spin-offs, certain rights issuances, mergers and acquisitions.

The CBOE may change the composition of the Index at any time or from time to time to reflect conditions in the environmental industry. If it becomes necessary to remove a stock from the Index (generally due to a takeover or merger), every effort will be made to add a stock that is representative of the environmental industry. In such circumstances, the CBOE will take into account the capitalization, liquidity, volatility and name recognition of the proposed replacement stock.

Index Options Trading. The Exchange proposes to base trading in options on the Environmental Index on the full value of that Index. The Exchange may list long-term index option series ("LEAPS"), as provided in proposed amendments to Rule 24.9. In such a case, the Exchange also may provide for the listing of reduced-value Index LEAPS, for which the underlying Index value will be computed at one-tenth (1/10th) of the value of the Environmental Index.

Exercise and settlement. The Exchange proposes that CBOE Environmental Index options will have a European-style exercise [2] and will be "A.M.-settled index options" within the meaning of the rules in chapter XXIV, including Rule 24.9. The proposed options will expire on the Saturday following the third Friday of the expiration month. Since A.M.-settled index options are settled based on an index value derived from opening prices of the component stocks on the last trading day before expiration (normally a Friday), the last trading day for an expiring Index option series will normally be the second to the last business day before expiration (normally a Thursday).

Exchange Rules Applicable to Industry Index Options. Except as modified by this rule filing, the rules in chapter XXIV of the CBOE rules will be applicable to Environmental Index options.

The CBOE also is proposing to amend Exchange Rule 24.1 to make clear that a "market index," a term which includes the Standard and Poor's ("S&P") 500, S&P 100, the FT-SE (U.K.) 100, and the FT-SE Eurotrack 200 indexes, also is a "broad-based index" within the meaning of the rules in chapter XXIV, including Rule 24.4 which relates to position limits for broad-based index options. The proposed amendment to Exchange Rule 24.1 further provides that the terms "narrow-based index" and the previously defined "industry index" both mean an index designed to be representative of a particular industry or group of related industries. An industry index contract such as the Environmental Index options will, therefore, be deemed to be "narrow-based" for purposes of the position limit requirements of Rule 24.4A. In addition, in the context of reduced-value Index LEAPS, ten reduced-value options will equal one full-value contract for position limit purposes.

Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and section 6(b)(5), in particular, in that it is designed to enhance the existing self-regulatory framework for the trading of options on industry indexes, thereby promoting just and equitable principles of trade and protecting investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change 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

[2] A European-style option only can be exercised during a specified period before the option expires.

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 Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 13, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[Release No. 34-31617; File No. SR-CBOE-92-30]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Listing Options on the CBOE Computer Software Index

December 17, 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 the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), on September 18, 1992, filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE requests approval to list and trade index options on the CBOE Computer Software Index (the "Computer Software Index" or "Index"). The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organizations 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

General

Pursuant to Exchange Rule 24.2, the CBOE proposes to list and trade cash-settled, European-style stock index options on an industry index, the CBOE Computer Software Index.

The Computer Software Index represents a segment of the U.S. equity market that is not currently represented in the derivative markets and, as such, will offer investors a low-cost means to achieve diversification or to tilt a portfolio toward or away from the computer software industry. The Index will provide retail and institutional investors with a means to benefit from their forecasts of that industry's market performance. Options on the Index also can be utilized by portfolio managers and investors to provide a performance measure and evaluation guide for passively or actively managed computer software industry funds, as well as means of hedging the risks of investing in the computer software industry.

Index Description

Design. The CBOE Computer Software Index is based on fifteen computer software industry stocks. One of those stocks currently trades on the New York Stock Exchange; fourteen currently trade through the facilities of the National Association of Securities Dealers Automated Quotation System. The Index is price-weighted, and will be calculated on a real-time basis using last-sale prices.

The Index is composed of stocks that ranged in capitalization from $122 million to $41 billion as of September 16, 1992. The median capitalization as of that date was $754 million. The largest stock accounted for 18% of the total weighting of the Index, while the smallest accounted for 2.2%. Fourteen of the fifteen component stocks (accounting for 93.9% of the Index) presently have options listed.

Calculation. The Index will be calculated continuously by the CBOE or its designee and will be disseminated every 15 seconds by the CBOE. If a component stock is not currently being traded, the most recently traded price will be used in the Index calculation.

Similar to the CBOE BioTech Index and the Dow Jones Industrial Average, the Computer Software Index is price-weighted and reflects changes in the prices of the component stocks relative to the base date. The Index is calculated by adding the prices of the component stocks and then dividing the sum by a divisor that is equal to the number of stocks in the Index.

Maintenance. The Index will be maintained by the CBOE. To maintain continuity in the Index following an adjustment to a component security, the divisor will be adjusted. Change which may result in the divisor changes include, but are not limited to, spin-offs, certain rights issuances, mergers and acquisitions.

The CBOE may change the composition of the Index at any time or from time to time to reflect conditions in the computer software industry. If it becomes necessary to remove a stock from the Index (generally due to a takeover or merger), every effort will be made to add a stock that is representative of the computer software industry. In such circumstances, the CBOE will take into account the capitalization, liquidity, volatility and name recognition of the proposed replacement stock.

Index Options Trading. The Exchange proposes to base trading in options on the Computer Software Index on the full

[3] 17 CFR 200.30-3(a)(12) (1992).

value of that Index. The Exchange may list long-term index option series ("LEAPS"), as provided in proposed amendments to Rule 24.9. In such a case, the Exchange also may provide for the listing of reduced-value Index LEAPS, for which the underlying Index value will be computed at one-tenth (1/10) of the value the Computer Software Index.

Exercise and settlement. The Exchange proposes that CBOE computer Software Index options will have a European-style exercise [1] and will be "A.M.-settled index options" within the meaning of the rules in Chapter XXIV, including Rule 24.9.[2] The proposed options will expire on the Saturday following the third Friday of the expiration month. Since A.M.-settled index options are settled based on an index value derived from opening prices of the component stocks on the last trading day before expiration (normally a Friday), the last trading day for an expiring Index option series will normally be the second to the last business day before expiration (normally a Thursday).

Exchange Rules Applicable to Stock Index Options. Except as modified by this rule filing, the rules in chapter XXIV will be applicable to Computer Software Index options.

The CBOE also is proposing to amend Exchange Rule 24.1 to make clear that a "market index," a term which includes the Standard and Poor's ("S&P") 500, S&P 100, the FT–SE (U.K.) 100, and the FT–SE Eurotrack 200, also is a "broad-based index" within the meaning of the rules in chapter XXIV, including Rule 24.4 which relates to position limits for broad-based index options. The proposed amendment to Exchange Rule 24.1 further provides that the terms "narrow-based index" and the previously defined "industry index" both mean an index designed to be representative of a particular industry or group of related industries. An industry index contract such as the Computer Software Index options will, therefore, be deemed to be "narrow-based" for purposes of the position limit requirements of rule 24.4A. Ten reduced-value options will equal one full-value contract for such purposes.

Basis. The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade, to protect investors and the public interest and to remove impediments to and perfect the mechanism of a free and open market.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change 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 Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 13, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–31161 Filed 12–22–92; 8:45 am]

BILLING CODE 8010–01–M

[1] A European-style option only can be exercised during a specified period before the option expires.

[2] Under CBOE Rule 24.9, A.M.-settled index options are settled based on an index value derived form opening prices on the last day of trading prior to expiration.

[3] 17 CFR 200.30–3(a)(12) (1992).

[Release No. 34–31601; File No. SR–NSCC–92–09]

December 16, 1992.

Self-Regulatory Organization; National Securities Clearing Corporation; Order Approving a Proposed Rule Change Relating to Index Receipts

On July 13, 1992, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1], a proposed rule change (File No. SR–NSCC–92–08) to enable NSCC to clear and settle index receipt products such as the Portfolio Depository Receipts ("PDRs") of the American Stock Exchange, Inc. ("AMEX"). Notice of the proposal was published in the **Federal Register** on October 21, 1992.[2] No comments were received. As discussed below, the Commission is approving NSCC's proposal.

I. Description

The proposed rule change will allow NSCC to provide clearance and settlement services to facilitate the creation and redemption of index receipt products such as the AMEX's proposed PDRs.[3] After an NSCC member places an order for the creation of an index receipt, the NSCC member will be required to deliver to the trustee [4] the shares comprising the index receipt and a cash amount as described below in exchange for a specified number of index receipts.[5] Upon redemption of an index receipt, the NSCC member will be entitled to delivery of the underlying shares. NSCC's service will provide members with the ability to utilize existing

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 31318 (October 14, 1992), 57 FR 48055.

[3] For a detailed description of AMEX's proposal to list and trade PDRs, refer to Securities Exchange Act Release Nos. 31039 (August 13, 1992), 57 FR 37851 (notice of filing of proposed rule change) and 31591 (December 11, 1992) (order approving proposed rule change) [File No. SR–AMEX–92–18].

[4] The trustee will also be a member of NSCC.

[5] The placement of orders by NSCC members with the underwriter/distributor for the trust and the creation of index receipt by the trustee both take place independently of NSCC's operations.

Continuous-Net-Settlement ("CNS") and Balance Order Systems (1) to deliver the underlying shares to the trustee and to receive index receipts upon creation and (2) to deliver the index receipts and receive the shares upon redemption. Processing of these transactions will occur within the normal five (5) day settlement timeframe.

Each day by such time as required by NSCC, the trustee will provide NSCC with data listing the underlying shares and the associated numbers of index receipts which will be created or redeemed on the next business day (referenced as "T"). The trustee also will provide data concerning an estimated cash amount. This estimated cash amount will be calculated by the trustee and will include an accrued dividend amount and a balancing amount.[6] The trustee may also be required or permitted to provide other financial data.

On T by such time as established by NSCC, the trustee, on behalf of each member placing an index receipt order, will report to NSCC the number of index receipts created and redeemed. The trustee also will report the final cash amount and a transaction amount which represents the trustee's transaction fee.

On the next business day ("T+1"), NSCC will report the details of creation/redemption instructions to each member on the Index Receipt Detail Report. Using the data supplied on the previous day, NSCC will report the net amount of the underlying securities that will be required to be delivered or received on settlement day. The report also will indicate the net number of index receipts to be received or delivered on settlement day.[7] The report will further indicate the final cash amount and the transaction fee which will be debited and credited on settlement day.

Settlement of the index receipt and depository eligible component shares will be processed in the CNS System. Settlement of non-depository eligible securities will be processed in the Balance Order System. NSCC will guarantee settlement of the shares to the same extent it guarantees the settlement of other CNS and non-CNS eligible securities. NSCC also will guarantee payment of the cash amount but not the transactions fee.

[6] The balancing amount is designed to compensate for any difference between the net asset value of the index receipt and the value of the underlying index. Among other reasons, a difference in value could result from the fact that an index receipt can not contain fractional shares of a security.

[7] The AMEX's PDRs require the exchange of multiple index receipts for component shares which always will be in multiples of whole shares. Thus, no delivery of fractional shares will occur.

II. Discussion

As described, the proposed rule change is consistent with the purposes of the Act and in particular with Section 17A(b)(3)(F) of the Act.[8] That section requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of funds and securities which are in the custody or control of the clearing agency or for which it is responsible, and to remove impediments to and to perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

The proposal allows a new product, index receipts such as the AMEX's PDRs, to be cleared and settled within the national clearance and settlement system. As proposed, the index receipt trustee will be long the underlying shares and short the index receipts in NSCC's systems. In turn, the NSCC member will be short the underlying shares and long the index receipts. The use of NSCC's systems permits the centralization and automation of the described index receipt process through NSCC, a clearing agency registered under section 17A of the Act. Otherwise, that process would require independent deliveries of shares and index receipts and payments among trustees and other NSCC members outside the national clearance and settlement system. The Commission believes that processing index receipt transactions through NSCC, therefore, should promote the prompt and accurate clearance and settlement of these securities transactions and should help perfect the mechanism of a national clearance and settlement system.

In addition, industry participants will receive the benefits, such as added certainty to the index receipt market, of NSCC's guarantee of their transactions. Because the guarantee associated with index receipts is no different than the guarantee associated with other securities transactions, the guarantee should impose no new or additional risks to NSCC.[9] NSCC's guarantee, accordingly, should help perfect the national clearance and settlement system while providing for the safeguarding of funds and securities at NSCC.

[8] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[9] Basically, the various components of index receipt transactions are no different than those of other securities transactions. For example, a broker-dealer placing an order for the creation of an index receipt has an obligation to deliver to NSCC the underlying shares (similar to if it had sold the shares) and the trustee has an obligation to deliver to NSCC the index receipt. The index receipt transaction will be included in both the purchasing broker-dealer's and the trustee's clearing fund requirements. For purposes of the clearing fund, the underlying shares will be valued at their closing price on the day of creation, and the index receipt will be valued using the aggregate value of the underlying shares.

III. Conclusion

On the basis of the foregoing, the Commission finds that NSCC's proposed rule change (File No. SR–NSCC–92–08) is consistent with the Act and in particular with Section 17A(b)(3)(F) of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–92–08) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–31051 Filed 12–22–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31615; File No. SR–NYSE–92–13]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc. Relating to Information Memo on Odd-Lot Trading Practices

December 17, 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 May 19, 1992, the New York Stock Exchange, Inc. ("NYSE") or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On November 20, 1992, the NYSE submitted to the Commission Amendment No. 1 to the proposed rule change.[1] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change concerns the Exchange's odd-lot limit order

[1] See letter Brian M. McNamara, Managing Director, Market Surveillance, NYSE, to Diana Luka-Hobson, Branch Chief, Commission, dated November 16, 1992. Amendment No. 1 clarified the Exchange's proposal to provide an example of a pattern of activity that could suggest day trading of odd-lot limit orders.

handling procedures. The Exchange is addressing several potential abuses of the procedures through the issuance of an Information Memo to all Members and Member Organizations.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In February 1991, the Exchange implemented changes to its odd-lot order handling procedures. One change established the use of "Best Pricing Quote" for pricing odd-lot market orders. This assures that an odd-lot market order sent to the Exchange for execution will be priced on the basis of the best prevailing national market system quotation for that security.[2] The second change eliminated all differentials on odd-lot limit orders entered by member organizations through the Exchange's system for odd-lot.[3]

Both these changes were designed to enhance the efficiency of odd-lot order executions for investors and member organizations by providing more economic pricing for these orders. The Exchange recognized, however, that the efficiencies sought to be obtained by these actions would only be achieved if the odd-lot system was utilized in a manner consistent with traditional odd-lot investing, and did not become a vehicle for trading practices inconsistent with such traditional investing.

The Exchange has carefully monitored the use of the odd-lot system since February, 1991 and has identified several practices which it believes are not consistent with traditional odd-lot investing practices and whose use constitutes an abuse of the Exchange's odd-lot system. These practices included unbundling of round-lots into odd-lots, failure to aggregate odd-lot orders into round lots and entry of both buy and sell odd-lot limit orders for purposes of capturing the spread in the stock.

The Exchange announced its position regarding these practices in Information Memo No. 91–29 which was issued to the Exchange's membership on July 25, 1991. Since that time, the Exchange has identified other practices which the Exchange believes are not consistent with traditional odd-lot investment activity. These practices, all involving the use of odd-lot limit orders, include index arbitrage, other types of program trading (the terms "index arbitrage" and "program trading" are defined in Exchange Rule 80A) or any pattern of activity that would suggest day trading, which, for example, could include entering multiple odd-lot limit orders to buy and sell the same security on the same day.

The Exchange intends to advise its members and member organizations, through an Information Memo, that these types of trading practices may not be effectuated by means of the odd-lot limit order service, except as to program trades where the odd-lot limit orders are in the aggregate a relatively small part of the overall program. It should be noted that the use of odd-lot market orders for effecting index arbitrage or program trading strategies is not prohibited.

The limitations on use of the odd-lot limit order system are intended to address specific types of trading activity, and are not intended to limit access to, or use of, the system by individual market participants or any class of market participants for any authorized use of the system.

Member organizations will be expected to establish appropriate systems to monitor odd-lot activity to ensure that the practices noted in the Information Memo are not engaged in. The Information Memo makes clear that the Exchange intends to initiate appropriate regulatory action if it finds that member organizations have permitted such trading practices, either for proprietary accounts or for the accounts of customers.

2. Statutory Basis

The basis under the Act for the proposed rule change is section 6(b)(5) which requires, in part, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that its odd-lot limit order service and pricing policies offer a benefit to the investing public by providing cost-effective execution of odd-lot orders, and that practices which threaten to undercut the economic viability of this system are inconsistent with the statutory objective of "perfecting the mechanism of a free and open market" for odd-lot investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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

[2] See Securities Exchange Release No. 27981 (May 2, 1992), 55 FR 19407 (May 9, 1990) (File No. SR–NYSE–90–06).

[3] See Securities Exchange Act Release No. 28837 (January 29, 1991), 56 FR 4660 (February 5, 1991) (File No. SR–NYSE–91–03).

provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–92–13 and should be submitted by January 13, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–31158 Filed 12–22–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31595; File No. SR–OCC–92–30]

Self-Regulatory Organization; The Options Clearing Corporation; Order Approving on an Accelerated Basis a Proposed Rule Change Relating to the Conversion of the Options Clearing Corporation's Current Batch Escrow Receipt Depository System to an On-Line System

December 11, 1992.

On September 22, 1992, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–OCC–92–30) under Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] to convert OCC's current batch Escrow Receipt Depository ("ERD") system to an on-line system and to allow index option escrow receipts to be processed through the on-line ERD system.[2] Notice of the proposal was published in the **Federal Register** on November 27, 1992.[3] On December 11, 1992, OCC amended the proposal.[4] No comment letters were received. As discussed below, this order approves the proposal on an accelerated basis.

I. Description

Under the proposal, OCC will convert the current batch ERD system to an on-line system and will allow index option escrow receipts to be processed through the on-line ERD system. OCC also is conforming its Rules to its actual practices with respect to the timing of the release of escrow deposits and is making clarifying and conforming changes in OCC Rules 610, 613(a)(7) (formerly Rule 613(g)), and implementing Rule 613(b)(7), all relating to daily money settlement for short positions covered by escrow deposits.

A. Conversion of ERD to an On-Line System

The current ERD system is a three-party (Clearing Member, ERD Bank, and OCC), multi-line entry and inventory escrow receipt system[5] which operates as follows. An ERD Bank that desires to make escrow deposits with OCC for the accounts of its customers or to "roll over"[6] existing escrow deposits to cover new short positions would do so by submitting to OCC a multi-line escrow receipt from covering an entire day's escrow deposit activity. The ERD Bank may specify on the form the amount of premium payable to the customer's Clearing Member for settlement through OCC.[7] Similarly, a Clearing Member that desires to withdraw an escrow deposit (*e.g.*, because the short position that it covered has been closed out) would complete and submit to OCC a multi-entry escrow receipt form covering a full day's withdrawal activity and specifying, as to each withdrawal instruction, any premiums receivable from the ERD Bank that holds the escrow deposit. At the end of that business day, OCC inputs all of the escrow instructions that it has received into ERD processing system via multiple batch procedures.

On the following business day, OCC delivers to each participating ERD Bank and to each Clearing Member a Pending Escrow Report summarizing the escrow deposits, roll overs, and withdrawal instructions affecting the ERD Bank or Clearing Member from the previous business day. The parties receiving the Pending Escrow Report may "pend" or reject any instruction appearing on the Report. Pended instructions appear on the next day's Pending Escrow Report. Rejected instructions are deleted from the system.

On the following morning, an instruction that was neither "pended" nor rejected is automatically entered into OCC's cash settlement system. At that time, the settlement accounts of the Clearing Member and the participating ERD Bank are charged or credited with the net premiums payable or receivable in connection with escrow deposit activity. Therefore, from the time when a deposit instruction is submitted to OCC until the settlement of premium, the current ERD system requires three days for processing.

OCC is converting the current batch ERD system to an on-line system through the use of its INTRACS Asset Custody Depository function.[8] The

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[1] 15 U.S.C. 78(b)(1) (1988).

[2] Escrow receipts are physical receipts that represent escrow deposits made by a Clearing Member's customer with an OCC approved custodian bank. On the instruction of the customer, an escrow receipt is issued by the custodian bank to the customer's broker-dealer in lieu of the physical assets on deposit to satisfy the customer's margin requirement as a writer of a call option. If the broker-dealer is a Clearing Member of OCC, it may forward the Escrow Receipt of OCC to satisfy its OCC margin obligations. If the broker-dealer is not a Clearing Member of OCC, it must submit the receipt to OCC through a correspondent Clearing Member. The escrow receipt assures the Clearing Member, the correspondent brokers and OCC that the securities held in escrow by the bank will not be released to the customer without prior written approval from OCC.

[3] Securities Exchange Act Release No. 31467 (November 27, 1992), 57 FR 56392.

[4] Letter from James C. Yong, Vice President and Deputy General Counsel, OCC to Jerry W. Carpenter, Branch Chief, Division of Market Regulation, Commission (December 11, 1992).

[5] For a detailed discussion of the various legal, regulatory and operational issues of the current batch ERD system, refer to Securities Exchange Act Release No. 18844 (June 25, 1982), 47 FR 29046 [File No. SR–OCC–82–6] (ordering approving implementation of the ERD program on a full-scale basis).

[6] "Roll over" is the term used to describe the situation when a writer of a call option contract closes out the short position by purchasing a call option contract of the same strike price and expiration date then immediately writes another call option contract on the same security or index with a later expiration date and uses the escrow deposit that covered the closed position to meet the margin requirement on the new short position.

[7] An additional feature of the ERD system is that it provides a premium pass through system to help assure timely premium payment via the OCC settlement network. Below is an example to illustrate the movement of premium through ERD system. It should be noted that currently the main users of escrow receipts are pension funds.

Pension Fund P wishes to write a call option on XYZ stock. P instructs its Broker B, who is a clearing member of OCC, to write one call option contract on XYZ stock. B shorts one call of XYZ at $4.00. B is in a short position because of the sale and therefore owes margin to OCC to cover the short position. B satisfies this margin obligation by posting a letter of credit. Settlement occurs by OCC paying B $400.00 as the premium for the sale of the option contract. P now has a margin obligation with B for the short position. P instructs its Depository Bank D, which is an approved ERD Bank, to pledge 100 shares of XYZ to OCC on behalf of B. After OCC has received the pledge through the ERD system, the call is covered and a hedged position is established. The effect is that B's margin requirement is significantly reduced. The letter of credit that B pledged earlier is now considered margin excess. B may leave the letter of credit on deposit or withdraw it. OCC will debit $400.00 (an amount equal to the premium for the sale of the call option but not the actual premium, which was credited to B earlier) from the account of B and credit P's account at D.

[8] The INTRACS Asset Custody Depository function is OCC's computer system designed to maintain records of Clearing Members' forms of margin deposits and the valuation and location of those deposits. The Asset Custody Depository function is concerned mainly with non-cash assets. Conference call between James C. Yong, Vice President and Deputy General Counsel, OCC, Jacqueline R. Luthringshausen, Attorney, OCC, Jerry W. Carpenter, Branch Chief, Division of Market Regulation, Commission, and Peter R. Geraghty,

Continued

conversion of the current ERD system to an on-line system will improve ERD processing in several ways. First, the proposed on-line system will shorten the time frame between customer pledge and settlement of premium. The proposed system will allow ERD Banks and Clearing Members to submit deposit, roll over, and withdrawal instructions directly into OCC's database via computer terminal. The system will generate on-line transaction and inquiry reports that will list all of the instructions that have been entered into the system. Those reports will be updated on a real-time basis throughout the business day. ERD Banks and Clearing Members will be able to review those on-line reports to determine whether a particular instruction has been approved by the ERD Bank or Clearing Member to which it was addressed.

Under the proposal, All escrow instructions (with the exception of withdrawals without premium and deposits without premium, which are effected without the need for approval) must be approved or rejected by the ERD Bank or Clearing Member to which they are addressed on the same day on which they were entered at or before such time as OCC shall prescribe. Instructions that are not approved by such time as OCC shall prescribe on that same business day will be deleted by OCC from the ERD system. Such instructions will have to be reentered the following business day. Unlike the current batch ERD system, the on-line system will not permit instructions to be "pended" across business days.

The result of these changes is that the proposed on-line system will allow real-time approvals and denials of escrow activity with next day premium settlement. The processing time for an escrow deposit receipt will therefore be reduced from three business days to two business days.

In addition, converting ERD to an on-line system will allow OCC, its ERD Banks, and Clearing Members to continue to move toward a paperless environment. Paper escrow receipts and ERD multi-line escrow receipt forms currently submitted to OCC for entries and corrections could eventually be eliminated as ERD Banks and Clearing Members begin submitting on-line escrow instructions. Furthermore, ERD Banks and Clearing Members will be given access to on-line reports that will be continually updated throughout the business day to provide a real-time inventory record. To facilitate audit trail print capability, ERD Banks and Clearing Members will be able to print hard copies of an escrow audit trail report.[9] Accordingly, the number of paper reports which OCC must produce and distribute on a daily basis will be substantially reduced.

OCC has stated that the conversion of the batch ERD system to an on-line system will not compromise OCC's ability to safeguard the securities and funds subject to its control. OCC's current Rules with respect to ERD expiration processing and the release of escrow deposits will remain intact.[10] In addition, each participating ERD Bank and Clearing Member will be given a user ID by OCC's Security Administration. Access to transactions and inquiry reports will be restricted to those authorized users. OCC will have "global" inquiry access to the reports of all ERD Banks and Clearing Members while ERD Banks and Clearing Members will have inquiry access only to their own inventory items. Furthermore, the proposed system has an on-line editing capability which will check for certain input errors such as an invalid Clearing Member number or option series. ERD Banks and Clearing Members can correct other input errors by reporting such errors to OCC. OCC will then cancel the erroneous transactions from the ERD processing system and input the correct data. Finally, approved transactions are not given effect until the system performs a successful margin excess/deficit check to ensure that a Clearing Member is not in, and that the transaction does not place a Clearing Member in, a margin deficit position.

OCC anticipates that the on-line ERD system will eventually eliminate the current batch ERD system. However, during the transition period, both systems will be in operation. Accordingly, OCC's rule change allows for the use of both the current batch systems and the proposed on-line system. The rules governing the batch ERD system have been renumbered to accommodate the addition of the on-line system. In addition, the names of forms referred to in the batch system rules have been changed to lower case letters in order to make such forms more generic. Furthermore, OCC has deleted certain obsolete language respecting escrow deposits for options on Treasury bills, certificates of deposit, and GNMAs which are not currently traded. Obsolete language respecting supplemental escrow deposit agreements, which were intended to govern escrow deposits consisting of Treasury bills, certificates of deposit, and GNMAs, has also been deleted. As discussed below, the language respecting the timing of the release of an escrow deposit in paragraph (a)(7) of Rule 613 (as renumbered) has been revised. Finally, a provision has been added to the batch system rules to prohibit the roll over of an escrow deposit after expiration of the option covered by the deposit. The provision was added in order to make what was previously an implicit practice explicit in OCC's Rules.

Any bank wishing to become an on-line ERD bank will be required to enter into the On-Line Escrow Deposit Agreement with OCC. In general, the provisions of the Agreement are parallel to the provisions in proposed Rule 613(b), which sets forth the procedures governing participation in the on-line ERD system.

B. Processing of Index Option Escrow Deposits Through the On-Line ERD Systems

The proposed rule change also allows index option escrow deposits to be processed through the on-line ERD system. When OCC's batch ERD system was originally developed and implemented by OCC in 1981, index options were not yet in existence. Accordingly, OCC's Rules do not permit the processing of index option escrow deposits through the ERD system. After index options came into existence, demand for the ability to process index option escrow deposits through the ERD system was initially low. As a result, Rule 1801(d)[11] was never modified. In the past year and a half, however, that demand has increased substantially. Accordingly, OCC is now revising Rule 1801(d) to allow for the processing of index option escrow deposits through the proposed on-line ERD system in accordance with the provisions of revised Rule 613(b). Certain provisions of Rule 613(b) accordingly reflect the fact that index option exercises have a shorter settlement period than equity option exercises.

C. Revision of Rules Relating to Releases of Escrow Deposits

OCC's rules currently permit escrow deposits to be established to cover short call stock option positions either through use of a stock option escrow receipt or through OCC's current batch ERD system. In the case of a deposit made via a stock option escrow receipt,

Attorney, Division of Market Regulation, Commission (November 19, 1992).

[9] The escrow audit trail report is an on-line report which summarizes the daily escrow transactions of an ERD Bank or Clearing Member from a printer attached to their own computer terminals.

[10] Procedures for OCC's escrow receipt depository program are set forth in Rule 613.

[11] Rule 1801 sets forth the procedure for index option escrow receipt deposits.

Rule 610(k) currently provides that the deposit may be withdrawn after settlement of an exercise that is assigned to the covered short position (*i.e.*, on the fifth day after exercise). Similarly, in the case of a deposit made via the batch ERD system, Rule 613(g)(3) currently provides that OCC will release the escrow deposit on the morning of the settlement date for an exercise that is assigned to the covered short position.[12]

Prior to the approval of File No. SR–OCC–82–6, Rule 610 provided that on the business day following the assignment of an exercise to a converted stock option short position (*i.e.*, on the second day following the exercise), ICC would collect margin on the account in which the position was carried without regard to the escrow deposit and after it had collected the margin would permit the escrow deposit to be withdrawn. (This margin requirement is often referred to as "pop-up" margin requirement because it is required only from the second day of the five day exercise settlement period to the end of the exercise settlement period.) At the time that File No. SR–OCC–82–6 was filed, OCC believed that revising Rule 610 and implementing Rule 613 so that each Rule permitted OCC to maintain escrow deposits in effect throughout the five day exercise settlement period was appropriate because OCC's exercise settlement system had begun to utilize (and still utilizes) the continuous net settlement systems of correspondent clearing corporations. As a result, Clearing Members no longer need actual access to the underlying securities on the exercise settlement date in order to make settlement, escrow deposits could be maintained in effect throughout the entire exercise settlement period, and the "pop-up" margin requirement could be eliminated.

In the course of developing the on-line ERD System and preparing new rules describing that system, it has come to OCC's attention that notwithstanding the approval of File No. SR–OCC–82–6 in 1982, changes to OCC's system to reflect the revised escrow release rules were never implemented, and OCC's practices since 1982 in releasing stock option escrow deposits and collecting margin have, therefore, not reflected the revised rules. After reviewing the changes in release procedures described in File No. SR–OCC–82–6, OCC has concluded, first, that both its current release procedures and the release procedures described in File No. SR–OCC–82–6 are consistent with maintaining a sound and secure settlement system and, second, that the costs of implementing the changes proposed in File No. SR–OCC–82–6, for now at least, outweigh the benefits to Clearing Members of avoiding the three day "pop-up" margin requirement.[13] OCC proposed in this rule filing to make changes to Rule 610 and Rule 613(a)(7) (formerly Rule 613(g)) and to implement rule 613(b)(7) so that these Rules would be consistent with OCC's current practices in releasing stock option escrow deposits.[14] By letter dated December 11, 1992, OCC withdrew this portion of the proposed rule change.[15]

D. Rule 503: Related Changes

Related changes are being made to Rule 503 to conform to the changes in Rule 613. Specifically, the names of forms are being changed to lower case letters to make such forms more generic. In addition, a cross reference to Rule 613 is being modified to reflect the renumbering of the subsections of Rule 613. Finally, language is being added to Rule 503 in order to clarify certain rights and obligations set forth in that Rule.

II. Discussion

Section 17A(a)(1)(C)[16] of the Act sets forth Congress' findings that new data processing and communication techniques create the opportunity for more efficient, effective, and safe procedures for clearance and settlement. Section 17A(b)(3)(F)[17] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible. The Commission believes that the on-line ERD system proposed in this rule filing is consistent with these provisions of section 17A and that, in general, it will enhance the safe and efficient operation of the national system for the clearance and settlement of securities transactions.

The Commission believes the on-line ERD system will reduce many of the risks and time delays inherent in a system utilizing paper forms. The system will provide Clearing Members and ERD Banks with the ability for real-time approvals and denials of escrow instructions and with on-line transaction and inquiry reports that will be updated on a real-time basis.[18] The system also has an on-line editing capacity which checks for certain input errors and gives Clearing Members the opportunity to correct these errors immediately. The on-line system, therefore, will provide Clearing Members with the capability to constantly monitor their escrow positions and to correct the input of escrow information. As a result, the on-line system decreases the time necessary for processing escrow deposit receipts from three business days to two business days and, thereby, facilitates the prompt and accurate clearance and settlement of securities transactions as required under the Act.

The system also will perform a margin excess/deficit check. If a Clearing Member is in a margin deficit position or if the approved transaction will place the Clearing Member in a margin deficit position, the transaction will not be given effect. The ability to perform real-time margin level checks will further strengthen the settlement system by limiting the exposure of OCC, Clearing Members, and ERD Banks by helping to ensure that each transaction is covered by sufficient margin.

Precautions have also been taken to safeguard the securities and funds under OCC's control by restricting access to transaction and inquiry reports to authorized users only. OCC will have inquiry access to reports of all Clearing Members and ERD Banks whereas Clearing Members and ERD Banks will have access only to their own inventory items through the use of a user ID supplied by OCC's Security Administration. The Commission believes these security features will enable OCC to safeguard the securities and funds which are in its custody or control or for which it is responsible consistent with OCC's obligations under the Act.

Because the revisions regarding the release of escrow deposits and the

[12] File No. SR–OCC–82–6 amended Rule 610(k) to its present form and added Rule 613(g)(3) to OCC Rules. Securities Exchange Act Release No. 18844, *supra* note 4.

[13] This cost-benefit analysis may change if the on-line ERD system causes an increase in Clearing Member usage of escrow deposits. To its current knowledge, however, OCC has not received any Clearing Member complaint relating to the three day "pop-up" margin requirement in the last ten years.

[14] Since index options have a one day exercise settlement period (two days in the case of capped options subject to automatic exercise), the changes in timing of release of deposits described in the text above are not relevant for index option escrow deposits.

[15] Letter from James C. Yong to Jerry W. Carpenter, *supra* note 4.

[16] 15 U.S.C. 78q–1 (a)(1)(C).

[17] 15 U.S.C. 78q–1 (b)(3)(F).

[18] Currently with the batch ERD system, the Pending Escrow Report is available the morning after the day the escrow instruction is submitted. The Depository Activity Report and the Escrow Settlement Report are available two days after the day the escrow instruction is submitted. The on-line system will allow ERD Banks and Clearing Members to receive these reports on a real-time basis. Hard copies of these reports will be available through the use of printers attached to the Clearing Members' and ERD Banks' owner computer terminals.

collection of "pop-up" margin that were proposed when the original ERD system initially was approved [19] were never implemented, OCC has continued to collect "pop-up" margin. As previously discussed, OCC has proposed in this filing revisions to conform its rules to its current practice. The currently proposed changes reflect that OCC desires to continue to collect "pop-up" margin and release escrow deposits on the second day following the exercise of the option contract. By letter dated December 12, 1992, OCC, at the Commission's request, asked that consideration of the portion of the proposed rule change that concerns "pop-up" margin be delayed. Therefore, this order does not grant approval to OCC's proposal to amend its rules to reflect it practice of collecting "pop-up" margin.[20]

OCC has requested and the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof. The on-line ERD system will be fully operational by December 4, 1992 and OCC has several ERD Banks and Clearing Members ready to use the on-line system. By granting accelerated approval, OCC will be able to implement the on-line system soon thereafter, and OCC, ERD Banks, and Clearing Members will be able to reap the benefits, as described above, that the on-line system provides. Moreover, the Commission does not believe that it will receive any significant adverse comments on the proposed rule change in view of the fact that OCC is converting its current batch ERD system to an on-line system and is neither creating a new system nor mandating use of the on-line system.

III. Conclusion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act. The Commission also finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof.

It is therefore ordered, Pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (File No. SR–OCC–92–30) be, and hereby is, approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–31053 Filed 12–22–92; 8:45 am]

BILLING CODE 8010–01–M

[19] Securities Exchange Act Release No. 18844, *supra* note 5.

[20] OCC will submit a new proposed rule change under Rule 19b–4 relating to the release of escrow receipts and the collection of "pop-up" margin.

[21] 15 U.S.C. 78s(b)(2).

[Release No. 34–31614; File No. SR–OCC–92–37]

Self-Regulatory Organization; The Options Clearing Corp.; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis of a Proposed Rule Change Relating to Revisions to the Standards for Letters of Credit Deposited as Margin

December 17, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 12, 1992, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval on a temporary basis through June 30, 1993.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change extends the Commission's previous temporary approval of OCC's modifications to its rules setting forth the standards for letters of credit deposited with OCC as a form of margin.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1) (1988).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In August 1991, February 1992, April 1992, and July 1992, OCC filed with the Commission rule changes which proposed to modify the standards for letters of credit deposited with OCC as a form of margin. The Commission granted approval of each of those filings on an accelerated and temporary basis.[2] This filing again proposes to make permanent the Commission's temporary approval of OCC's modifications to its Rule 604 which sets forth the standards for letters of credit deposited with OCC as a form of margin. Like the previous filings, this filing proposes several modifications to that rule. First, in order to conform to the Uniform Commercial Code and to avoid any ambiguity as to the latest time for honoring demands upon letters of credit, letters of credit must state expressly that payment must be made prior to the close of business on the third banking day following demand. Second, letters of credit must be irrevocable. Third, the letters of credit must expire on a quarterly basis. Fourth, OCC included language in its rules to make explicit its authority to draw upon letters of credit at any time, whether or not the Clearing Member that deposited the letter of credit has been suspended or is in default, if OCC determines that such draws are advisable to protect OCC, other Clearing Members, or the general public.[3]

In the interim since its original letter of credit filing, OCC has received no adverse comments or complaints from any of its Clearing Members, Banks, or other interested parties with respect to the modifications to Rule 604 or to the implementation of the revised letter of credit standards. Accordingly, OCC now requests that the Commission grant permanent approval of those revisions.

OCC believes the proposed rule change is consistent with the requirements of section 17A of Act, as

[2] Securities Exchange Act Release Nos. 29641 (August 30, 1991), 56 FR 46027 (File No. SR–OCC–91–13) (order temporarily approving proposed rule change through February 28, 1992); 30424 (February 28, 1992), 57 FR 8160 (File No. SR–OCC–92–06) (order temporarily approving proposed rule change through May 31, 1992); 30763 (June 1, 1992), 57 FR 24284 (File No. SR–OCC–92–11) (order temporarily approving proposed rule change through August 31, 1992); and 31126 (September 1, 1992) 57 FR 40925 (File No. SR–OCC–92–19) (order temporarily approving proposed rule change through December 31, 1992).

[3] For a detailed discussion of the modifications to OCC's rules governing letters of credit deposited as margin, refer to Securities Exchange Act Release No. 29641, *supra* note 2.

[4] 15 U.S.C. 78q–1.

amended.[4] Specifically, OCC believes the proposed rule change promotes the protection of investors by enhancing OCC's ability to safeguard the securities and funds in its possession or subject to its control.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were not and are not intended to be solicited with respect to the proposed rule change, and one were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission believes that the proposal is consistent with section 17A of the Act and specifically with section 17A(b)(3)(F) of the Act.[5] That section requires that the rule of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which the clearing agency is responsible. The revised standards should make letters of credit deposited as a form of margin more liquid instruments and, consequently, should permit OCC to more safely rely upon such letters of credit. Because the revised standards will induce letter of credit issuers to reexamine Clearing Member's financial conditions every three months rather than annually as under the prior standards, the financial conditions of Clearing Members electing to deposit letters of credit as margin may be assessed more frequently thereby facilitating the discovery of any adverse developments in a more timely manner. In addition, since the letters of credit will be irrevocable, issuers of letters of credit will no longer be able to revoke letters of credit at times when the Clearing Members most need credit facilities (e.g., when a Clearing Member is experiencing financial difficulties or during times of market volatility). By approving the proposed rule change on a temporary basis through June 30, 1993, OCC, the Commission, and other interested parties will be able to assess further, prior to permanent Commission approval, any effects these revised standards have on letter of credit issuance and on margin deposited at OCC.

OCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving because the Commission believes it is desirable that the proposed rule change be approved before the expiration of the Commission's previous order granting temporary approval of these modifications to the letter of credit standards. By approving this proposed rule filing before expiration of the prior temporary approval order, the changes that have been implemented pursuant to the temporary approval order may remain in place pending permanent approval.

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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number SR–OCC–92–37 and should be submitted by January 13, 1993.

V. Conclusion

On the basis of the foregoing, the Commission finds that OCC's proposed rule change is consistent with the Act and in particular with section 17A of the Act.

It is therefore ordered, Under section 19(b)(2) of the Act, that the proposal (File No. SR–OCC–92–37) be, and hereby is, approved temporarily through June 30, 1993.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–31159 Filed 12–22–92; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[6] 17 CFR 200.30–3(a)(12) (1991).

DEPARTMENT OF STATE

[Public Notice 1746]

Secretary of State's Advisory Committee on Private International Law; Meeting of Study Group on Intercountry Adoption

The third meeting of the Study Group on Intercountry Adoption of the Secretary of State's Advisory Committee on Private International Law will take place on Friday, January 8, 1993 from 9:30 a.m. to approximately 4:30 p.m. in room 1912 of the Department of State in Washington, DC.

The purpose of the meeting is to review the preliminary draft convention on international co-operation and protection of children in respect of intercountry adoption prepared in the course of three two-week meetings of a 57-nation special commission of the Hague Conference on Private International Law. The meeting is to provide private sector guidance for the preparation of written U.S. comments on the draft convention to be transmitted to the Hague Conference for dissemination to other nations participating in these negotiations in advance of the 17th session of the Hague Conference (intergovernmental diplomatic conference) that will take place on May 10–29, 1993 at The Hague, Netherlands. The preliminary draft convention will form the basic working document for the 17th session at the conclusion of which the convention's final text will be adopted and the convention will be opened for signature and ratification by States.

The Study Group will also discuss various issues likely to be addressed in U.S. Federal implementing legislation needed to ensure the full and uniform implementation of the intercountry adoption convention throughout the United States should it receive the necessary support for Senate advice and consent to U.S. ratification.

Copies of the preliminary draft convention and a paper discussing issues to be addressed in implementing legislation may be requested from the Office of the Assistant Legal Adviser for Private International Law by contacting Miss Gonzales by fax at (202) 653–9854 or by writing to the Office of the Legal Adviser (L/PIL), 2100 K Street, NW., suite 501, Washington, DC 20037–7180.

Members of the general public may attend up to the capacity of the meeting

room and participate subject to the direction of the Chair. The meeting will be held in Conference Room 1912 at the State Department; participants are to use only the main ("diplomatic") entrance to the Department at 22nd and C Streets, NW. As access to the building is controlled, Miss Gonzales in the office indicated above (telephone: (202) 653–9853) must be notified not later than Tuesday, January 5 by phone, fax or letter of the name affiliation, address, phone number, date of birth and social security number of persons wishing to attend. Persons interested in this project but unable to attend the meeting are welcome to request documents and to submit comments or proposals to the address indicated above.

Peter H. Pfund,

Assistant Legal Adviser for Private International Law, Vice-Chair, Secretary of State's Advisory Committee on Private International Law.

[FR Doc. 92–31045 Filed 12–22–92; 8:45 am]

BILLING CODE 4710–08–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Notice No. 92–33]

Reports, Forms, and Recordkeeping Requirements

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

DATES: December 18, 1992.

ADDRESSES: Written comments on the DOT information collection requests should be forwarded, as quickly as possible, to Edward Clarke, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503, (202) 395–7340. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

FOR FURTHER INFORMATION CONTACT: Copies of the DOT information collection requests submitted to OMB may be obtained from John Chandler, Annette Wilson or Susan Pickrel, Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4735.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to OMB for initial, approval, or for renewal under the Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on December 18, 1992:

DOT No: 3702.
OMB No: 2106–0009.
Administration: Research and Special Programs Administration.
Title: Part 221—Electronic Filing of Property and Passenger Tariffs.
Need for Information: Tariffs containing international air fares/cargo rates are required by Section 403 of the Federal Aviation Act of 1958, as amended, and are required in the public interest to establish the prices of air transportation to air carrier passengers and shippers of air cargo.
Proposed Use of Information: The information will be used to establish the prices of air transportation to air carrier passengers and shipper of air cargo.
Frequency: As needed.
Burden Estimate: 1,695,373 hours.
Respondents: Air carriers and foreign air carriers.
Form(s): None.
Average Burden Hours Per Response: 5 minutes.

DOT No: 3703.
OMB No: New.
Administration: Federal Aviation Administration.
Title: Airport Grants Program.
Need for Information: The information required by this program is necessary to protect the Federal interest in safety, efficiency, and utility of the airport. Data is collected to meet reporting requirements of 49 CFR Part 18 for financial management and performance monitoring.
Proposed Use of Information: The FAA collects information from airport sponsors and planning agencies in order to administer the Airports Grants Programs. Data is used to determine eligibility, ensure proper use of Federal funds and ensure project accomplishments.
Frequency: On occasion and Quarterly.
Burden Estimate: 66,947 hours.
Respondents: Airport sponsors and planning agencies.
Form(s): FAA Forms 5100–30, 5100–100, 5100–108, and 5370–1.
Average Burden Hours Per Response: FAA 5100–30, 36 hours; FAA 5100–100, 36 hours; FAA 5100–108, 30 minutes; FAA 5370–1, 3 hours.

DOT No.: 3704.
OMB No: 2115–0520.
Administration: U.S. Coast Guard.
Title: Plan Approval and Records for Existing Tank Vessels of 20,000 to 40,000 Deadweight Tons Carrying Oil in Bulk.
Need for Information: This information collection is needed by the Coast Guard to ensure that the minimum standards as promulgated by the regulations for the design, construction and equipment of tank vessels of 20,000 to 40,000 deadweight tons are met.
Proposed Use of Information: Coast Guard will use this information collection to review plans, calculations, specifications and manuals submitted by vessel owners and to certify these vessels if they comply with the minimum standards. Operating personnel will also use this information for the safe and proper operation of the vessel and equipment.
Frequency: On occasion.
Burden Estimate: 43 hours.
Respondents: U.S. and foreign tank vessel owners, operators and builders.
Form(s): None.
Average Burden Hours Per Response: 17 minutes for reporting; 26 minutes for recordkeeping.

DOT No: 3705
OMB No: 2115–0581
Administration: U.S. Coast Guard
Title: Plan Review for Facilities with Vapor Control Systems
Need for Information: This information collection is needed to provide safety standards for marine vapor control systems. Submission of plans and technical information will be reviewed by a Coast Guard accepted certifying entity to ensure that the safety standards are being met. This requirement also establishes

procedures for a person or organization to submit their application for a certifying entity to the Coast Guard

Proposed Use of Information: This information collection will be used by the Coast Guard's Captain of the Port personnel as evidence that vapor control system plans and technical information have been certified by an accepted certifying entity. Coast Guard will also use this information to approve or disapprove applications from persons or organizations who wish to become a certifying entity

Frequency: On occasion

Burden Estimate: 3,466 hours

Respondents: Owners/operators of vapor control systems facilities

Form(s): None

Average Burden Hours Per Response: 34 hours for reporting; 6 minutes for recordkeeping

DOT No: 3706

OMB No: 2120–0042

Administration: Federal Aviation Administration

Title: Aircraft Registration

Need for Information: The information collected is needed by the FAA to register aircraft or hold an aircraft in trust

Proposed Use of Information: The information is used by the FAA Aircraft Registry to maintain a registration system for aircraft identification and a centralized public record of aircraft ownership

Frequency: On occasion

Burden Estimate: 70,684 hours

Respondents: Any person or organization wishing to register an aircraft

Form(s): AC 8050–1, AC 8050–2, AC 8050–4, AC 8050–81, AC 8050–117, AC 8050–98, AC 8050–130, AC 8050–131, AC 8050–132

Average Burden Hours Per Response: AC 8050–1, 30 minutes; AC 8050–2, 30 minutes; AC 8050–4, 30 minutes, AC 8050–81, 30 minutes; AC 8050–98, 30 minutes; AC 8050–117, 1 hour and 30 minutes; AC 8050–130, 30 minutes; AC 8050–131, 45 minutes; AC 8050–132, 45 minutes

DOT No: 3707

OMB No: 2120–0024

Administration: Federal Aviation Administration

Title: Dealer's Aircraft Registration Certificate Application

Need for Information: The information is used by the Aircraft Registry to determine eligibility of applicant to receive Dealer's Certificate, to issue certificates, and to correct name and address of applicants

Proposed Use of Information: An application for dealer's certificate is filled out by any individual or company engaged in manufacturing, distributing or selling aircraft who wants to fly those aircraft with a dealer's certificate instead of registering them permanently in his name. The application is reviewed in the FAA Aircraft Registry by a conveyance examiner to insure that it is completely and properly filled out. If it is correct, the Registry issues the number of dealer's certificates requested and mails them to the dealer

Frequency: On occasion

Burden Estimate: 1,920 hours

Respondents: Aircraft Dealers

Form(s): AC 8050–5 and AC 8050–132

Average Burden Hours Per Response: AC 8050–5, 30 minutes; AC 8050–132, 45 minutes

DOT No: 3708

OMB No: New

Administration: Federal Aviation Administration

Title: Alcohol Misuse Prevention Program for Personnel Engaged in Specified Aviation Activities

Need for Information: The information is needed to respond to regulations promulgated in accordance with the Omnibus Transportation Employee Testing Act of 1991, enacted on October 28, 1991

Proposed Use of Information: The information submitted is intended to be the basis for monitoring industry implementation of and compliance with the FAA Alcohol Misuse Prevention Program. The information will also be used to evaluate the effectiveness of the program

Frequency: Annually

Burden Estimate: 23,862 hours

Respondents: Specified aviation employers

Form(s): FAA Industry Drug and Alcohol Program Annual Report Form

Average Burden Hours Per Response: 2 hours for reporting; 2 hours for recordkeeping

DOT No: 3709

OMB No: 2120–0535

Administration: Federal Aviation Administration

Title: Anti-Drug Program for Personnel Engaged in Specified Aviation Activities

Need for Information: The information is needed to respond to a DOT NPRM which proposes that employers in all segments of the transportation industry maintain and submit standardized anti-drug program information

Proposed Use of Information: The information submitted is intended to be the basis for monitoring industry implementation of and compliance with the FAA anti-drug rule, and for evaluating the effectiveness of the FAA antidrug program

Frequency: Annually

Burden Estimate: 32,742 hours

Respondents: Specified aviation employers

Form(s): FAA Industry Drug and Alcohol Program Annual Report Form

Average Burden Hours Per Response: 2 hours and 30 minutes for reporting; 3 hours for recordkeeping

DOT No: 3710

OMB No: New

Administration: U.S. Coast Guard

Title: Chemical Drug and Alcohol Testing of Commercial Vessel Personnel; Collection of Drug and Alcohol Testing Information

Need for Information: This information collection is needed by the Coast Guard to analyze, evaluate and monitor the effectiveness of its anti-drug testing program. Information gathered from this collection will give the Coast Guard a more comprehensive assessment of the critical program areas, including the deterrent effect of testing, employee drug abuse patterns, effectiveness of employer's rehabilitation policies and programs, and multi-drug abuse patterns

Proposed Use of Information: This information will be used by the Coast Guard to identify significant trends of drug abuse in the marine industry, and it will form the basis for program modification and improvement

Frequency: Annually

Burden Estimate: 7,262 hours

Respondents: Marine employers

Form(s): USCG Drug Testing Management Information System Data Collection Form

Average Burden Hours Per Response: 16 minutes for reporting; 15 minutes for recordkeeping

DOT No: 3711

OMB No: New

Administration: Federal Transit Administration

Title: Prevention of Alcohol Misuse in Transit Operations

Need for Information: The information is needed to properly monitor the effectiveness of the program and to ensure compliance with the rule

Proposed Use of Information: The information will be used to build a database to determine any necessary modifications or the continuing need for the rule

Frequency: Annually

Burden Estimate: 79,401 hours

Respondents: State and local governments, business or other for-

profit, non-profit institutions, and small businesses or organizations
Form(s): FTA Drug and Alcohol Testing Management Information System Data Collection Form
Average Burden Hours Per Response: 16 hours for reporting; 25 hours and 28 minutes for recordkeeping
DOT No: 3712
OMB No: New
Administration: Federal Transit Administration
Title: Prevention of Prohibited Drug Use in Transit Operations
Need for Information: The information is necessary to properly monitor the effectiveness of the program and to ensure compliance with the rule
Proposed Use of Information: The information will be used to build a database to help determine continuing need for the rule
Frequency: Annually
Burden Estimate: 66,974 hours
Respondents: State and local governments, businesses, or other for-profit, non-profit institutions, and small businesses or organizations
Form(s): FTA Drug and Alcohol Testing Management Information System Data Collection Form
Average Burden Hours Per Response: 16 hours for reporting; 33 hours and 10 minutes for recordkeeping.
DOT No: 3713
OMB No: 2125–0543
Administration: Federal Highway Administration
Title: Controlled Substances
Need for Information: To monitor the effectiveness of FHWA's anti-drug program and to ensure that motor carriers are complying with the requirement to conduct pre-employment, post-accident, reasonable suspicion and random drug testing
Proposed Use of Information: To measure the magnitude of the drug problem affecting highway safety and to analyze FHWA's current approach to detecting and deterring illegal drug use within the motor carrier industry
Frequency: Annually, Recordkeeping (2 years)
Burden Estimate: 1,178,366 hours
Respondents: Motor carriers
Form(s): FHWA Drug and Alcohol Testing Management Information System Data Collection Form
Average Burden Hours Per Response: 2 hours for reporting; 4 hours and 40 minutes for recordkeeping
DOT No: 3714
OMB No: New
Administration: Federal Highway Administration
Title: Controlled Substance and Alcohol Use and Testing
Need for Information: To monitor the effectiveness of FHWA's anti-alcohol program and to ensure that motor carriers are complying with the requirement to conduct pre-employment, post-accident, reasonable suspicion and random drug testing
Proposed Use of Information: To measure the magnitude of the alcohol problem affecting highway safety and to analyze FHWA's current approach to detecting and deterring illegal alcohol use within the motor carrier industry
Frequency: Annually, Recordkeeping (2 years)
Burden Estimates: 484,407 hours
Respondents: Motor carriers
Form(s): FHWA Drug and Alcohol Testing Management Information System Data Collection Form
Average Burden Hours Per Response: 1 hour for reporting; 1 hour and 56 minutes for recordkeeping
DOT No: 3715
OMB No: 2137–0579
Administration: Research and Special Programs Administration
Title: MIS Standardized Data Collection and Reporting
Need for Information: The information collection will provide a mechanism for evaluating the overall effectiveness of the pipeline operators' drug and alcohol testing program
Proposed Use of Information: The information will be used to monitor implementation and address compliance and enforcement issues
Frequency: Annually
Burden Estimates: 21,772 hours
Respondents: Pipeline operators
Form(s): RSPA Drug and Alcohol Testing Management Information System Data Collection Form
Average Burden Hours Per Response: 4 hours and 30 minutes for reporting; 4 hours and 30 minutes for recordkeeping
DOT No: 3716
OMB No: New
Administration: Research and Special Programs Administration
Title: Alcohol Misuse Prevention Program
Need for Information: The information collection will provide a mechanism for evaluating the overall effectiveness of the pipeline operators' alcohol misuse prevention program
Proposed Use of Information: The information will be used to monitor implementation and address compliance and enforcement issues
Frequency: Annually
Burden Estimates: 35,317 hours
Respondents: Pipeline operators
Form(s): RSPA Drug and Alcohol Testing Management Information System Data Collection Form
Average Burden Hours Per Response: 4 hours and 30 minutes for reporting; 10 hours for recordkeeping
DOT No: 3717
OMB No: 2130–0526
Administration: Federal Railroad Administration
Title: Control of Alcohol and Drug Use in Railroad Operations
Need for Information: The information is needed to deter the use of alcohol or drug involvement in railroad operations
Proposed Use of Information: FRA and the railroad industry will use this information to determine the extent of alcohol and drug problems and to curtail the widespread use of alcohol and drugs
Frequency: Annually, On occasion, Recordkeeping
Burden Estimates: 184,316 hours
Respondents: Railroads
Form(s): FRA–F–6180.73, FRA–F–6180.74, FRA–F–6180–91
Average Burden Hours Per Response: 39 hours and 38 minutes for reporting; 684 hours and 25 minutes for recordkeeping.

Issued in Washington, DC, on December 18, 1992.

Cynthia C. Rand,

Director of Information, Resource Management.

[FR Doc. 92–31237 Filed 12–21–92; 12:09 pm]

BILLING CODE 4910–62–M

Federal Highway Administration

Environmental Impact Statement; Blair and Centre Counties, PA

AGENCY: Federal Highway Administration (FHWA), DOT.
ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Blair and Centre Counties, Pennsylvania.

FOR FURTHER INFORMATION CONTACT:. Mr. John A. Gerner, District Engineer, Federal Highway Administration, 2228 Walnut Street, P.O. Box 1088, Harrisburg, Pennsylvania 17108–1088, Telephone: (717) 782–3411 or Joseph A. Walter, P.E., Liaison Engineer, Pennsylvania Department of Transportation, 1924–30 Daisy Street, Clearfield, Pennsylvania, 16039, Telephone: (814) 765–0440

SUPPLEMENTARY INFORMATION: The FWHA, in cooperation with the

Pennsylvania Department of Transportation (PennDOT), will prepare an Environmental Impact Statement for a section of US Route 220, in Blair and Centre Counties, Pennsylvania. Also included in the study will be consideration of improvements to US Route 322 from the eastern terminus of the four lane section of Route 322 approximately 1.0 miles west of Port Matilda to the western terminus of the four lane Mount Nittany Expressway on US Route 322.

Located between Bald Eagle and State College, this 20 mile project will improve the safety and relieve traffic congestion on these sections of US Routes 220 and 322. The southern terminus and study area limits will be the northern end of the existing 4-lane limited access section of US Route 220 approximately 1.0 mile southwest of Bald Eagle. The Northern terminus and study area limits will be the western end of the existing 4-lane limited access section of US Route 322 (Mount Nittany Expressway) approximately 2.3 miles northwest of the Borough of State College.

It is anticipated that at least six alternatives will be evaluated during the course of the study. Based on existing and projected traffic volumes, the build alternatives will be evaluated to determine the need for a four lane facility to accommodate the traffic volumes. The alternates under consideration are: Upgrading the existing facility, transportation system management, two alternatives on new location south of existing US Route 220, one alternative north of existing US Route 220 and the "No Build" alternate. Four interchanges will be evaluated, one being at the southern terminus in the vicinity of Bald Eagle, one in the vicinity of Port Matilda near the eastern terminus of the four lane section of US Route 322, one in the vicinity of Martha Furnace near the existing interchange of US Route 220 and 322, and one being at the northern terminus in the vicinity of Waddle.

A Preliminary Alternative Analysis will evaluate all suggested alternatives against the need and environmental and engineering constraints. A Plan of Study for the Environmental Impact Statement will be prepared and circulated to State and Federal agencies for those alternatives recommended as feasible by the Preliminary Alternative Analysis.

The second phase of the study process will consist of analyzing the alternatives selected for detailed study. These alternatives will be the basis for the detailed environmental studies and the Environmental Impact Statement. From this analysis a preferred alternative will be identified which best meets the needs of the traffic demand, and satisfies the environmental, socioeconomic, and engineering evaluations and public comments.

An active public participation program will be pursued during the project. At the beginning of the study, an advertisement will be placed in local newspapers and the Pennsylvania Bulletin informing the public and public agencies of the study and soliciting names of individuals, organizations and agencies interested in participating in the Study. A Citizens' Advisory Committee will meet regularly to provide liaison between the Commonwealth of Pennsylvania and local citizens, and participate in all aspects of the study. Public meetings will be held throughout the study to gather input to be used in the study and distribute information on the study. A Public Hearing will be held at the conclusion of the study to solicit comments from the public on alternatives presented. The Draft Environmental Impact Statement will be available for public and agency review and comment prior to the public hearing.

The U.S. Army Corps of Engineers and the Environmental Protection Agency will be invited to participate as cooperating agencies in development of the documents.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to PennDOT or the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernment consultation on Federal programs and activities apply to this program.)

George L. Hannon,

Assistant Division Administrator, Harrisburg, Pennsylvania.

[FR Doc. 92–31066 Filed 12–22–92; 8:45 am]

BILLING CODE 4910–22–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 247
Wednesday, December 23, 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).

COPYRIGHT ROYALTY TRIBUNAL

TIME AND DATE: Monday, January 11, 1993, at 11 a.m.

PLACE: 1825 Conn. Ave., NW., suite 918, Washington, DC 20009.

STATUS: Meeting closed pursuant to a vote taken December 16, 1992.

MATTERS TO BE CONSIDERED: Amendment of rules relating solely to the internal personnel rules and practices of the Tribunal.

CONTACT PERSON FOR MORE INFORMATION: Linda R. Bocchi, General Counsel, Copyright Royalty Tribunal, 1825 Conn. Ave., NW., suite 918, Washington, DC 20009, (202) 606–4400

Dated: December 17, 1992.

Cindy S. Daub,

Chairman.

COPYRIGHT ROYALTY TRIBUNAL

Certification of Closed Meeting

The General Counsel of the Copyright Royalty Tribunal hereby certifies, pursuant to 5 U.S.C. 552b(f)(1), and pursuant to section 301.14(b) of the Tribunal's rules, 37 CFR § 301.14(b), that the Tribunal's deliberations concerning the amendment of the Tribunal's rules regarding internal personnel matters scheduled to occur on January 11, 1993 (and from time to time thereafter up to 30 days as the Tribunal may, pursuant to 37 CFR § 301.14(a), find appropriate) may properly be closed to public observation.

The relevant exemptions on which this certification is based are set forth in the following provisions of law:

5 U.S.C. § 552b(c)(2) (internal personnel rules and practices of an agency)
37 CFR § 301.13(b) (internal personnel rules and practices of the Tribunal)

The recorded vote of each Commissioner taken December 16, 1992 on the question of a closed meeting is as follows:

Chairman Cindy Daub—Yes
Commissioner Edward Damich—Yes
Commissioner Bruce Goodman—Yes

It is anticipated that, in addition to the Commissioners of the Tribunal, the General Counsel will attend the Tribunal's deliberations.

Dated: December 17, 1992.

Linda R. Bocchi,

General Counsel.

[FR Doc. 92–31285 Filed 12–21–92; 2:28 pm]

BILLING CODE 1410–09–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration; Amendment to Sunshine Act Meeting

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on December 9, 1992 (57 FR 58283) of the regular meeting of the Farm Credit Administration Board (Board) scheduled for December 10, 1992. This notice is to amend the agenda for the closed session of that meeting.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of the meeting of the Board were open to the public (limited space available), and parts of the meeting were closed to the public. The agenda for December 10, 1992, is amended by revising the closed session to read as follows:

***Session Closed**

A. New Business

1. Enforcement Actions

2. Other

a. Request from Banks for Cooperatives to Temporarily Exceed the Legal Lending Limit to One Borrower.

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*Session Closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(4), (8) and (9).

Dated: December 17, 1992.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 92–31207 Filed 12–21–92; 9:25 am]

BILLING CODE 6705–01–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 1:00 p.m. on Monday, January 4, 1993, and at 8:30 a.m. on Tuesday, January 5, 1993, in Washington, DC.

By telephone vote on December 15, 1992, a majority of the members contacted and voting, the Board of Governors voted to close to public observation its meeting scheduled for January 4, which will involve consideration of possible actions to take in Docket 91–1073 before the United States Court of Appeals for the District of Columbia Circuit. The Board determined that pursuant to section 552b(c)(10) of Title 5, United States Code, and section 7.3(j) of Title 39, Code of Federal Regulations, discussion of this matter is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)].

In accordance with section 552b(f)(1) of title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in her opinion the meeting may properly be closed to public observation, pursuant to section 552b(c)(10) of title 5, United States Code; and section 7.3(j) of title 39, Code of Federal Regulations.

The January 5 meeting is open to the public and will be held at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W., in the Benjamin Franklin Room. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

Agenda

Monday Session

January 4—1:00 p.m. (Closed)

1. Consideration of Possible Actions in Docket 91–1073 before the United States Court of Appeals for the District of Columbia Circuit.

Tuesday Session

January 5—8:30 a.m. (Open)

1. Minutes of Previous Meetings, November 30–December 1 and December 15, 1992.
2. Remarks of the Postmaster General. (Marvin Runyon.)
3. Officers' Compensation. (Marvin Runyon.)
4. Annual Report on Sunshine Act Compliance. (David F. Harris, Secretary for the Board of Governors.)

5. Annual Report of the Postmaster General. (Deborah K. Bowker, Vice President, Communications.)

16. Annual Comprehensive Statement to Congress. (William T. Johnstone, Vice President, Government Relations.)

7. Election of Chairman and Vice Chairman.

8. Tentative Agenda for the February 1–2, 1993, meeting in Washington, DC.

David F. Harris,

Secretary.

[FR Doc. 92–31329 Filed 12–21–92; 3:49 pm]

BILLING CODE 7710–12–M

federal register

Wednesday
December 23, 1992

Part II

Nuclear Regulatory Commission

48 CFR Chapter 20
Acquisition Regulation (NRCAR); Final Rule

NUCLEAR REGULATORY COMMISSION

48 CFR Chapter 20

RIN 3150–AC01

Acquisition Regulation (NRCAR)

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is revising its Nuclear Regulatory Commission Acquisition Regulation (NRCAR) to establish requirements for the procurement of goods and services within the NRC to satisfy the particular needs of the agency. This rule expands the existing NRCAR to implement and supplement the government-wide Federal Acquisition Regulation (FAR). This rule applies to all contracts, including small purchases, where specified, awarded on or after the effective date, and to modifications awarded on or after the effective date which require a justification for other than full and open competition.

EFFECTIVE DATE: January 22, 1993.

FOR FURTHER INFORMATION CONTACT: Edward L. Halman, Director, Division of Contracts and Property Management, Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 492–4347.

SUPPLEMENTARY INFORMATION:

Background

The policies and procedures of the Federal Government regarding the procurement of supplies and services have been developed in a largely independent fashion. Many statutes bearing on Federal contracting have been directed toward specific agencies. Federal agencies traditionally have developed their own contracting procedures with limited attention to uniformity among agencies. The result was a system of procurement policies that varied from agency to agency, causing confusion within the contracting community. As long ago as 1972, the Commission on Government Procurement recommended that there be a standard Government-wide procurement regulatory system. The Office of Federal Procurement Policy, created in 1974, has worked with the agencies and the public to create a uniform procurement regulation known as the Federal Acquisition Regulation (FAR).

The FAR has been promulgated as the uniform, simplified acquisition regulation called for by Executive Order 12352, Federal Procurement Reforms. The FAR, which was issued by the General Services Administration, Department of Defense, and National Aeronautics and Space Administration, superseded the Defense Acquisition Regulation (DAR), the Federal Procurement Regulation (FPR), and the National Aeronautics and Space Administration Procurement Regulation (NASAPR) on April 1, 1984. The FAR was published in the **Federal Register** on September 19, 1983 (48 FR 42102) with an effective date of April 1, 1984. The FAR is codified as chapter 1 of title 48 of the Code of Federal Regulations.

Because of differing statutory authorities among Federal agencies, the FAR authorizes agencies to issue regulations to implement FAR policies and procedures internally and to include additional policies and procedures, solicitation provisions or contract clauses to satisfy the specific needs of the agency. The regulations being published today represent the NRC's necessary implementation and supplementation of the FAR.

Debarment, Suspension and Ineligibility

A single provision of the NRCAR was published as a final rule July 1, 1992 (57 FR 29220). That provision only contained agency debarment, suspension and ineligibility procedures. This rule publishes the NRCAR in its entirety, including the debarment procedures.

Organizational Conflicts of Interest

The proposed rule, which was published for public comments on October 2, 1989 (54 FR 40420), contained organizational conflicts of interest (COI) provisions which prohibited contractors from doing work for others that fell within the broad-scope of the underlying contract.

On August 15, 1991, the Commission approved a revision to its proposed NRCAR modifying the Agency's COI policy. The thrust of this revision limited COI restrictions to the relatively narrow scope and shorter duration of individual task orders rather than to the entire scope and term of the basic contract. While the NRC believed that the revised policy would increase competition for NRC technical assistance and research work, additional restrictions were added to (a) avoid the potential for unfair competitive advantage that could result if NRC contractors were permitted to market their services while working for NRC at a licensee site, and (b) ensure that NRC contractors do not have divided financial interests while working at a licensee site.

Two of NRC's major technical assistance and research contractors commented that the COI provision, approved on August 15, 1991, was overly restrictive and would impede rather than enhance NRC's ability to increase competition in the technical assistance marketplace. Therefore, the NRC held a public meeting on March 26, 1992, in order that all interested parties could provide further comments on the proposed revision of the Commission's COI policy or provide alternatives that would achieve an equivalent level of COI protection (57 FR 4652; February 6, 1992).

The nature of the comments received in connection with the March 26, 1992, meeting varied with respect to how the commenters viewed the restrictiveness reflected in the proposed revision to the COI policy. While a number of commenters found the existing COI language adequate, others stated the policy was overly restrictive and lacking in flexibility.

The Commission has considered the comments concerning the substantial restrictions against performing any work at an NRC licensee site where the contractor performs on-site work for NRC, coupled with the lack of flexibility in applying this restriction, and agrees that exceptions to the blanket restriction may be permitted in appropriate cases. Thus, the Commission has modified the restriction to authorize the NRC contractor to perform work for NRC licensees at the site of work performed for NRC if:

(a) The work is not in the same technical area as the work performed for NRC; and

(b) The contracting officer determines that the specific situation will not pose a potential for technical bias or unfair competitive advantage.

In making the determination, the contracting officer will consider factors such as: the relative value of the work for NRC; whether there has been an on-going contractual or financial relationship between the NRC contractor and the NRC licensee that predates the NRC contract; whether the NRC contractor gained information about the availability of work for the NRC licensee as a result of contractor access to the site under the NRC contract; the relative amount of time spent at the site by the NRC contractor's personnel; whether the work for NRC at the site is specific or is a part of a generic task or contract; and any other factors that may indicate financial ties or competitive advantage.

requirement to disclose all other work proposed to be done by the contractor for others that may give rise to a COI situation. The specific objection related to the requirement that the NRC be informed of the work at least 15 days in advance of undertaking the work. Some companies complained that it is difficult for diversified firms to ensure that the division performing the work for NRC would be aware of the work by other divisions 15 days in advance in all cases. Giving due consideration to these comments, the Commission has modified the provision to require that the contractor use due diligence to identify and obtain information about work for others that would fall within the scope of the NRC contract, and report the information to NRC 15 days in advance of undertaking the work. The Commission has also added a corresponding provision which indicates that the contracting officer may approve reporting not in accordance with this provision in cases where the contractor justifies the deviation on the grounds of urgency or by showing that despite the exercise of due diligence, the contractor's officials responsible for the NRC contract were not aware of the work for others falling within this provision.

The above revision to the Commission's COI policy has published as a proposed rule August 18, 1992 (57 FR 37140). The final draft rule which was not changed from the proposed rule was approved by the Commission November 2, 1992. This final rule incorporates the November 2, 1992, COI language.

Administrative Procedure Act

Section 553 of the Administrative Procedure Act (5 U.S.C. 551 et seq) exempts rules relating to public contracts from the prior notice and comment procedure normally required for informal rulemaking. However, the Office of Federal Procurement Policy (OFPP), Office of Management and Budget, has established procedures to be used by all Federal agencies in the promulgation of procurement regulations. OFPP Policy Letter 83–2 states that an agency must provide an opportunity for public comment before adopting procurement regulation if the regulation is "significant."

This regulation is issued principally to create one body of guidance incorporating previously cleared procedures, to exercise delegations established by the FAR and to adopt other procedures that will not have a cost or administrative impact on contractors. The NRC issued its acquisition regulation proposed rule for public comment on October 2, 1989 (54 FR 40420). The section on organizational conflicts of interest was issued for public comment on August 18, 1992 (57 FR 37140).

Public Comments

A proposed rule was published in the Federal Register on October 2, 1989 (54 FR 40420). Three organizations commented and all comments were considered in the development of this final rule. The comments and responses are summarized below, in the order of the NRCAR text with the exception of organizational conflicts of interest which is contained in a separate subsection.

One commenter suggested that NRCAR 2001.402, concerning policies for deviations from the FAR and the NRCAR, is instructional language that should be excluded from the NRCAR and issued through an NRC internal issuance. This policy, as much as any other internal concurrence or approval, affects the flow of the procurement process. Just as the FAR has a parallel Subpart 1.4, and numerous other specified internal concurrences and approvals, this section is an important part of the NRCAR. In addition, the place to specify the policies for deviating from any requirement is in the policy itself. This section remains in the NRCAR.

One commenter suggested that NRCAR 2001.602–3, Ratification of Unauthorized Commitments, is unnecessary. However, this provision specifies which officials within NRC may approve ratifications. It also specifies the information which must be provided to seek approval of a ratification. The contracting community can be profoundly affected by these policies. Therefore, this section remains in the NRCAR.

One commenter asked if NRCAR 2009.1, Responsible Prospective Contractors, provides special treatment to a firm predominantly staffed by former NRC employees, none of whom were employed by the NRC within the last two years. It does not. NRCAR 2009.1 is designed to prevent preferential treatment under the "revolving door" concept. To extend this restriction beyond two years is not practical in terms of recordkeeping and would be unduly restrictive for individuals whose firms have either survived or formed after a reasonable hiatus from government employment.

One commenter suggested that the NRCAR requirement found at § 2009.405–2(a) for a certification of debarment status is inconsistent with FAR clause 52.209.5. FAR clause 52.209–5 was added to the FAR in 1989. Therefore, the NRCAR clause is no longer necessary and has been removed from the final rule.

One commenter suggested that NRCAR 2009.570–3(c) contains instructional language that should be excluded from the NRCAR and promulgated through one of the NRC internal issuances. This section contains examples of conflicts for the information of potential contractors, as well as NRC staff and therefore, belongs in the survey. These examples are formatted to be similar to those in FAR 9.508, Examples, but the examples are specific to the NRC. The guidance provided after each example is used to illustrate, for potential contractors, as well as NRC staff, the possible resolution of each situation. Therefore, this section remains in the NRCAR.

One commenter questioned why § 2014.201–670(b)(1) requires that past experience be described in all bids. This requirement has been edited to make it optional to fit circumstances. In some instances there is little or no procurement history available, the information requested concerning bidder qualifications and past experience enables the contacting officer to query the contacts identified and ascertain the offeror's performance record, integrity and business ethics.

One commenter suggested moving paragraphs (d) and (e) of NRCAR 2052.214–72, Bid Evaluations, to a new section NRCAR 2014.404–2. This information on materially unbalanced bids and separate charges remains in the provision because knowledge of this information can affect acceptance of the bid. These situations have occurred enough to merit including this information in the provision.

One commenter expressed concern that the requirement for all proposed work to be considered as stated in NRCAR 2019.705–2, Determining the Need for a Subcontracting Plan, is inconsistent with FAR 19.705–2. Both texts state that all proposed contract actions must be considered when determining whether a subcontracting plan will be required. NRCAR 2019.705–2 is therefore an unnecessary duplication and has been removed from the final rule.

One commenter suggested that NRCAR 2019.705–4, Reviewing the Subcontracting Plan, duplicates the FAR (19.7). However, the NRCAR text provides additionally that subcontracting plans may be requested from all concerns in the competitive range, and clarifies conditions for acceptance of master subcontracting plans. Because these provisions are not

in the FAR, the NRCAR text is necessary to provide consistent treatment of proposers.

One commenter suggested that NRCAR 2020.102 duplicates the FAR (20.3). However, the NRCAR text identifies the office that needs to be contacted for labor surplus area set-asides.

A commenter stated that the additional patent reporting requirements stated in NRCAR 2027.305–3 go beyond those required by the FAR. FAR 27.305–3(a) states that Agencies shall maintain appropriate procedures to protect the Government's interest and to check that subject inventories are identified and disclosed. The reporting described in the NRCAR simply requires the contractor to certify that no patent or similar activities took place under the contract. This response is necessary to document that the contractor has not generated work to which the Federal government might have technical or economic rights. This requirement remains in the NRCAR.

One commenter suggested that NRCAR 2035.71, Broad Agency Announcements, duplicates FAR 35.016, Broad Agency Announcement. The duplicate text has been removed from the final rule.

One commenter suggested that NRCAR 2042.803(b) be revised to state that audit cost issues will be resolved within 30 days when payment has not already been made to the contractor. The period in other situations would remain at six months. Contractors who have a need to receive payment due to a hardship currently can offer to help expedite the decision making process. Otherwise, six months is a reasonable period of time for receiving and reviewing audit reports, preparing positions and correspondence, and conducting negotiations. Because the process is dependent on a number of inputs, including the contractor's, the language has been clarified to indicate that "within six months" is a goal, not a deadline.

One commenter suggested that a standard for technical performance reports, OMB Circular A–110, Attachment H, Monitoring and Reporting Program Performance, be used, and took exception to monthly reporting requirements in NRCAR clause 2052.212–71, Technical Progress Report. The requirements of OMB Circular A–110 are applicable only to certain financial assistance awards; and are not appropriate for NRC contracts. However, the prescription for the NRCAR clause 2052.212–71 states that the contracting officer may alter the clause. This prescription has been strengthened to clarify that the frequency of reporting is set at whatever frequency is meaningful and productive for each contract, considering the size and complexity of the particular project or program.

One commenter suggested that a standard for financial assistance, OMB Circular A–110, Attachment G.3.a, Financial Status Report, should be used to set the frequency of submission for Financial Status Reports under NRC contracts. The prescription for NRCAR 2052.212–72, Financial Status Report, states that the contracting officer may alter the clause. This prescription has been strengthened to clarify that the frequency of reporting is set at whatever frequency is meaningful and productive for each contract.

Paragraph (a) of NRCAR provision 2052.214–72 is duplicative of FAR clause 52.214–4, False Statements, and has been removed from the final rule.

It was suggested by one commenter that NRCAR clause 2052.215–76 be modified to require that cost related information on proposed subcontracts be included in the cost proposal, rather than the technical and management proposal. This change has been made to the final rule.

The same commenter recommended that paragraph (e)(4) of NRCAR clause 2052.215–76 permit offerors to address the criteria enumerated under paragraphs (e)(4)(i) through (e)(4)(xix) in other than the manner and sequence outlined. This would lead to inconsistences and difficulties in evaluating proposals. The commenter suggested that the proposed change would provide offerors with flexibility to develop and structure their respective technical and management proposals in a format consistent with the stated evaluation criteria contained in an NRC solicitation. However, NRCAR 2015.407–70(b)(2) already states that the provision must be tailored to assure that all sections reflect the evaluation criteria. Therefore, no change has been made to the final rule.

One commenter suggested that the NRCAR clause 2052.215–76 should be expanded to include guidance for completion of the referenced Contractor Spending Plan. NRC's internal instructions provide only a suggested format which must, as the internal guidance states, be modified to meet each situation. The plan format developed for each specific proposed contract will appear in the Request for Proposal. While a Contractor Spending Plan is required for each applicable contract, the degree of flexibility permitted to the contracting officer is such that guidance for completion of each plan is not appropriate in this regulation. No change is made to the provision for this purpose.

Subpart 4.603, Solicitation Provision, which requires in provision § 52.204–4 that contractors provide Data Universal Numbering System (DUNS) information, was added to the FAR by Federal Acquisition Circular 84–50. Therefore, NRCAR clause § 2052.215–73, Data Universal Numbering System (DUNS), is no longer required and has been removed from the final rule.

A comment was made that section 24, Public Law 100–679, exempts universities from having to comply with the Federal Travel Regulations if they follow their own travel policies in accordance with OMB Circular A–21, Cost Principles for Educational Institutions. Therefore, the commenter stated, NRCAR clause 2052.215–79, (formerly § 2052.215–75) Travel Reimbursement, should be modified in accordance with part 31 of the FAR, and several OMB Circulars, including A–21 (cost principles applicable to universities). A second commenter suggested that the clause be amended to be consistent with FAR part 31.205–46. NRCAR clause 2052.215–79 has been modified to make these clarifications. With these changes and the deletion of the word "domestic" from the first sentence of paragraph (c), paragraph (d) is no longer necessary and has been removed from the final rule.

One commenter states that NRCAR clause 2052.215–80, Travel Approvals, is inconsistent with OMB Circular A–21, when it says that "all domestic travel requires the prior approval of the project officer." OMB Circular A–21, Paragraph J.43.f of A–21, which is applicable to both direct and indirect costs, states that "domestic travel cost are allowable when permitted by the sponsoring agreement." Paragraph C.2 of A–21, Factors Affecting Allowability of Costs, states that in order for costs to be allowable, "they must conform to any limitations or exclusions set forth in these principles or in the sponsored agreement as to types or amounts of cost items." The NRC has reserved to project officers, whose role includes monitoring work and associated costs, the ability to determine that domestic travel costs are necessary and prudent expenditures under the contract. No change to this provision has been made in the final rule.

One commenter suggested that provision § 2052.216–74, Task Order Procedures, should specify the task order proposal due date which has been set by mutual agreement. Task ordering contracts are negotiated for needs that are not clearly defined and which will

need to be provided for quickly. The NRC contract administrator is responsible for setting a due date which reflects the agency's needs. If circumstances arise which prevent it from meeting the due date, the contractor should alert the contract administrator at the earliest opportunity. Therefore, no change is made to the provision of the final rule.

NRCAR clause 2052.235–70, Publication of Research Results, has been revised to clarify the requirements for the use of NRC Management Directives.

NRCAR clause 2052.245–71, Private Use of Contract Information and Data is deleted, since NRCAR clauses 2052.235–70 and 2052.235–71 provide adequate coverage.

Organizational Conflicts of Interest

Comments on the COI language contained in the proposed rule published on October 2, 1989 (54 FR 40420):

One commenter suggested that NRCAR 2009.570–5 and the additions to the general organizational conflicts of interest clause set forth under contract clauses §§ 2052.209–76 and 2059.209–77 conflicts restrictions should only be applied to work which is the same or similar to NRC work. The commenter stated that this would protect the NRC against situations which may (a) result in providing an offeror or contractor with an unfair competitive advantage, or (b) impair the offeror's or contractor's objectivity in performing work for the NRC. Paragraph (2) of § 2052.209–76, which would have required prior approval of the contracting officer to perform same or similar services; has been deleted and a new paragraph (§ 2052.209.73(c)(3)) has been added to the final rule. The paragraph prohibits the contractor from performing any of the following activities for a period of one year upon completion of work at a licensee or applicant site: (1) Soliciting work at that site; (2) performing work at that site; and (3) performing work in the same technical area for the licensee or applicant organization regardless of location. While the deletion may lead to some situations whereby NRC will not be able to issue some task orders to a contractor because of the contractor's other work for licensees started after the beginning of the NRC contract, the NRC believes that other alternatives exist to get the work accomplished. The new paragraph will minimize situations of unfair competitive advantage. Language has been added to NRCAR 2052.209–73(d)(3) to limit denial of approval under task order contracts to situations where NRC has issued to plans to issue a task order in the same technical area or at the site.

A commenter suggested that paragraph (d), Disclosure After Award, be deleted in its entirety from NRCAR clause 2052.209–74 (currently § 2052.209–73(d)(3)). The commenter states that NRCAR 2052.209–74(c) already requires contractors to make immediate and full disclosure. However, paragraph (d)(1) also requires the contractor to provide a negative response. Paragraph (d)(3) additionally requires that any disclosure must include a description of action taken to avoid or mitigate such conflicts. NRCAR 2052.209–77 (currently § 2052.209.73(d)) requires that additional text be added to paragraph (d)(3), to clarify the applicability to task orders. Therefore, paragraph (d) is not deleted.

One commenter proposed that NRCAR clause 2052.209–77 (currently § 2052.209.73(d)(3)), Contractor Organizational Conflicts of Interest-Language for Task Order Contracts, imposes a burdensome information reporting requirement. Paragraph (d)(3) provides that the contractor will disclose all proposed new work of any type involving NRC licensees or applicants. The commenter suggested a change in the wording to "the same as, or substantially similar to." The commenter states correctly that this disclosure is necessary regardless of whether the proposed activities represent a potential or actual conflict of interest with work being performed for the NRC. Additionally, circumstances other than the nature of a contractor's work, such as its financial ties to a licensee could constitute a conflict of interest. Consequently, the disclosure requirements in paragraph (d)(3) remain unchanged in order that the Contracting Officer be provided with all requisite information in reaching a determination on organizational conflicts of interests. Therefore, no change is made to paragraph (d)(3) of this clause.

One commenter suggested that the contracting officer should be permitted to alter any conflict of interest clause. The clauses currently provide for basic policies to be applied in all or designated cases. Waivers or contracting officer decisions would provide flexibility in policy application. Open-ended altering of the basic policies would cause inequities and unnecessary delays to the procurement process. Therefore, the language is not changed for this purpose.

Comments on the COI language on the August 18, 1992 proposed rule (57 FR 37140):

Only one comment was received. It endorsed the proposed rule changes. The commenter also provided certain comments on implementation of the rule change. The commenter indicated that implementation of the rule should permit an NRC contractor to discuss and reach agreement with the NRC contracting officer concerning the application of the proposed restrictions to certain types of work for others which the contractor may wish to solicit in advance of such solicitation. The rule proposed would permit such discussion provided that the contractor can provide the contracting officer with the information, outlined above, to enable the contracting officer to determine that the situation will not pose a potential for technical bias or unfair competitive advantage. The commenter also indicated that it expected that, in instances in which the contractor expresses an interest in pursuing totally unrelated activities, a determination permitting an exception to the work for others restrictions would be a timely and routine matter. Under the proposed rule, exceptions from the work for others restrictions is a matter of discretion of the contracting officer, provided that contracting officer is able to reach a determination, on the basis of the factors discussed above, that the proposed work for others will not pose a potential for technical bias or unfair competitive advantage. The fact that the proposed work is totally unrelated to work being done for NRC would be an important factor in such a determination, but the other factors outlined above would also need to be considered.

Other Revisions

Since the proposed rule was published (October 2, 1989; 54 FR 40420) other amendments to proposed NRCAR text have been made as a result of internal review, changes in the Federal Acquisition Regulation, and coordination with other agencies. The amended sections are:

Section 2015.604 which incorporates the Procurement Integrity Act.

Section 2015.610 which provides more specific guidance on the conduct of written and oral discussions.

Section 2015.611 which clarifies the Source Evaluation Panel's basic role as one of fact-finding and scoring.

Section 2009.405–2, in which paragraph (a) has been deleted to be consistent with FAR 9.404.

Section 2009.570–8 which exempts supply subcontractors and includes the

$10,000 threshold requiring offerors and contractors to have subcontractor and consultants submit a COI representation.

Section 2012.104–70 which gives the Contracting Officer more discretion in determining the reporting schedule.

Section 2014.201–670(b)(1) which makes the inclusion of this section optional to fit the circumstances.

Section 2052.214–72, in which paragraph (a) has been removed because it duplicated FAR 14.201–6(b)(4) and the clause cite has been changed to "FAR Subpart 1".

Section 2019.705–2 which has been removed because it duplicated FAR.

Section 2035.71 in which paragraphs (a) and (b) (4) and (2) have been removed because they duplicated FAR.

Section 2052.215–73, which has been removed because it duplicated FAR 4.603.

Section 2052.216–70, which segregates professional and clerical staff years.

Section 2052.235–71 which has been removed because it was inconsistent with Executive Order No. 12591.

Environmental Impact: Categorical Exclusion

The NRC has determined that this regulation is the type of action described in the categorical exclusion set forth in 10 CFR 51.22(c) (5) and (6). Therefore, neither an environmental impact statement nor an environmental assessment is required for this rule.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget approval number 3150–0169.

The information collection requirements were submitted to OMB at the proposed rule stage. At that time, OMB denied approval. OMB believed that rather than promulgating an NRC regulation, NRC should forward those provisions appropriate for inclusion in the FAR to the FAR Councils for consideration in accordance with FAR 1.304(c). OMB further requested that publication of provisions relating to Conflict of Interest Policies Applicable to Consultants await implemtation in the FAR. It is the NRC's position that because we are required by law to have separate procurement regulations implementing the FAR and these provisions only apply to the special circumstances of the NRC, the provisions of the NRCAR are not appropriate for inclusion in the FAR for government wide usage. In addition, in accordance with Sec. 8, Public Law 95–601, adding Sec. 170A to Public Law 83–703, 68 Stat. 919, as amended (42 U.S.C. 2210a), NRC's organizational conflicts of interest provision takes precedence over the FAR 9.5, Organizational and Consultant Conflicts of Interest. However, where non-conflicting guidance appears in FAR 9.5, the NRC shall follow that guidance. With these considerations, NRC therefore requested OMB approval of the information collection requirements at the final rule stage and OMB subsequently approved these requirements.

The public reporting burden for this collection of information is estimated to average 10.7 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 this burden, to the Information and Records Management Branch (MNBB–7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019, (3150–0169), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

This final rule establishes the procedures and requirements necessary to implement and supplement the FAR. The final rule presents the regulations necessary to ensure that the regulations governing the procurement of goods and services within the NRC satisfy the particular needs and requirements of the NRC. This final rule constitutes an administrative action governing the procurement activities of the NRC. These provisions would not have an adverse economic impact on any contractor or potential contractor because they merely supplement the requirements applicable to the acquisition of goods and services by the agency. By clearly and explicitly implementing the FAR and presenting those additional provisions necessary to reflect the needs of the NRC, the final rule would allow a contractor or potential contractor to understand more easily the regulations to be used in soliciting, evaluating and awarding contracts for the provision of goods and services. This constitutes the regulatory analysis for this final rule.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. The final rule establishes the procedures and requirements necessary to implement and supplement the FAR which will govern the acquisition of goods and services by the NRC. To the extent that the final rule effects a small entity, it sets out provisions applicable to small business and to small, disadvantaged business concerns.

Backfit Analysis

The NRC has determined that a backfit analysis is not required for this final rule because it does not involve any provision which would impose backfits as defined in 10 CFR part 50.109(a)(1).

List of Subjects

48 CFR Parts 2001, 2002, 2003, 2004, and 2005

Government procurement, Nuclear Regulatory Commission Acquisition Regulations.

48 CFR Part 2009

Government procurement, Nuclear Regulatory Commission Acquisition Regulations, Reporting and recordkeeping requirements.

48 CFR Parts 2010, 2012, and 2013

Government procurement, Nuclear Regulatory Commission Acquisition Regulations.

48 CFR Parts 2014 and 2015

Government procurement, Nuclear Regulatory Commission Acquisition Regulations, Reporting and recordkeeping requirements.

48 CFR Parts 2016 and 2017

Government procurement, Nuclear Regulatory Commission Acquisition Regulations.

48 CFR Part 2019

Government procurement, Nuclear Regulatory Commission Acquisition Regulations, Reporting and recordkeeping requirements.

48 CFR Parts 2020, 2022, 2024, and 2025

Government procurement, Nuclear Regulatory Commission Acquisition Regulations.

48 CFR Part 2027

Government procurement, Nuclear Regulatory Commission Acquisition

Regulations, Reporting and recordkeeping requirements.

48 CFR Parts 2030, 2031, 2032, 2033, 2035, and 2039

Government procurement, Nuclear Regulatory Commission Acquisition Regulations.

48 CFR Part 2042

Government procurement, Nuclear Regulatory Commission Acquisition Regulations, Reporting and recordkeeping requirements.

48 CFR Part 2045

Government procurement, Nuclear Regulatory Commission Acquisition Regulations.

48 CFR Part 2052

Government procurement, Nuclear Regulatory Commission Acquisition Regulations, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, 5 U.S.C. 552 and 553, and FAR subpart 1.3, the NRC is revising chapter 20 to title 48 of the Code of Federal Regulations.

CHAPTER 20—NUCLEAR REGULATORY COMMISSION

PART

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2003 Improper business practices and personal conflicts of interest
2004 Administrative matters

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

2005 Publicizing contract actions
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SUBCHAPTER A—GENERAL

PART 2001—NUCLEAR REGULATORY COMMISSION ACQUISITION REGULATION SYSTEM

Subpart 2001.1—Purpose, Authority, Issuance

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Subpart 2001.3—Agency Acquisition Regulations

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Subpart 2001.4—Deviations from the FAR and the NRCAR

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2001.403 Individual deviations.
2001.404 Class deviations.

Subpart 2001.6—Contracting Authority and Responsibilities

2001.600–70 Scope of subpart.
2001.601 General.
2001.602–3 Ratification of unauthorized commitments.
2001.603 Selection, appointment, and termination of appointment.

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841; 41 U.S.C. 418(b)).

Subpart 2001.1—Purpose, Authority, Issuance

2001.101 Purpose.

This subpart establishes chapter 20, the Nuclear Regulatory Commission Acquisition Regulation (NRCAR), and provides for the codification and publication of uniform policies and procedures for acquisitions by the NRC. The NRCAR is not, by itself, a complete document. It must be used in conjunction with the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1).

2001.102 Authority.

The NRCAR and the amendments to it are issued by the Director, Office of Administration, under a delegation from the Executive Director for Operations in accordance with the authority of the Atomic Energy Act of 1954, as amended (42. U.S.C. 161), the Energy Reorganization Act of 1974 (42 U.S.C. 5841, 5872), the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)), as amended, FAR Subpart 1.3, and other applicable law.

2001.103 Applicability.

The FAR and NRCAR apply to all NRC acquisitions of supplies and services which obligate appropriated funds, except as exempted by Sections 31 and 161 of the Atomic Energy Act of 1954 as amended, and Section 205 of the Energy Reorganization Act of 1974 as amended. For procurements made from nonappropriated funds, the Director, Division of Contracts and Property Management, shall determine the rules and procedures that apply.

2001.104 Issuance.

2001.104–1 Publication and code arrangement.

(a) The NRCAR and its subsequent changes are:

(1) Published in the daily issue of the Federal Register; and

(2) Codified in the Code of Federal Regulations (CFR).

(b) The NRCAR is issued as 48 CFR Chapter 20.

2001.104–2 Arrangement of the regulations.

(a) *General.* Chapter 20 is divided into parts, subparts, sections, subsections, paragraphs, and further subdivisions as necessary.

(b) *Numbering.* The numbering system and part, subpart and section titles used in this chapter 20 conform with those used in the FAR as follows:

(1) Where chapter 20 implements the FAR or supplements a parallel part, subpart, section, or paragraph of the

FAR, that implementation or supplementation is numbered and captioned to the FAR part, subpart, section, or subsection being implemented or supplemented, except that the implementation or supplementation is preceded with a 20 or 200 so that there will always be four numbers to the left of the decimal. For example, NRC's implementation of FAR 1.104–1 is shown as 2001.104–1 and the NRC's implementation of FAR 24.1 is shown as 2024.1.

(2) When NRC supplements material contained in the FAR, it is given a unique number containing the numerals "70" or higher. The rest of the number parallels the FAR part, subpart, section, subsection, or paragraph it is supplementing. For example, Section 170A of the Atomic Energy Act of 1954, as amended, requires a more comprehensive organizational conflict of interest review for NRC than is contemplated by FAR 9.5. This supplementary material is identified as 2009.570.

(3) Where material in the FAR requires no implementation or supplementation, there is no corresponding numbering in the NRCAR. Therefore, there may be gaps in the NRCAR sequence of numbers where the FAR requires no further implementation.

(c) *Citation.* The NRCAR will be cited in accordance with Federal Register Standards approved for the FAR. Thus, this section when referred to in the NRCAR is cited as 2001.104–2(c). When this section is referred to formally in official documents, such as legal briefs, it should be cited as "48 CFR 2001.104–2(c)." Any section of the NRCAR may be formally identified by the section number, e.g., "NRCAR 2001.104–2." In the NRCAR, any reference to the FAR will be indicated by "FAR" followed by the section number, for example FAR 1–104.

2001.104–3 Copies.

Copies of the NRCAR in Federal Register and CFR form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

2001.105 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

(b) The information collection requirements contained in this part appear in 2009.570–3(b)(1)&(2), 2009.570–3(c), 2009.570–3(c)(4)(ii), 2009.570–5(b), 2009.570–8, 2014.201–670, 2015.607, 2019.705–4(a), 2027.305–3(a), 2042.803(a)(b), 2052.204–70(b)(j)&(k), 2052.204–71, 2052.204–72, 2052.209–71, 2052.209–72, 2052.209–73(d)(2)&(3)&(f), 2052.210–70(b), 2052.210–71, 2052.212–70, 2052.212–71, 2052.212–72, 2052.213–73, 2052.214–71, 2052.214–72(e), 2052.214–74, 2052.214–75, 2052.215–70, 2052.215–71(f), 2052.215–76, 2052.215–77, 2052.216–74, 2052.235–70, 2052.235–71, and 2052.235–72.

Subpart 2001.3 Agency Acquisition Regulations

2001.301 Policy.

Policy, procedures, and guidance of an internal nature will be promulgated through internal NRC issuances such as Management Directives, or Division of Contracts and Property Management Instructions.

2001.303 Public participation.

FAR 1.301 and Section 22 of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 418b) require rulemaking for substantive acquisition rules, but allow discretion in the matter for other than significant issues meeting the stated criteria. Accordingly, the NRCAR has been promulgated and may be revised from time to time in accordance with FAR 1.301. This procedure for significant subject matter generally involves issuing a notice of proposed rulemaking, inviting public comment, review and analysis of comments received, and publication of a final rule. The final rule includes a discussion of the public comments received and describes any changes made as a result of the comments.

Subpart 2001.4—Deviations From the FAR and the NRCAR

2001.402 Policy.

(a) Requests for authority to deviate from the provisions of the FAR or the NRCAR must be signed by the requesting office and submitting to the Director, Division of Contracts and Property Management, in writing as far in advance as possible. Each request for deviation must contain the following:

(1) A statement of the deviation desired, including identification of the specific paragraph number(s) of the FAR or NRCAR from which a deviation is requested;

(2) The reason why the deviation is considered necessary or would be in the best interest of the Government;

(3) If applicable, the name of the contractor and identification of the contract affected;

(4) A statement as to whether the deviation has been requested previously and, if so, circumstances of the previous request (including the result of that request);

(5) A description of the intended effect of the deviation;

(6) A statement of the period of time for which the deviation is needed; and

(7) Any pertinent background information which will contribute to a full understanding of the desired deviation.

2001.403 Individual deviations.

In individual cases, deviations from either the FAR or the NRCAR will be authorized only when essential to effect a necessary acquisition or where special circumstances make the deviations clearly in the best interest of the Government. Individual deviations must be authorized in advance by the Director, Division of Contracts and Property Management.

2001.404 Class deviations.

Where deviations from the FAR or NRCAR are considered necessary for classes of contracts, requests for authority to deviate must be submitted in writing to the Director, Division of Contracts and Property Management, who will consider the submission jointly with the Chairperson of the Civilian Agency Acquisition Council, as appropriate.

Subpart 2001.6—Contracting Authority and Responsibilities

2001.600–70 Scope of subpart.

This subpart deals with the placement of contracting authority and responsibility within the agency, the selection and designation of contracting officers, and the authority of contracting officers.

2001.601 General.

(a) Contracting authority vests in the Chairman. The Chairman has delegated this authority to the Executive Director for Operations (EDO). The EDO has delegated this authority to the Director, Office of Administration (ADM). The Director, ADM, has delegated the authority to the Director, Division of Contracts and Property Management, who, in turn, makes contracting officer appointments within the Headquarters and Regional Offices. All of the above delegations are formal written

delegations containing dollar limitations and conditions.

(b) The Director, Division of Contracts and Property Management, establishes contracting policy throughout the agency; monitors the overall effectiveness and efficiency of the agency's contracting office; establishes controls to assure compliance with laws, regulations, and procedures; and delegates contracting officer authority.

2001.602–3 Ratification of unauthorized commitments.

(a) The Government is not bound by agreements or contractual commitments made to prospective contractors by persons to whom contracting authority has not been delegated. Any unauthorized commitment may be in violation of the Federal Property and Administrative Services Act, other Federal laws, the FAR, the NRCAR, and good acquisition practice. Certain requirements of law and regulation necessary for the proper establishment of a contractual obligation may not be met under an unauthorized commitment; for example, the certification of the availability of funds, justification for other than full and open competition, competition of sources, determination of contractor responsibility, certification of current pricing data, price/cost analysis, administrative approvals, and negotiation of appropriate contract clauses.

(b) The execution of otherwise proper contracts made by individuals without contracting authority, or by contracting officers in excess of the limits of their delegated authority, may later be ratified. To be effective, the ratification must be in the form of a written procurement document clearly stating that ratification of a previously unauthorized commitment is intended. All ratifications must be approved by the Competition Advocate except that ratifications of procurement actions valued at $2,500 or less may be approved by the appropriate Regional Administrator or at a level above the appropriate Headquarters Contracting Officer. For any such action approved by the Regional Administrator, all other terms of Subpart 2001.6 are applicable, and a copy of all documentation must be submitted within two working days to the Competition Advocate.

(c) Request received by contracting officers for ratification of commitments made by personnel lacking contracting authority must be processed as follows:

(1) The Designating Official, responsible for the office request, shall furnish the contracting officer all records and documents concerning the commitment and a complete written statement of facts, including, but not limited to:

(i) A statement as to why the contracting office was not used including the name of the employee who made the commitment:

(ii) A statement as to why the proposed contractor was selected;

(iii) A list of other sources considered;

(iv) A description of work to be performed or products to be furnished;

(v) The estimated or agreed upon contract price;

(vi) A certification of the appropriated funds available;

(vii) A statement of whether the contractor has commenced performance; and

(viii) A description of how unauthorized commitments in similar circumstances will be avoided in the future.

(2) The contracting officer shall review and forward the written statement of facts for a determination of approval to the Competition Advocate DCPM, with any comments or information which should be considered in evaluating the request for ratification.

(3) The NRC legal advisor may be asked for an opinion, advice, or concurrence if there is concern regarding the propriety of the funding source, appropriateness of the expense, or when some other legal issue is involved.

2001.603 Selection, appointment, and termination of appointment.

The Director, Division of Contracts and Property Management, is authorized by the Director, Office of Administration, to select and appoint contracting officers and to terminate their appointment as prescribed in FAR 1.603. Delegations of contracting officer authority are issued by memorandum which includes a clear statement of the delegated authority, including responsibilities and limitations in addition to the "Certificate of Appointment"; SF 1402.

PART 2002—DEFINITIONS

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841, and 41 U.S.C. 418(b).

Subpart 2002.1—Definitions

2002.100 Definitions.

Agency means the Nuclear Regulatory Commission (NRC).

Agency Head or *Head of the Agency* means the NRC Executive Director for Operations, for the purposes specified in this regulation and the FAR. This delegation does not extend to internal NRC requirements such as clearance levels and Commission papers which specify higher levels of authority.

Commission means the NRC Commission of five members, or a quorum thereof, sitting as a body, as provided by Section 201 of the Energy Reorganization Act of 1974 (42 U.S.C. 5841).

Competition Advocate means the individual appointed as such by the Agency Head as required by Public Law 98–369. The Director, Division of Contracts and Property Management, has been appointed the Competition Advocate for the NRC.

Day means calendar day unless otherwise specified. If the last day of the designated period of time is a Saturday, Sunday, or legal holiday under Federal law, the period includes the next business day.

Head of the Contracting Activity (HCA) means the Director, Division of Contracts and Property Management.

Procurement Executive means the individual appointed as such by the Agency Head pursuant to Executive Order 12352. The Director, Office of Administration, has been appointed the NRC Procurement Executive.

PART 2003—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 2003.1—Safeguards.

Sec.
2003.101 Standards of conduct.
2003.101–3 Agency regulations.

Subpart 2003.2—Contractor Gratuities to Government Personnel

2003.203 Reporting suspected violations of the gratuities clause.

Authority: 42 U.S.C. 2201; Sec. 201, 88 Stat. 1242, as amended; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2003.1—Safeguards

2003.101 Standards of conduct.

2003.101–3 Agency regulations.

NRC standards of conduct for its employees are published in 10 CFR Part 0. The standards of conduct include requirements for financial disclosure (§ 0.735–28).

Subpart 2003.2—Contractor Gratuities to Government Personnel

2003.203 Reporting suspected violations of the gratuities clause.

(a) Suspected violations of the "Gratuities" clause, FAR 52.203.3, must be reported orally or in writing directly to the NRC Office of the Inspector

General. A report must include all facts and circumstances related to the case. Refer to 10 CFR 0.735–42, Gifts, Entertainment and Favors, for an explanation regarding what is prohibited and what is permitted.

(b) When appropriate, discussions with the contracting officer or a higher procurement official, procurement policy staff, and the procurement legal advisor prior to filing a report are encouraged.

PART 2004—ADMINISTRATIVE MATTERS

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 481(b).

Subpart 2004.4—Safeguarding Classified Information Within Industry

2004.404 Contract clauses.

The security clauses used in NRC contracts are found at 2052.204. They are:

(a) Security, 2052.204–70. This clause will be used in all contracts during the performance of which the contractor may have access to, or contact with classified information, including National Security information, restricted data, formerly restricted data, and other classified data.

(b) Site Access Badge Requirements, 2052.204–71. This clause will be used in all contracts under which the contractor will require access to Government facilities. The clause may be altered to reflect any special conditions to be applied to foreign nationals.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 2005—PUBLICIZING CONTRACT ACTIONS

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93–400, 88 Stat. 796, as amended by Pub. L. 96–83, 93 Stat. 648, Pub. L. 98–577, 98 Stat. 3074 (41 U.S.C. 401 et seq.).

Subpart 2005.5—Paid Advertisements

2005.502 Authority.

Before placing paid advertisements in newspapers and trade journals to publicize contract actions, written authority must be obtained from the Director, Division of Contracts and Property Management, for Headquarters activities, or the Director, Division of Resource Management and Administration, within each regional office for a regional procurement.

PART 2009—CONTRACTOR QUALIFICATIONS

Subpart 2009.1—Responsible Prospective Contractors

Sec.
2009.100 NRC policy.
2009.105—70 Contract provisions.

Subpart 2009.4—Debarment, Suspension, and Ineligibility

2009.403 Definitions.
2009.404 Consolidated list of parties excluded from Federal procurement or non-procurement programs.
2009.405 Effect of listing.
2009.405–1 Continuation of current contracts.
2009.405–2 Restrictions on subcontracting.
2009.406 Debarment.
2009.406–3 Procedures.
2009.407 Suspension.
2009.407–3 Procedures.
2009.470 Appeals.

Subpart 2009.5—Organizational Conflicts of Interest

2009.500 Scope of subpart.
2009.570 NRC organizational conflicts of interest.
2009.570–1 Scope of policy.
2009.570–2 Definitions.
2009.570–3 Criteria for recognizing contractor organizational conflicts of interest.
2009.570–4 Representation.
2009.570–5 Contract clauses.
2009.570–6 Evaluation, findings, and contract award.
2009.570–7 Conflicts identified after award.
2009.570–8 Subcontracts.
2009.570–9 Waiver.
2009.570–10 Remedies.

Authority: 42 U.S.C. 2201; Sec. 201, 88 Stat. 1242; as amended; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2009.1—Responsible Prospective Contractors

2009.101 NRC policy.

(a) It is NRC policy that contracts will not normally be placed on a noncompetitive basis with an individual who was employed by the NRC within two years of the date of the request for procurement action. This policy also pertains to any firm in which a former NRC employee is a partner, principal officer, majority stockholder, or which is otherwise controlled or predominantly staffed by former NRC employees and for granting consent of subcontracts. An exception to this policy will be made if it is determined by the agency Procurement Executive to be in the best interest of the Government to do so. This restriction also applies to former NRC employees acting as a principal under a task order type contract or as a principal under a contract awarded non-competitively under the Small Business Administration's 8(a) Program. This policy is also applied when reviewing subcontracts for the purpose of granting consent under NRC prime contracts.

(b) The term *NRC employee* includes special Government employees performing services for NRC as experts, advisors, consultants, or members of advisory committees, if—

(1) The contract arises directly out of the individual's activity as a special employee;

(2) The individual is in a position to influence the award of the contract; or

(3) The Contracting Officer determines that another conflict of interest exists.

(c) A justification explaining why it is in the best interest of the Government to contract with an individual or firm described in paragraph (a) of this section on a noncompetitive basis may be approved by the Procurement Executive after consulting with the Executive Director for Operations or his designee. This is in addition to any justification and approvals which may be required by the FAR for use of other than full and open competition.

(d) Nothing in this policy statement shall be construed as relieving former employees from obligations prescribed by law, such as 18 U.S.C. 207, Disqualification of Former Officers and Employees.

2009.105–70 Contract provisions.

The contracting officer shall insert the following provisions in all solicitations:

(a) Section 2052.209–70, Qualifications of Contract Employees.

(b) Section 2052.209–71, Current/Former Agency Employee Involvement.

Subpart 2009.4—Debarment, Suspension, and Ineligibility

2009.403 Definitions.

As used in 2009.4:

Debarring official means the Procurement Executive.

Initiating official means the contracting officer, the Head of the Contracting Activity (HCA), the Procurement Executive, or the Inspector General.

Suspending official means the Procurement Executive.

2009.404 Consolidated list of parties excluded from Federal procurement or non-procurement programs.

The contracting officer responsible for the contract affected by the debarment or suspension shall perform the actions required by FAR 9.404(c)(1)-(3).

2009.405 Effect of listing.

Compelling reasons are considered to be present where failure to contract with the debarred or suspended contractor would seriously harm the agency's programs and prevent accomplishment of mission requirements. The Procurement Executive is authorized to make the determinations under FAR 9.405. Requests for these determinations must be submitted through the HCA to the Procurement Executive.

2009.405–1 Continuation of current contracts.

The HCA is authorized to make the determinations under FAR 9.405–1.

2009.405–2 Restrictions on subcontracting.

The HCA is authorized to approve subcontracts with debarred or suspended subcontractors under FAR 9.405–2.

2009.406 Debarment.

2009.406–3 Procedures.

(a) Investigation and referral. When a contracting officer becomes aware of possible irregularities or any information which may be sufficient cause for debarment, the case must be referred through the HCA to the Procurement Executive immediately. The case must be accompanied by a complete statement of the facts (including a copy of any criminal indictments, if applicable) along with a recommendation for action. Where the statement of facts indicates the irregularities to be possible criminal offenses, or for any other reason further investigation is considered necessary, the matter must first be referred to the HCA who will consult with the Office of the Inspector General to determine if further investigation is required prior to referring to the debarring official.

(b) Decision-making process. If, after reviewing the recommendations and consulting with the Office of the General Counsel and, if appropriate, the Office of the Inspector General, the debarring official determines debarment is justified, the debarring official shall initiate the proposed debarment in accordance with FAR 9.406–3(c) and notify the HCA of the action taken. If the contractor fails to submit a timely written response within 30 days after receipt of the notice, the debarring official may notify the contractor in accordance with FAR 9.406–3(d) that the contractor is debarred.

(c) Fact-finding proceedings. For actions listed under FAR 9.406–3(b)(2), the contractor shall be given the opportunity to appear at an informal hearing. The hearing should be held at a location and time that is convenient to the parties concerned, and no later than 30 days after the contractor received the notice, if at all possible. The contractor and any specifically named affiliates may be represented by counsel or any duly authorized representative. Witnesses may be called by either party. The proceedings must be conducted expeditiously and in such a manner that each party will have an opportunity to present all information considered pertinent to the proposed debarment.

2009.407 Suspension.

2009.407–3 Procedures.

(a) Investigation and referral. When a contracting officer becomes aware of possible irregularities or any information which may be sufficient cause for suspension, the case must be referred through the HCA to the Procurement Executive immediately. The case must be accompanied by a complete statement of the facts along with a recommendation for action. Where the statement of facts indicates the irregularities to be possible criminal offenses, or for any other reason further investigation is considered necessary, the matter must first be referred to the HCA who will consult with the Office of the Inspector General to determine if further investigation is required prior to referring the matter to the suspending official.

(b) Decision-making process. If, after reviewing the recommendations and consulting with the Office of the General Counsel, and if appropriate, the Office of the Inspector General, the suspending official determines suspension is justified, the suspending official shall initiate the proposed suspension in accordance with FAR 9.407–3(b)(2). The contractor shall be given the opportunity to appear at an informal hearing, similar in nature to the hearing for debarments as discussed in FAR 9.406–3(b)(2). If the contractor fails to submit a timely written response within 30 days after receipt of the notice, the suspending official may notify the contractor in accordance with 9.407–3(d) that the contractor is suspended.

2009.470 Appeals.

A debarred or suspended contractor may appeal the debarring/suspending official's decision by mailing or otherwise furnishing a written notice within 90 days from the date of the decision to the Executive Director for Operations. A copy of the notice of appeal must be furnished to the debarring/suspending official from whose decision the appeal is taken.

Subpart 2009.5—Organizational Conflicts of Interest

2009.500 Scope of subpart.

In accordance with 42 U.S.C. 2210a., NRC acquisitions are processed in accordance with 2009.570, which takes precedence over FAR 9.5 with respect to organizational conflicts of interest. Where non-conflicting guidance appears in FAR 9.5, that guidance must be followed.

2009.570 NRC organizational conflicts of interest.

2009.570–1 Scope of policy.

(a) It is the policy of NRC to avoid, eliminate, or neutralize contractor organizational conflicts of interest. The NRC achieves this objective by requiring all prospective contractors to submit information describing relationships, if any, with organizations or persons (including those regulated by the NRC) which may give rise to actual or potential conflicts of interest in the event of contract award.

(b) Contractor conflict of interest determinations cannot be made automatically or routinely. The application of sound judgment on virtually a case-by-case basis is necessary if the policy is to be applied to satisfy the overall public interest. It is not possible to prescribe in advance a specific method or set of criteria which would serve to identify and resolve all of the contractor conflict of interest situations which might arise. However, examples are provided in these regulations to guide application of this policy guidance. The ultimate test is as follows: Might the contractor, if awarded the contract, be placed in a position where its judgment may be biased, or where it may have an unfair competitive advantage?

(c) The conflict of interest rule contained in this subpart applies to contractors and offerors only. Individuals or firms who have other relationships with the NRC (e.g., parties to a licensing proceeding) are not covered by this regulation. This rule does not apply to the acquisition of consulting services through the personnel appointment process, NRC agreements with other government agencies, international organizations, or state, local, or foreign governments. Separate procedures for avoiding conflicts of interest will be employed in these agreements, as appropriate.

2009.570–2 Definitions.

As used in 2009.570:

Affiliates means business concerns which are affiliates of each other when either directly or indirectly one concern

or individual controls or has the power to control another, or when a third party controls or has the power to control both.

Contract means any contractual agreement or other arrangement with the NRC except as provided in 2009.570–1(c).

Contractor means any person, firm, unincorporated association, joint venture, co-sponsor, partnership, corporation, affiliates thereof, or their successors in interest, including their chief executives, director, key personnel (identified in the contract), proposed consultants or subcontractors, which are a party to a contract with the NRC.

Evaluation activities means any effort involving the appraisal of a technology, process, product, or policy.

Offeror or *prospective contractor* means any person, firm, unincorporated association, joint venture, co-sponsor, partnership, corporation, or their affiliates or successors in interest, including their chief executives, director, key personnel, proposed consultants, or subcontractors, submitting a bid or proposal, solicited or unsolicited, to the NRC to obtain a contract.

Organizational conflicts of interest means that a relationship exists whereby a contractor or prospective contractor has present or planned interests related to the work to be performed under an NRC contract which:

(1) May diminish its capacity to give impartial, technically sound, objective assistance and advice, or may otherwise result in a biased work product; or

(2) May result in its being given an unfair competitive advantage.

Potential conflict of interest means that a factual situation exists that suggests that an actual conflict of interest may arise from award of a proposed contract. The term *potential conflict of interest* is used to signify those situations that—

(1) Merit investigation before contract award to ascertain whether award would give rise to an actual conflict; or

(2) Must be reported to the contracting officer for investigation if they arise during contract performance.

Research means any scientific or technical work involving theoretical analysis, exploration, or experimentation.

Subcontractor means any subcontractor of any tier who performs work under a contract with the NRC except subcontracts for supplies and subcontracts in amounts not exceeding the small purchase threshold.

Technical consulting and management support services means internal assistance to a component of the NRC in the formulation or administration of its programs, projects, or policies which normally require that the contractor be given access to proprietary information or to information that has not been made available to the public. These services typically include assistance in the preparation of program plans, preliminary designs, specifications, or statements of work.

2009.570–3 Criteria for recognizing contractor organizational conflicts of interest.

(a) *General.*

(1) Two questions will be asked in determining whether actual or potential organizational conflicts of interest exist:

(i) Are there conflicting roles which might bias an offeror's or contractor's judgment in relation to its work for the NRC?

(ii) May the offeror or contractor be given an unfair competitive advantage based on the performance of the contract?

(2) NRC's ultimate determination that organizational conflicts of interest exist will be made in light of common sense and good business judgment based upon the relevant facts. While it is difficult to identify and to prescribe in advance a specific method for avoiding all of the various situations or relationships that might involve potential organizational conflicts of interest, NRC personnel will pay particular attention to proposed contractual requirements that call for the rendering of advice, consultation or evaluation activities, or similar activities that directly lay the groundwork for the NRC's decisions on regulatory activities, future procurements, and research programs. Any work performed at an applicant or licensee site will also be closely scrutinized by the NRC staff.

(b) *Situations or relationships.* The following situations or relationships may give rise to organizational conflicts of interest:

(1) The offeror or contractor shall disclose information, that may give rise to organizational conflicts of interest under the following circumstances. The information may include the scope of work or specification for the requirement, being performed, the period of performance, and the name and telephone number for a point of contact at the organization knowledgeable about the commercial contract.

(i) Where the offeror or contractor provides advice and recommendation to the NRC in the same technical area where it is also providing consulting assistance to any organization regulated by the NRC.

(ii) Where the offeror or contractor provides advice to the NRC on the same or similar matter on which it is also providing assistance to any organization regulated by the NRC.

(iii) Where the offeror or contractor evaluates its own products or services, or has been substantially involved in the development or marketing of the products or services of another entity.

(iv) Where the award of a contract would result in placing the offeror or contractor in a conflicting role in which its judgment may be biased in relation to its work for the NRC, or would result in an unfair competitive advantage for the offeror or contractor.

(v) Where the offeror or contractor solicits or performs work at an applicant or licensee site while performing work in the same technical area for the NRC at the same site.

(2) The contracting officer may request specific information from an offeror or contractor or may require special contract clauses such as provided in 2009.570–5(b) in the following circumstances:

(i) Where the offeror or contractor prepares specifications that are to be used in competitive procurements of products or services covered by the specifications.

(ii) Where the offeror or contractor prepares plans for specific approaches or methodologies that are to be incorporated into competitive procurements using the approaches or methodologies.

(iii) Where the offeror or contractor is granted access to information not available to the public concerning NRC plans, policies, or programs that could form the basis for a later procurement action.

(iv) Where the offeror or contractor is granted access to proprietary information of its competitors.

(v) Where the award of a contract might result in placing the offeror or contractor in a conflicting role in which its judgment may be biased in relation to its work for the NRC or might result in an unfair competitive advantage for the offeror or contractor.

(c) *Policy application guidance.* The following examples are illustrative only and are not intended to identify and resolve all contractor organizational conflict of interest situations.

(1)(i) *Example.* The ABC Corp., in response to a Request for Proposal (RFP), proposes to undertake certain analyses of a reactor component as called for in the RFP. The ABC Corp. is one of several companies considered to be technically well qualified. In

response to the inquiry in the RFP, the ABC Corp. advises that it is currently performing similar analyses for the reactor manufacturer.

(ii) *Guidance.* An NRC contract for that particular work normally would not be awarded to the ABC Corp. because the company would be placed in a position in which its judgment could be biased in relationship to its work for the NRC. Because there are other well-qualified companies available, there would be no reason for considering a waiver of the policy.

(2)(i) *Example.* The ABC Corp., in response to an RFP, proposes to perform certain analyses of a reactor component that is unique to one type of advanced reactor. As is the case with other technically qualified companies responding to the RFP, the ABC Corp. is performing various projects for several different utility clients. None of the ABC Corp. projects have any relationship to the work called for in the RFP. Based on the NRC evaluation, the ABC Corp. is considered to be the best qualified company to perform the work outlined in the RFP.

(ii) *Guidance.* An NRC contract normally could be awarded to the ABC Corp. because no conflict of interest exists which could motivate bias with respect to the work. An appropriate clause would be included in the contract to preclude the ABC Corp. from subsequently contracting for work with the private sector that could create a conflict during the performance of the NRC contract. For example, ABC Corp. would be precluded from the performance of similar work for the company developing the advanced reactor mentioned in the example.

(3)(i) *Example.* The ABC Corp., in response to a competitive RFP, submits a proposal to assist the NRC in revising NRC's guidance documents on the respiratory protection requirements of 10 CFR part 20. ABC Corp. is the only firm determined to be technically acceptable. ABC Corp. has performed substantial work for regulated utilities in the past and is expected to continue similar efforts in the future. The work has and will cover the writing, implementation, and administration of compliance respiratory protection programs for nuclear power plants.

(ii) *Guidance.* This situation would place the firm in a role where its judgment could be biased in relationship to its work for the NRC. Because the nature of the required work is vitally important in terms of the NRC's responsibilities and no reasonable alternative exists, a waiver of the policy, in accordance with 2009.570–9 may be warranted. Any waiver must be fully documented in accordance with the waiver provisions of this policy with particular attention to the establishment of protective mechanisms to guard against bias.

(4)(i) *Example.* The ABC Corp. submits a proposal for a new system to evaluate a specific reactor component's performance for the purpose of developing standards that are important to the NRC program. The ABC Corp. has advised the NRC that it intends to sell the new system to industry once its practicability has been demonstrated. Other companies in this business are using older systems for evaluation of the specific reactor component.

(ii) *Guidance.* A contract could be awarded to the ABC Corp. if the contract stipulates that no information produced under the contract will be used in the contractor's private activities unless this information has been reported to the NRC. Data on how the reactor component performs, which is reported to the NRC by contractors, will normally be disseminated by the NRC to others to preclude an unfair competitive advantage. When the NRC furnishes information about the reactor component to the contractor for the performance of contracted work, the information may not be used in the contractor's private activities unless the information is generally available to others. Further, the contract will stipulate that the contractor will inform the NRC contracting officer of all situations in which the information, developed about the performance of the reactor component under the contract, is proposed to be used.

(5)(i) *Example.* The ABC Corp., in response to a RFP, proposes to assemble a map showing certain seismological features of the Appalachian fold belt. In accordance with the representation in the RFP and 2009.570–3(b)(1)(i), ABC Corp. informs the NRC that it is presently doing seismological studies for several utilities in the eastern United States, but none of the sites are within the geographic area contemplated by the NRC study.

(ii) *Guidance.* The contracting officer would normally conclude that award of a contract would not place ABC Corp. in a conflicting role where its judgment might be biased. Section 2052.209–73(c) Work for Others, would preclude ABC Corp. from accepting work which could create a conflict of interest during the term of the NRC contract.

(6)(i) *Example.* AD Division of ABC Corp., in response to a RFP, submits a proposal to assist the NRC in the safety an environmental review of applications for licenses for the construction, operation, and decommissioning of fuel cycle facilities. ABC Corp. is divided into two separate and distinct divisions, AD and BC. The BC Division performs the same or similar services for industry. The BC Division is currently providing the same or similar services required under the NRC's contract for an applicant or licensee.

(ii) *Guidance.* An NRC contract for that particular work would not be awarded to the ABC Corp. The AD Division could be placed in a position to pass judgment on work performed by the BC Division, which could bias its work for NRC. Further, the Conflict of Interest provisions apply to ABC Corp. and not to separate or distinct divisions within the company. If no reasonable alternative exists, a waiver of the policy could be sought in accordance with 2009.570–9.

(7)(i) *Example.* The ABC Corp. completes an analysis for NRC of steam generator tube leaks at one of a utility's six sites. Three months later, ABC Corp. is asked by this utility to perform the same analysis at another of its sites.

(ii) *Guidance.* 2052.290–73(c)(3) would prohibit the contractor from beginning this work for the utility until one year after completion of the NRC work at the first site.

(8)(i) *Example.* ABC Corp. is assisting NRC in a major on-site analysis of a utility's redesign of the common areas between its twin reactors. The contract is for two years with an estimated value of $5 million. Near the completion of the NRC work, ABC Corp. requests authority to solicit for a $100K contract with the same utility to transport spent fuel to a disposal site. ABC Corp. is performing no other work for the utility.

(ii) *Guidance.* The Contracting Officer, would allow the contractor to proceed with the solicitation because (A) it is not in the same technical area as the NRC work and (B) the potential for technical bias by the contractor because of financial ties to the utility is slight due to the relative value of the two contracts.

(9)(i) *Example.* The ABC Corp. is constructing a turbine building and installing new turbines at a reactor site. The contract with the utility is for five years and has a total value of $100 million. ABC Corp. has responded to an NRC Request for Proposal requiring the contractor to participate in a major team inspection unrelated to the turbine work at the same site. The estimated value of the contract is $75K.

(ii) *Guidance.* An NRC contract would not normally be awarded to ABC Corp. since these factors create the potential for financial loyalty to the utility that may bias the technical judgment of the contractor.

(d) *Other considerations.*

(1) The fact that the NRC can identify and later avoid, eliminate, or neutralize any potential organizational conflicts arising from the performance of a contract is not relevant to a determination of the existence of conflicts prior to the award of a contract.

(2) It is not relevant that the contractor has the professional reputation of being able to resist temptations which arise from organizational conflicts of interest, or that a follow-on procurement is not involved, or that a contract is awarded on a competitive or a sole source basis.

2009.570–4 Representation.

(a) The following procedures are designed to assist the NRC contracting officer in determining whether situations or relationships exist which may constitute organizational conflicts of interest with respect to a particular offeror or contractor. The procedures apply to small purchases meeting the criteria stated in the following paragraph (b) of this section.

(b) The organizational conflict of interest representation provision at 2052.209–72 must be included in solicitations and unsolicited proposals, (including those for task orders and modifications for new work) for:

(1) Evaluation services or activities;

(2) Technical consulting and management support services;

(3) Research; and

(4) Other contractual situations where special organizational conflicts of interest provisions are noted in the solicitation and would be included in the resulting contract. This representation requirement also applies to all modifications for additional effort under the contract except those issued under the "Changes" clause. Where, however, a statement of the type required by the organizational conflicts of interest representation provisions has previously been submitted with regard to the contract being modified, only an updating of the statement is required.

(c) The offeror may, because of actual or potential organizational conflicts of interest, propose to exclude specific kinds of work contained in a RFP unless the RFP specifically prohibits the exclusion. Any such proposed exclusion by an offeror will be considered by the NRC in the evaluation of proposals. If the NRC considers the proposed excluded work to be an essential or integral part of the required work and its exclusion would be to the detriment of the competitive posture of the other offerors, the NRC shall reject the proposal as unacceptable.

(d) The offeror's failure to execute the representation required by paragraph (b) of this section with respect to an invitation for bids is considered to be a minor informality. The offeror will be permitted to correct the omission.

2009.570–5 Contract clauses.

(a) *General contract clause.* All contracts and small purchases of the types set forth in 2009.570–4(b) must include the clause entitled, "Contractor Organizational Conflicts of Interest," set forth in 2052.209–73.

(b) *Other special contract clauses.* If it is determined from the nature of the proposed contract that an organizational conflict of interest exists, the contracting officer may determine that the conflict can be avoided, or, after obtaining a waiver in accordance with 2009.570–9, neutralized through the use of an appropriate special contract clause. If appropriate, the offeror may negotiate the terms and conditions of these clauses, including the extent and time period of any restriction. These clauses include but are not limited to:

(1) Hardware exclusion clauses which prohibit the acceptance of production contracts following a related non-production contract previously performed by the contractor;

(2) Software exclusion clauses;

(3) Clauses which require the contractor (and certain of its key personnel) to avoid certain organizational conflicts of interest; and

(4) Clauses which provide for protection of confidential data and guard against its unauthorized use.

2009.570–6 Evaluation, findings, and contract award.

The contracting officer shall evaluate all relevant facts submitted by an offeror and other relevant information. After evaluating this information against the criteria of 2009.570–3, the contracting officer shall make a findings of whether organizational conflicts of interest exist with respect to a particular offeror. If it has been determined that real or potential conflicts of interest exist, the contracting officer shall:

(a) Disqualify the offeror from award;

(b) Avoid or eliminate such conflicts by appropriate measures; or

(c) Award the contract under the waiver provision of 2009.570–9.

2009.570–7 Conflicts identified after award.

If potential organizational conflicts of interest are identified after award with respect to a particular contractor, and the contracting officer determines that conflicts do exist and that it would not be in the best interest of the government to terminate the contract, as provided in the clauses required by 2009.570–5, the contracting officer shall take every reasonable action to avoid, eliminate, or, after obtaining a waiver in accordance with 2009.570–9, neutralize the effects of the identified conflict.

2009.570–8 Subcontracts.

The contracting officer shall require offerors and contractors to submit a representative statement from all subcontractors (other than a supply subcontractor) and consultants performing services in excess of $10,000 in accordance with 2009.570–4(b). The contracting officer shall require the contractor to include contract clauses in accordance with 2009.570–5 in consultant agreements or subcontracts involving performance of work under a prime contract.

2009.570–9 Waiver.

(a) The contracting officer determines the need to seek a waiver for specific contract awards, with the advice and concurrence of the program office director and legal counsel. Upon the recommendation of the Procurement Executive, and after consultation with legal counsel, the Executive Director for Operations may waive the policy in specific cases if he determines that it is in the best interest of the United States to do so.

(b) Waiver action is strictly limited to those situations in which:

(1) The work to be performed under contract is vital to the NRC program.

(2) The work cannot be satisfactorily performed except by a contractor whose interests give rise to question of conflict of interest.

(3) Contractual and/or technical review and surveillance methods can be employed by the NRC to neutralize the conflict.

(c) For any waivers, the justification and approval documents must be placed in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

2009.570–10 Remedies.

In addition to other remedies permitted by law or contract for a breach of the restrictions in this subpart or for any intentional misrepresentation or intentional nondisclosure of any relevant interest required to be provided for this section, the NRC may debar the contractor from subsequent NRC contracts.

PART 2010—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Sec.

2010.004—Brand name products or equal.
2010.011—Solicitation provisions and contract clauses.

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841; 41 U.S.C. 418(b).

2010.004 Brand name products or equal.

(a) Acquisitions will generally not be based on a specifically identified product or feature(s) thereof. However, under unusual circumstances this type of approach may be used as described below.

(b) Brand name or equal purchase descriptions must cite all brand name products known to be acceptable and of current manufacture. If the use of a brand name or equal purchase description results in the purchase of an acceptable brand name product which was not listed as an "equal" product, a reference to that brand name product should be included in the purchase description for later acquisition. If a brand name product is no longer applicable, the reference to that brand name must be deleted from any subsequent purchase description.

(1) It is imperative that brand name or equal purchase descriptions specify each physical or functional characteristic of the product that is essential to the intended use. Failure to do so may result in a defective solicitation and the necessity to resolicit the requirement. Care must be taken to avoid specifying characteristics that cannot be shown to materially affect the intended end use and which unnecessarily restrict competition.

(2) When describing essential characteristics, permissible tolerances should be indicated. A characteristic (e.g., a specific dimension) of a brand name product may not be specified unless it is essential to the Government's need. The contracting officer shall be able to justify the requirement.

(c) The clause found at 2052.210–70 must be inserted in all solicitations citing a brand name or equal, except when samples are requested.

(d) An offer may not be rejected for failure of the offered product to equal a characteristic of a brand name product if it was not specified in the brand name or equal description. However, if it is clearly established that the unspecified characteristic is essential to the intended end use, the solicitation is defective and no award may be made. In these cases, the contracting officer should resolicit the requirements, using a purchase description that sets forth the essential characteristics.

(e) In small purchases within the open market limitations, brand name policies and procedures are applicable to the extent practicable.

2010.011 Solicitation provisions and contract clauses.

The contracting officer shall insert the clause at 2052.210–71, Drawings, Designs, Specifications, and Data, in all contracts in which drawings, designs, specifications, or other data will be developed and the NRC must retain full rights to them (except for the contractor's right to retain a copy for its own use). When any of the clauses prescribed at FAR 27.409, Solicitation Provisions and Contract Clauses, are included in the solicitation/contract, this clause will not be used.

PART 2012—CONTRACT DELIVERY OR PERFORMANCE

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2012.104—Contract clauses

2012.104–70 NRC clauses.

(a) The contracting officer shall insert the clause at 2042.212–70, Preparation of Technical Reports, when deliverables include a technical report.

(b) The contracting officer shall insert the clause at 2052.212–71, Technical Progress Report, in all solicitations and contracts except—

(1) Firm fixed price; and

(2) Indefinite-delivery contracts to be awarded on a time and materials or labor-hour basis, or which provide for issuance of delivery orders for specific products/services (line items).

(c) The contracting officer shall insert the clause at 2052.212–72, Financial Status Report, in all solicitations and contracts (except Fixed Price) when detailed assessment of costs is warranted and a Contractor Spending Plan is required; use the clause at 2052.212–73 Financial Status Report—Alternate 1 when no Contractor Spending Plan is required.

(d) The contracting officer may alter these clauses prior to issuance of the solicitation or during competition by solicitation amendment. Reporting requirements should be set at a meaningful and productive frequency. Insignificant changes may also be made by the contracting officer on a case-by-case basis during negotiations, without solicitation amendment.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 2013—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2013.5—Purchase Orders

2013.505–2 Agency order forms in lieu of Optional Forms 347 and 348.

NRC Form 103, Purchase Order, is prescribed for use by the NRC in lieu of Optional Forms 347 and 348.

PART 2014—SEALED BIDDING

Subpart 2014.2—Solicitation of Bids

Sec.
2014.201 Preparation of invitation for bids.
2014.201–670 Solicitation provisions.

Subpart 2014.4—Opening of Bids and Award of Contract

2014.406 Mistakes in bids.

2014.406–3 Other mistakes disclosed before award.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2014.2—Solicitation of Bids

2014.201 Preparation of invitation for bids.

2014.201–670 Solicitation provisions.

(a) The contracting officer shall insert the provision at 2052.214–70, Prebid Conference, in Invitations for Bids (IFB) where there will be a prebid conference. This provision may be altered by the contracting officer to fit circumstances.

(b) The cognizant contracting officer shall insert in all invitations for bids, except as noted, the provisions at:

(1) Section 2052.214–71, Bidder Qualifications and Past Experiences. (optional, to fit circumstances)

(2) Section 2052.214–72, Bid Evaluation (paragraph f. is optional).

(3) Section 2052.214–73, Timely Receipt of Bids.

(4) Section 2052.214–74, Disposition of Bids.

Subpart 2014.4—Opening of Bids and Award of Contract

2014.406 Mistakes in bids.

2014.406–3 Other mistakes disclosed before award.

(a) The Director, Division of Contracts and Property Management, is delegated the authority to make the determinations concerning mistakes in bids, including those with obvious clerical errors, discovered prior to award. These determinations will be concurred in by legal counsel prior to notification of the bidder.

(b) The cognizant contracting officer is delegated the authority to make determinations concerning mistakes disclosed after award in accordance with FAR 14.406–4.

PART 2015—CONTRACTING BY NEGOTIATION

Subpart 2015.4—Solicitation and Receipt of Proposals and Quotations

Sec.
2015.407–70 Solicitation provisions and contract clauses.
2015.413 Disclosure and use of information before award.
2015.413–2 Alternate II.

Subpart 2015.5—Unsolicited Proposals

2015.506 Agency procedures.
2015.506–1 Receipt and initial review.
2015.506–2 Evaluation.
2015.507 Contracting methods.

Subpart 2015.6—Source Selection

2015.602 Applicability.
2015.604 Responsibilities.
2015.605 Evaluation factors.
2015.607 Disclosure of mistakes before award.
2015.608 Proposal evaluation.
2015.610 Written or oral discussions.
2015.611 Best and final offers.
2015.612 Sources Evaluation Panel structure.
2015.670 Contract provisions.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2015.4—Solicitation and Receipt of Proposals and Quotations

2015.407–70 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert in Requests for Proposals (RFPs) the provisions at:

(1) Section 2052.215–70, Key Personnel;

(2)(i) Section 2052.215–71, Project Officer Authority (for solicitations for cost reimbursement, cost plus fixed fee, cost plus award fee, cost sharing labor hour or time and materials, including task order contracts);

(ii) Section 2052.215–72, Project Officer Authority—Alternate 1 (for solicitations for issuance of delivery orders for specific products/services).

(iii) Section 2052.215–72, Project Officer Authority—Alternate 2 with paragraph (b)(1) deleted and the remainder of the clause renumbered (for solicitations for firm fixed price contracts;

(iv) This provision § 2052.215–70 and Alternate 1 are intended for experienced, trained project officers, and may be altered to delete duties where appropriate.

(3) Section 2052.215–73, Timely Receipt of Proposals;

(4) Section 2052.215–74, Award Notification and Commitment of Public Funds; and

(5) Section 2052.215–75, Disposition of Proposals.

(b) The contracting officer shall insert in all solicitations for negotiated procurements for cost type contracts that do not provide for task orders or delivery orders, the provision at 2052.215–76, Proposal Presentation and Format except that:

(1) For all solicitations for negotiated task order contracts, paragraphs (e)(4)(xi) and (xii) must be deleted (and the remainder renumbered), and the paragraph found at 2052.215–77 must be substituted for paragraph (d)(2).

(2) For all negotiated procurements for a fixed price, labor hour, or time and materials contract, paragraph (d)(2) shall be deleted from the provision 2052.215–76.

The provision must be tailored to assure that all sections, but in particular paragraph (e), Technical and Management Proposal, reflect a one-to-one relationship to the evaluation criteria.

(c) The contracting officer shall insert the provision at 2052.215–78, Preproposal Conference, in RFPs where there will be a preproposal conference. This provision may be altered to fit the circumstances of the requirement.

(d) The contracting officer shall insert the clauses at 2052.215–79, Travel Reimbursement, 2052–215–79, Travel Reimbursement—Alternate 1 with paragraph (a) deleted and the remainder of the clause renumbered (for contracts when there is no ceiling amount on domestic travel), and 2052–215–80, Travel Approvals, in RFPs where there will be travel.

2015.413 Disclosure and use of information before award.

2015.413–2 Alternate II.

The procedures discussed at FAR 15.413–2 may be used if approved at a level above the contracting officer.

Subpart 2015.5—Unsolicited Proposals

2015.506 Agency procedures.

(a) The Division of Contracts and Property Management, Policy Branch (PB), is the point of contact for the receipt, acknowledgement, and handling of unsolicited proposals.

(b) Unsolicited proposals in original and two copies, and requests for additional information regarding their preparation must be submitted to: Chief, Policy Branch, Division of Contracts and Property Management, Mail Stop P–1118, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

This will ensure that the proposal is logged into the unsolicited proposal tracking system.

2015.506–1 Receipt and initial review.

(a) PB shall acknowledge receipt of an unsolicited proposal, complete a preliminary review, assign a docket number, and send copies of the unsolicited proposal to the appropriate program office Director(s) or designee for evaluation.

(b) PB shall be responsible for controlling reproduction and distribution of proposal material by notifying evaluators of their responsibilities and tracking the number of proposals received and forwarded to evaluators.

(c) An acknowledgement letter will be sent to the proposer by the PB, providing an estimated date for a funding decision or identifying the reasons for non-acceptance of the proposal for review in accordance with FAR 15.503 and 15.505.

2015.506–2 Evaluation.

Directors of NRC offices shall conduct comprehensive technical evaluations of proposals submitted to them by the PB, in accordance with the criteria discussed in FAR 15.506–2(a).

2015.507 Contracting methods.

If a noncompetitive contract is recommended, the Director of the recommending NRC office shall submit to the Division of Contracts and Property Management a written evaluation, Request for Procurement Action (RFPA) and Justification for Other Than Full and Open Competition in accordance with FAR 15.507(b)(5).

Subpart 2015.6—Source Selection

2015.602 Applicability.

This subpart does not apply to contracts awarded to the Small Business Administration under Section 8(a) of the Small Business Act.

2015.604 Responsibilities.

(a) All persons participating in the evaluation process may not discuss or reveal information concerning the evaluations except to an individual participating in the same evaluation proceeding, and then only to the extent that the information is required in connection with the proceeding. Divulging information during evaluation, selection, and negotiation phases of the acquisition to offerors or to other persons not having a need to know could jeopardize the resultant award and violates the information-disclosure provisions of FAR 3.104, Procurement Integrity. These provisions carry criminal as well as civil and administrative penalties. Only the contracting officer (or authorized representative within the Division of

Contracts and Property Management) may release source selection information to others during the selection process. The contracting officer (or authorized representative) shall instruct all participants in the evaluations to observe the prohibitions of the Procurement Integrity Act. A procurement official certification must be signed for each agency employee personally and substantially involved in preparing or approving the advance procurement plans, statement of work and participating in the source evaluation process [i.e. serving as a member of the Source Evaluation Panel (SEP)].

(b) All persons participating in the evaluation process shall declare any financial or other relationships which may create conflict or interest problems with their evaluation duties. A form for this purpose must be signed prior to receipt of any proposals or participation in discussion of proposals.

(c) Only the contracting officer (or authorized representative within the Division of Contracts and Property Management) may conduct discussions with offerors relative to any aspect of the acquisition. The contracting officer may include other personnel in discussions, as necessary.

2015.605 Evaluation factors.

The evaluation criteria included in the solicitation serve as the standard against which all proposals are evaluated, and are the basis for the development of proposal preparation instructions, in accordance with 2015.407–70(b). Indication in the solicitation of the relative importance of evaluation factors and subfactors is accomplished by the assignment of a numerical weight to each. For those factors that will not be numerically weighted, only their relative importance will be stated in the solicitation. Examples of factors which may not be numerically weighted are conflict of interest, estimated cost, and business evaluations, and "go/on go" evaluation factors.

2015.607 Disclosure of mistakes before award.

(a) The contracting officer shall require that the offeror's clarification(s) provided in accordance with FAR 15.607 be in writing.

(b) A correction of a mistake in a proposal may be made only after a written determination to permit it has been made by the contracting officer.

2015.608 Proposal evaluation.

(a) A Source Evaluation Panel (SEP) shall evaluate technical proposals in accordance with the solicitation technical evaluation criteria. The SEP prepares and signs the Competitive Range Report with the SEP's findings and scoring for each technical proposal together with its analysis of cost and other factors and forwards the report for the review and approval of the Designating Official. The contracting officer uses this technical evaluation and analysis of costs and other factors in determining the competitive range.

(b) The Designating Official (Office Director or designee) is responsible for appointing the SEP and is responsible for conducting an independent review and evaluation of the SEP's two primary products after proposal evaluation: the Competitive Range Report and the Final Evaluation Report. Any cancellation of solicitations and subsequent rejection of all proposals must be approved by the Head of the Contracting Activity.

2015.610 Written or oral discussions.

The contracting officer shall point out to each offeror within the competitive range any deficiencies including ambiguities or uncertainties in its proposal. The discussions are intended to assist the SEP in understanding the proposals and their strengths and weaknesses based upon the individual efforts of each offeror to ensure that the meaning and emphasis of solicitation provisions have been adequately conveyed to the offerors so that all offerors are competing equally on the basis intended by the Government.

2015.611 Best and final offers.

The SEP evaluations the technical proposal portion of the best and final offers. Technical proposals will be recorded and rescored by the SEP, as appropriate, and a Final Evaluation Report of the SEP's findings and scoring for each technical proposal will be prepared and forwarded to the Designating Official for review and approval prior to submission to the contracting officer for final approval. The report will include a summary of the technical analysis of costs as a part of the analysis of the technical proposals. The SEP's individual evaluation worksheets and summary score sheet must accompany the Final Evaluation Report and will become part of the official file.

2015.612 Source Evaluation Panel structure.

(a) For all proposed contracts with total estimated values in excess of $25,000 and expected to result from competitive technical and price/cost negotiations, the cooperative review efforts of technical, contracting, and other administrative personnel are formalized through the establishment of a SEP.

(b)(1) The SEP includes:

(i) At least three technical members (one of whom serves as the chairperson) who participate in the scoring of proposals using weighted evaluation criteria and evaluating proposals using other unweighted factors; and

(ii) A contract negotiator who ensures that procurement rules and regulations are followed, ensures that the integrity of the process is maintained, and negotiates the contract on behalf of the NRC.

(2) Except in unusual cases, the SEP should not exceed five members including the Chairperson. The technical members are usually employees of the NRC program office initiating the request or other NRC employees with expertise in areas related to the solicitation Statement of Work. Appointment of a technical member from other than the office initiating the request is encouraged. Employees of other agencies with expertise in a specific area may also serve as SEP technical members not withstanding the fact that they are not employees of the NRC. Evaluators need not be Federal employees, but the potential for conflict of interest must be carefully considered in these cases and the solicitation should notify offerors of the NRC's intent to use non-Federal evaluators. The CO will make a determination whether or not a non-federal evaluator will be a voting SEP member. For proposed procurements with a total estimated cost of less than $500,000 over a performance period of three years or less, a single technical member may be appointed to evaluate proposals with the contracting officer's approval. Designation of SEP members is accomplished by memorandum initiated by the director of the program office or the director's designee. This official is referred to as the Designating Official (DO).

(c) The SEP chairperson may obtain the services of advisors (e.g., legal, financial, etc.) to assist the SEP. Advisors who serve on technical evaluation committees are appointed in writing by the DO. Advisors are not SEP members, and therefore do not score proposals. Advisors need not be Federal employees, but the potential for conflict of interest must be carefully considered in these cases, and the solicitation should notify offerors of the NRC's intent to use non-Federal advisors.

(d) The contracting officer shall establish the competitive range on all acquisitions. This is accomplished by

approval of the SEP's written recommendation transmitted by the DO.

(e) The source selection official is the contracting officer. Selection is made based on review of the SEP's recommendations as endorsed by the DO, together with all supporting data to ensure that award is in accordance with sound procurement principles and directly related to the evaluation criteria as set forth in the solicitation. Any proposed selection not endorsed by the DO will be concurred in by the Head of the Contracting Activity.

2015.670 Contract provisions.

(a) The contracting officer shall include the provision found at 2052.215–81, Contract Award and Evaluation of Proposals, in all solicitations, where technical is more important than cost:

(1) The contracting officer shall substitute the paragraph found at 2052.215–82 for paragraph (b) in all solicitation for negotiated competitive procurements where cost is more important than technical merit.

(2) The contracting officer shall substitute the paragraph found at 2052.215–83 for paragraph (b) in all solicitations for negotiated competitive procurements where cost and technical merit are of equal significance.

(b) The contracting officer may make appropriate changes to the provision to accurately reflect other evaluation procedures, such as evaluation of proposals against mandatory criteria and benchmaking criteria for ADP procurements.

PART 2016—TYPES OF CONTRACTS

Subpart 2016.3—Cost Reimbursement Contracts

Sec.

2016.307–70 Contract provisions and clauses.

Subpart 2016.5 Indefinite-Delivery Contracts

2016.506–70 Contract provisions and clauses.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2016.3—Cost Reimbursement Contracts

2016.307–70 Contract provisions and clauses.

(a) The contracting officer shall insert the clause at 2052.216–70, Level of Effort, in solicitation for negotiated procurements containing labor costs other than maintenance services, to be awarded on a cost reimbursement, cost sharing, cost-plus-award fee, cost-plus-fixed fee, time and materials, or labor hour basis.

(b) The contracting officer shall insert the following provisions and clauses in all cost reimbursement contracts:

(1) Section 2052.216–71, Indirect Cost Rates (where provisional rates without ceilings apply).

(2) Section 2052.216–72, Indirect Cost Rates—Alternate 1 (where predetermined rates apply).

(3) Section 2052.216–73, Indirect Cost Rates—Alternate 2 (where provisional rates with ceilings apply).

(c) The contracting officer may make appropriate changes to these clauses to reflect different arrangements.

Subpart 2016.5—Indefinite-Delivery Contracts

2016.506–70 Contract provisions and clauses.

The contracting officer shall insert the following provisions in all solicitations and contracts that contain task order procedures:

(a) Section 2052.216–74, Task Order Procedures;

(b) Section 2052.216–75, Accelerated Task order Procedures.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 2017—SPECIAL CONTRACTING METHODS

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 481(b).

Subpart 2017.2—Options

2017.204 Contracts

(a) The contracting officer may approve extensions to five year contracts for up to a total of an additional six months, for the purpose of completing the competitive process for a follow on contract, provided that the competitive requirement was received in DCPM not less than six months before the end of the fifth year.

(b) The Head of the Contracting Activity may approve extensions for up to a total of one year.

PART 2019—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 2019.7—Subcontracting with small business and small disadvantaged business concerns

Sec.

2019.705 Responsibilities of the contracting officer under the subcontracting assistance program.

2019.705–4 Reviewing the subcontracting plan.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2019.7—Subcontracting with Small Business and Small Disadvantaged Business Concerns

2019–705 Responsibilities of the contracting officer under the subcontracting assistance program.

2019.705–4 Reviewing the subcontracting plan.

(a) During the source selection process, subcontracting plans may be requested from all concerns required to submit them and determined to be in the competitive range, for negotiation with the apparent successful offeror.

(b) The contracting officer may accept the terms of an overall or "master" company subcontracting plan incorporated by reference into a specific subcontracting plan submitted by the apparent successful offeror/bid for a specific contract, if:

(1) The master plan contains all of the elements required by FAR 19.704;

(2) Subcontracting goals for small and small disadvantaged business concerns are specifically set forth in each contract or modification over the statutory threshold;

(3) Any changes to the plan deemed necessary and required by the contracting officer in areas other than goals are specifically set forth in the contract or modification; and

(4) The contracting officer has copies of the entire plan.

PART 2020—LABOR SURPLUS AREA CONCERNS

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2020.1—General

2020.102 General Policy.

Acquisitions that are in excess of $25,000 must be reviewed for potential labor surplus area set-aside consideration in accordance with FAR 20.104 using publications and other information identifying labor surplus areas obtained from: U.S. Department of Labor, Employment and Training Administration, U.S. Employment Service, Office of Labor Market Information, 200 Constitution Ave., NW., room N4456, Washington, DC 20510, Telephone Number: (202) 535–0157.

PART 2022—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 2022.1 Basic Labor Policies

Sec.

2022.101–1 General.

2022.103–4 Approvals.

Subpart 2022.9 Nondiscrimination Because of Age

2022.901–70 Contract provisions.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 4186(b)

Subpart 2022.1 Basic Labor Policies

2022.101–1 General.

The Head of Contracting Activity shall designate programs or requirements for which it is necessary that contractors be required to notify the Government of actual or potential labor disputes that are delaying or threaten to delay the timely contract performance.

2022.103–4 Approvals.

The agency approving official for contractor overtime shall be the contracting officer.

Subpart 2022.9—Nondiscrimination Because of Age

2022.901–70 Contract provisions.

The contracting officer shall insert the provision found at 2052.222–70, Nondiscrimination Because of Age, in all solicitations.

PART 2024—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 2024.1—Protection of Individual Privacy

2024.103 Procedures.

Subpart 2024.2—Freedom of Information Act

2024.202 Policy.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2024.1—Protection of Individual Privacy

2024.103 Procedures.

The provisions at 10 CFR part 9, subpart B, Privacy Act Regulations, are applicable to the maintenance or disclosure of information for a system of records on individuals.

Subpart 2024.2—Freedom of Information Act

2024.202 Policy.

The provisions at 10 CFR part 9, Subpart A, Freedom of Information Act Regulations, are applicable to the availability of NRC records to the public.

PART 2025—FOREIGN ACQUISITION

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2025.1—Buy American Act—Supplies

2025.102 Policy.

Contracting officers may make the determination required by FAR 25.102(a)(4), provided the determination is factually supported in writing. For contracts exceeding $1 million, the Head of the Contracting Activity shall approve the determination.

SUBCHAPTER 3—GENERAL CONTRACTING REQUIREMENTS

PART 2027—PATENTS, DATA, AND COPYRIGHTS

Subpart 2027.3—Patent Rights Under Government Contracts

Sec.

2027.305 Administration of patent rights clauses.
2027.305–3 Follow-up by Government.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2027.3—Patent Rights Under Government Contracts

2027.305 Administration of patent rights clauses.

The contracting officer shall ensure that each contractor report is in writing on whether any patent rights are being claimed, before final payment and closeout of the contract.

2027.305–3 Follow-up by Government.

(a) The contracting officer shall, as a part of the closeout of a contract, require each contractor to report on any patents, copyrights, or royalties attained using any portion of the contract funds. The contractor shall, if no activity is to be reported, certify that in connection with the performance of the contract:

(1) No inventions or discoveries were made,

(2) No copyrights were secured, produced, or composed,

(3) No notices or claims of patent or copyright infringement have been received by the contractor or its subcontractors, and

(4) No royalty payments were directly involved in the contract or reflected in the contract price to the Government, nor were any royalties or other payments paid or owed directly to others.

(b) The contracting officer may waive any of the requirements paragraphs (a)(1)–(4) of this section, after documenting the file to indicate the—

(1) Impracticality of obtaining the document(s); and

(2) Steps taken to attempt to obtain them.

(c) The contracting officer shall notify agency legal counsel responsible for patents whenever a contractor reports any patient, copyright, or royalty activity, and shall document the official file with the resolution to protect the Government's rights prior to making any final payment and closing out the contract.

PART 2030—COST ACCOUNTING STANDARDS

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2030.2—CAS Program Requirements

2030.201–5 Waiver.

In accordance with the FAR 30.201–5(c), the Head of the Contracting Activity may waive CAS requirements.

PART 2031—CONTRACT COST PRINCIPLES AND PROCEDURES

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2031.1—Applicability

2031.109–70 Contract clauses.

The contracting officer shall insert the clause at 2052.231–70, Precontract Costs, in all cost type contracts when costs in connection with work under the contract will be incurred by the contractor before the effective date of the contract. Approval for use of this clause must be obtained at one level above the contracting officer.

PART 2032—CONTRACT FINANCING

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2032.4—Advance Payments

2032.402 General.

(a) The contracting officer shall have the responsibility and authority for making findings and determinations, and for approval of contract terms concerning advance payments.

(b) Before authorizing any advance payment agreements except for subscriptions to publications, the approving official shall coordinate with the Office of the Controller, Division of Accounting and Finance, to ensure completeness of contractor submitted documentation.

PART 2033—PROTESTS, DISPUTES, AND APPEALS

Subpart 2033.1—Protests

Sec.

2033.103 Protests to the agency.
2033 203 Applicability.
2033.211 Contracting officer's decision.

Sec.
2033.214 Contract clause.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2033.1—Protests

2033.103 Protests to the agency.

The agency may not process, or shall cease processing, agency level protests that are protested outside the agency unless and until such time that a proper determination is made authorizing the agency to proceed under the applicable protest procedures.

2033.203 Applicability.

Pursuant to an interagency agreement between the NRC and the Department of Energy Board of Contract Appeals (EBCA), the EBCA will hear appeals from final decisions of NRC contracting officers issued pursuant to the Contract Disputes Act. The EBCA rules appear in 10 CFR part 1023.

2033.211 Contracting officer's decision.

Contracting officers shall alter the paragraph at FAR 33.211(a)(4)(iv) to identify the Energy Board of Contract Appeals and include its address: Webb Building, room 1006, 4040 N. Fairfax Drive, Arlington, Virginia 22203, when preparing a written decision.

2033.214 Contract clause.

The contracting officer shall use the clause at FAR 52.233–1, Disputes, with its Alternate I where continued performance is vital to National Security, the public health and safety, critical and major agency programs, or other essential supplies or services whose timely reprocurement from other sources would be impractical.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 2035—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.
2035.70 Contract clauses.
2035.71 Broad agency announcements.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

2035.70 Contract clauses.

(a) The contracting officer shall insert the following clauses in all RFPs for Research and Development or in Requests for Proposals (RFPs) for other technical services as appropriate:

(b) Section 2052.235–70, Publication of Research Results, except that in the case of universities, the contracting officer shall substitute the paragraph found at 2052.235–71 for paragraph c.

(c) Section 2052.235–72 Safety, Health and Fire Protection.

2035.71 Broad agency announcements.

(a) Criteria for selecting contractors will include such factors as:

(1) Unique and innovative methods, approaches, or concepts demonstrated by the proposal.

(2) Overall scientific, technical, or economic merits of the proposal.

(3) The offeror's capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the proposal objectives.

(4) The qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel who are critical in achieving the proposal objectives.

(5) Potential contribution of the effort to NRC's mission.

(6) Overall standing among similar proposals available for evaluation and/or evaluation against the known state-of-the-art technology.

(b) Once a proposal is received, communication between the agency's scientific or engineering personnel and the principal investigator is permitted for clarification purposes only and must be coordinated through the Division of Contracts and Property Management.

(c) After evaluation of the proposals, the Designating Official shall submit a comprehensive evaluation report to the contracting officer which recommends the source(s) for contract award. The report must reflect the basis for the selection or nonselection of each proposal received.

PART 2039—ACQUISITION OF INFORMATION RESOURCES

Sec.
2039.001 Policy.
2039.002 Delegations of procurement authority.

Authority: 42 U.S.C. 2201; 42 U S.C. 5841; and 41 U.S.C. 418(b).

2039.001 Policy.

In accordance with the Federal Information Resources Management Regulation (41 CFR Ch. 201), and appropriate NRC Management Directives, the Office of Information Resources Management will be responsible for development and/or approval of requirements analysis including information needs, justification for specific make and model, analysis of alternatives, and Delegations of Procurement Authority for information resources management procurements in excess of $25,000 (automated data processing, telecommunications, and records), when required. These documents must be submitted to the Division of Contracts and Property Management with the Request for Procurement Action (RFPA) for which these documents are required.

2039.002 Delegations of procurement authority.

The NRC official authorized to sign Agency Procurement Requests and Agency Telecommunications Requests for Delegations of Procurement Authority is the Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support or designee.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 2042—CONTRACT ADMINISTRATION

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 418(b).

Subpart 2042.8—Disallowance of Costs

2042.803 Disallowing costs after incurrence.

(a) Vouchers and invoices submitted to NRC must be submitted to the contracting officer or designee for review and approval for payment. If the examination of a voucher or invoice raises a question regarding the allowability of a cost submitted, the contracting officer or designee shall:

(1) Hold informal discussions with the contractor as appropriate.

(2) If the discussions do not resolve the matter, the contracting officer shall issue a notice advising the contractor of costs disallowed. The notice must advise the contractor that it may:

(i) If in disagreement with the disallowance, submit a written claim to the contracting officer for payment of the disallowed cost and explain why the cost should be reimbursed; or

(ii) If the disagreement(s) cannot be settled, file a claim under the disputes clause which will be processed in accordance with disputes procedures found at FAR subpart 33.2; and

(3) Process the voucher or invoice for payment and advise the NRC Division of Accounting and Finance to deduct the disallowed costs when scheduling the voucher for payment.

(b) When audit reports or other notifications question costs or consider them unallowable, the contracting officer shall resolve all cost issues through discussions with the contractor and/or auditor, whenever possible, within six months of receipt of the audit report.

(1) One of the following courses of action must be pursued:

(i) Accept and implement audit recommendations as submitted;

(ii) Accept the principle of the audit recommendation but adjust the amount of the questioned costs;

(iii) Reject audit findings and recommendations.

(2) When implementing the chosen course of action, the contracting officer shall:

(i) Hold discussions with the auditor and contractor, as appropriate;

(ii) If the contracting officer agrees with the auditor concerning the questioned costs, attempt to negotiate a mutual settlement of questioned costs;

(iii) Issue a final decision, including any disallowance of questioned costs; inform the contractor of his/her right to appeal the decision under the disputes procedures found at FAR subpart 33.2; and provide a copy of the final decision of the Office of the Inspector General; and

(iv) Initiate immediate recoupment actions for all disallowed costs owed the government by one or more of the following methods:

(A) Request that the contractor provide a credit adjustment (offset) against amounts billed the government on the next or other future invoice(s) submitted under the contract for which the disallowed costs apply;

(B) Deduct the disallowed costs from the next invoice submitted under the contract;

(C) Deduct the disallowed costs on a schedule determined by the contracting officer after discussion with the contractor (if the contracting officer determines that an immediate and complete deduction is inappropriate); and

(D) Advise the contractor that a refund is immediately payable to the government (in situations where there are insufficient payments owed by the government to effect recovery from the contract).

PART 2045—GOVERNMENT PROPERTY

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2045.3—Providing Government Property to Contractors

2045.370 Providing government property (in general).

(a) Unless otherwise provided for in FAR 45.302–1(d), applicable to Government facilities with a unit cost of less than $10,000, a contractor may be provided Government property or allowed to purchase the property at Government expense upon determination made by the contracting officer with the advice of the agency property official that:

(1) No practicable or economical alternative exists; e.g., acquisition from other sources, utilization of subcontractors, rental of property, or modification of program project requirements;

(2) Furnishing Government property is likely to result in substantially lower costs to the Government for the items produced or services rendered when all costs involved (e.g., transportation, installation, modification, maintenance, etc.) are compared with the costs to the Government of the contractor's use of privately-owned property; and

(3) The Government receives adequate consideration for providing the property.

(b) If the program office is aware before the submission of the RFPA that it will be necessary to provide prospective contractors with Government property, a written justification must accompany the RFPA to the Division of Contracts and Property Management.

SUBCHAPTER H—CLAUSES AND FORMS

PART 2052—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 2052.2—Text of Provisions and Clauses

Sec.

2052.200– Authority.
2052.204–70 Security.
2052.204–71 Site access badge requirements.
2052.209–70 Qualifications of contract employees.
2052.209–71 Current/former agency employee involvement.
2052.209–72 Contractor organizational conflicts of interest (representation).
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2052.210–71 Drawings, designs, specifications, and other data.
2052.212–70 Preparation of technical reports.
2052.212–71 Technical progress report.
2052.212–72 Financial status report.
2052.212–73 Financial status report—Alternate 1.
2052.214–70 Prebid conference.
2052.214–71 Bidder qualifications and past experiences.
2052.214–72 Bid evaluation.
2052.214–73 Timely receipt of bids.
2052.214–74 Disposition of bids.
2052.215–70 Key personnel.
2052.215–71 Project officer authority.
2052.215–72 Project officer authority—Alternate 1.
2052.215–73 Timely receipt of proposals.
2052.215–74 Award notification and commitment of public funds.
2052.215–75 Disposition of proposals.
2052.215–76 Proposal presentation and format.
2052.215–77 Proposal presentation and format—Alternate 1 (language for negotiated task order contracts).
2052.215–78 Proposal presentation and format—Alternate 2 (language for negotiated fixed prices, labor hour, or time and materials contracts).
2052.215–79 Preproposal conference.
2052.215–80 Travel reimbursement.
2052.215–81 Travel approvals.
2052.215–82 Contract award and evaluation of proposals—technical merit more important than cost.
2052.215–83 Contract award and evaluation of proposals—cost most important than technical merit.
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2052.216–70 Level of effort.
2052.216–71 Indirect cost rates.
2052.216–72 Indirect cost rates—Alternate 1.
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2052.216–74 Task order procedures.
2052.216–75 Accelerated task order procedures.
2052.222–70 Nondiscrimination because of age.
2052.231–70 Precontract costs.
2052.235–70 Publication of research results.
2052.235–71 Publication of research results—universities.
2052.235–72 Safety, health, and fire protection.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2052.2—Text of Provisions and Clauses

2052.200 Authority.

2052.204–70 Security.

As prescribed at 2004.404(a), insert the following clause in applicable solicitations and contracts:

Security

(a) Security/Classification Requirements Form. The attached NRC Form 187 (See Section J for List of Attachments) furnishes the basis for providing security and classification requirements to prime contractors, subcontractors, or others (e.g., bidders) who have or may have an NRC contractual relationship that requires access to classified information or matter, access on a continuing basis (in excess of 90 or more days) to NRC Headquarters controlled buildings, or otherwise requires NRC photo identification or card-key badges.

(b) It is the contractor's duty to safeguard National Security Information, Restricted Data, and Formerly Restricted Data. The contractor shall, in accordance with the Commission's security regulations and requirements, be responsible for safeguarding National Security Information, Restricted Data, and Formerly Restricted Data, and for protecting against sabotage, espionage, loss, and theft, the classified documents and material in the contractor's possession in connection with the performance of work

under this contract. Except as otherwise expressly provided in this contract, the contractor shall, upon completion or termination of this contract, transmit to the Commission any classified matter in the possession of the contractor or any person under the contractor's control in connection with performance of this contract. If retention by the contractor of any classified matter is required after the completion or termination of the contract and the retention is approved by the contracting officer, the contractor shall complete a certificate of possession to be furnished to the Commission specifying the classified matter to be retained. The certification must identify the items and types or categories of matter retained, the conditions governing the retention of the matter and their period of retention, if known. If the retention is approved by the contracting officer, the security provisions of the contract continue to be applicable to the matter retained.

(c) In connection with the performance of the work under this contract, the contractor may be furnished, or may develop or acquire, proprietary data (trade secrets) or confidential or privileged technical, business, or financial information, including Commission plans, policies, reports, financial plans, internal data protected by the Privacy Act of 1974 (Pub. L. 93–579), or other information which has not been released to the public or has been determined by the Commission to be otherwise exempt from disclosure to the public. The contractor agrees to hold the information in confidence and not to directly or indirectly duplicate, disseminate, or disclose the information in whole or in part to any other person or organization except as may be necessary to perform the work under this contract. The contractor agrees to return the information to the Commission or otherwise dispose of it at the direction of the contracting officer.

Failure to comply with this clause is grounds for termination of this contract.

(d) Regulations. The contractor agrees to conform to all security regulations and requirements of the Commission.

(e) Definition of National Security Information. The term National Security Information, as used in this clause, means information that has been determined pursuant to Executive Order 12356 or any predecessor order to require protection against unauthorized disclosure and that is so designated.

(f) Definition of Restricted Data. The term Restricted Data, as used in this clause, means all data concerning:

(1) design, manufacture, or utilization of atomic weapons;

(2) the production of special nuclear material; or

(3) the use of special nuclear material in the production of energy, but does not include data declassified or removed from the Restricted Data category pursuant to section 142 of the Atomic Energy Act of 1954, as amended.

(g) Definition of Formerly Restricted Data. The term Formerly Restricted Data, as used in this clause, means all data removed from the Restricted Data category under section 142–d of the Atomic Energy Act of 1954, as amended.

(h) Security clearance personnel. The contractor may not permit any individual to have access to Restricted Data, Formerly Restricted Data, or other classified information, except in accordance with the Atomic Energy Act of 1954, as amended, and the Commission's regulations or requirements applicable to the particular type or category of classified information to which access is required. The contractor shall also execute a Standard Form 312, Classified Information Nondisclosure Agreement, when access to classified information is required.

(i) Criminal liabilities. It is understood that disclosure of National Security Information, Restricted Data, and Formerly Restricted Data, relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any Restricted Data, Formerly Restricted Data, or any other classified matter that may come to the contractor or any person under the contractor's control in connection with work under this contract, may subject the contractor, its agents, employees, or subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794; and Executive Order 12356.)

(j) Subcontracts and purchase orders. Except as otherwise authorized in writing by the contracting officer, the contractor shall insert provisions similar to the foregoing in all subcontracts and purchase orders under this contract.

(k) In performing the contract work, the contractor shall classify all documents, material, and equipment originated or generated by the contractor in accordance with guidance issued by the Commission. Every subcontract and purchase order issued hereunder involving the origination or generation of classified documents, material, and equipment must provide that the subcontractor or supplier assign classification to all documents, material, and equipment in accordance with guidance furnished by the contractor.

(End of Clause)

2052.204–71 Site access badge requirements.

As prescribed at 2004.404(b), insert the following clause in applicable solicitations and contracts:

Site Access Badge Requirement

During the life of this contract, the rights of ingress and egress for contractor personnel must be made available as required. In this regard, all contractor personnel whose duties under this contract require their presence on-site shall be clearly identifiable by a distinctive badge furnished by the Government. The Project Officer shall assist the contractor in obtaining the badges for the contractor personnel. It is the sole responsibility of the contractor to ensure that each employee has proper identification at all times. All prescribed identification must be immediately delivered to the Security Office for cancellation or disposition upon the termination of employment of any contractor personnel. Contractor personnel must have this identification in their possession during on-site performance under this contract. It is the contractor's duty to assure that contractor personnel enter only those work areas necessary for performance of contract work, and to assure the safeguarding of any Government records or data that contractor personnel may come into contact with.

(End of Clause)

2052.209–70 Qualifications of contract employees.

As prescribed at 2009.105–70, insert the following provision in applicable solicitations:

Qualifications of Contract Employees

The offeror hereby certifies by submission of this offer that all representations made regarding its employees, proposed subcontractor personnel, and consultants are accurate.

(End of Provision)

2052.209–71 Current/former agency employee involvement.

As prescribed at 2009.105–70, insert the following provision in applicable solicitations:

Current/Former Agency Employee Involvement

(a) The following representation is required by the NRC Acquisition Regulation 2009.105–70(b). It is not NRC policy to encourage offerors and contractors to propose current/former agency employees to perform work under NRC contracts, and as set forth in the above cited provision, the use of such employees may, under certain conditions, adversely affect NRC's consideration of non-competitive proposals and task orders.

(b) The offeror hereby certifies that there ( ) are ( ) are no current/former NRC employees (including special Government employees performing services as experts, advisors, consultants, or members of advisory committees) who have been or will be involved, directly or indirectly, in developing the offer, or in negotiating on behalf of the offeror, or in managing, administering, or performing any contract, consultant agreement, or subcontract resulting from this offer. For each individual so identified, the Technical and Management proposal must contain, as a separate attachment, the name of the individual, the individual's title while employed by the NRC, the date individual left NRC, and brief description of the individual's role under this proposal.

(End of Provision)

2052.209–72 Contractor organizational conflicts of interest (representation).

As prescribed at 2009.570–4(b) and 2009.570–8, insert the following provision in applicable solicitations:

Contractor Organizational Conflicts of Interest Representation

I represent to the best of my knowledge and belief that:

The award to _____ of a contract or the modification of an existing contract does / / does not / / involve situations or relationships of the type set forth in 48 CFR 2009.570–3(b).

(a) If the representation, as completed, indicates that situations or relationships of the type set forth in 48 CFR 2009.570–3(b) are involved, or the contracting officer otherwise determines that potential organizational conflicts of interest exist, the offeror shall provide a statement in writing which describes in a concise manner all relevant factors bearing on his representation to the contracting officer. If the contracting officer determines that organizational conflicts exist, the following actions may be taken:

(1) Impose appropriate conditions which avoid such conflicts,

(2) Disqualify the offeror, or

(3) Determine that it is otherwise in the best interest of the United States to seek award of the contract under the waiver provisions of 48 CFR 2009–570–9.

(b) The refusal to provide the representation required by 48 CFR 2009.570–4(b), or upon request of the contracting officer, the facts required by 48 CFR 2009.570–3(b), must result in disqualification of the offeror for award.

(End of Provision)

2052.209–73 Contractor organizational conflicts of interest.

As prescribed at 2009.570–5(a) and 2009–570–8, insert the following clause in all applicable solicitations and contracts:

Contractor Organizational Conflicts of Interest

(a) Purpose. The primary purpose of this clause is to aid in ensuring that the contractor:

(1) Is not placed in a conflicting role because of current or planned interests (financial, contractual, organizational, or otherwise) which relate to the work under this contract; and

(2) Does not obtain an unfair competitive advantage over other parties by virtue of its performance of this contract.

(b) Scope. The restrictions described apply to performance or participation by the contractor, as defined in 48 CFR 2009.570–2 in the activities covered by this clause.

(c) Work for others.

(1) Notwithstanding any other provision of this contract, during the term of this contract the contractor agrees to forgo entering into consulting or other contractual arrangements with any firm or organization, the result of which may give rise to a conflict of interest with respect to the work being performed under this contract. The contractor shall ensure that all employees under this contract abide by the provision of this clause. If the contractor has reason to believe with respect to itself or any employee that any proposed consultant or other contractual arrangement with any firm or organization may involve a potential conflict of interest, the contractor shall obtain the written approval of the contracting officer before the execution of such contractual arrangement.

(2) The contractor may not represent, assist, or otherwise support an NRC licensee or applicant undergoing an NRC audit, inspection, or review where the activities that are the subject of the audit, inspection or review are the same as or substantially similar to the services within the scope of this contract (or task order as appropriate), except where the NRC licensee or applicant requires the contractor's support to explain or defend the contractor's prior work for the utility or other entity which NRC questions.

(3) When the contractor performs work for the NRC under this contract at any NRC licensee or applicant site, the contractor shall neither solicit nor perform work in the same or similar technical area for that licensee or applicant organization for a period commencing with the award of the task order or beginning of work on the site (if not a task order contract) and ending one year after completion of all work under the associated task order, or last time at the site (if not a task order contract).

(4) When the contractor performs work for the NRC under this contract at any NRC licensee or applicant site,

(i) The contractor may not solicit work at that site for that licensee or applicant during the period of performance of the task order or the contract, as appropriate.

(ii) The contractor may not perform work at that site for that licensee or applicant during the period of performance of the task order or the contract, as appropriate, and for one year thereafter.

(iii) Notwithstanding the foregoing, the contracting officer may authorize the contractor to solicit or perform this type of work (except work in the same or similar technical area) if the contracting officer determines that the situation will not pose a potential for technical bias or unfair competitive advantage.

(d) Disclosure after award.

(1) The contractor warrants that to the best of its knowledge and belief, and except as otherwise set forth in this contract, it does not have any organizational conflicts of interest as defined in 48 CFR 2009.570–2.

(2) The contractor agrees that, if after award, it discovers organizational conflicts of interest with respect to this contract, it shall make an immediate and full disclosure in writing to the contracting officer. This statement must include a description of the action which the contractor has taken or proposes to take to avoid or mitigate such conflicts. The NRC may, however, terminate the contract if termination is in the best interest of the government.

(3) It is recognized that the scope of work of a task-order-type contract necessarily encompasses a broad spectrum of activities. Consequently, if this is a task-order-type contract, the contractor agrees that it will disclose all proposed new work involving NRC licensees or applicants which comes within the scope of work of the underlying contract. Further, if this contract involves work at a licensee or applicant site, the contractor agrees to exercise diligence to discover and disclose any new work at that licensee or applicant site. This disclosure must be made before the submission of a bid or proposal to the utility or other regulated entity and must be received by the NRC at least 15 days before the proposed award date in any event, unless a written justification demonstrating urgency and due diligence to discover and disclose is provided by the contractor and approved by the contracting officer. The disclosure must include the statement of work, the dollar value of the proposed contract, and any other documents that are needed to fully describe the proposed work for the regulated utility or other regulated entity. NRC may deny approval of the disclosed work only when the NRC has issued a task order which includes the technical area and, if site-specific, the site, or has plans to issue a task order which includes the technical area and, if site-specific, the site, or when the work violates paragraphs (c)(2), (c)(3) or (c)(4) of this section.

(e) Access to and use of information.

(1) If in the performance of this contract, the contractor obtains access to information, such as NRC plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. Section 552a (1988)), or the Freedom of Information Act (5 U.S.C. Section 552 (1986)), the contractor agrees not to:

(i) Use this information for any private purpose until the information has been released to the public;

(ii) Compete for work for the Commission based on the information for a period of six months after either the completion of this contract or the release of the information to the public, whichever is first;

(iii) Submit an unsolicited proposal to the Government based on the information until one year after the release of the information to the public; or

(iv) Release the information without prior written approval by the contracting officer unless the information has previously been released to the public by the NRC.

(2) In addition, the contractor agrees that, to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. section 552a (1988)), or the Freedom of Information Act (5 U.S.C. section 552 (1986)), or other confidential or privileged technical, business, or financial information under this contract, the contractor shall treat the information in accordance with restrictions placed on use of the information.

(3) Subject to patent and security provisions of this contract, the contractor shall have the right to use technical data it produces under this contract for private purposes provided that all requirements of this contract have been met.

(f) Subcontracts. Except as provided in 48 CFR 2009.570–2, the contractor shall include this clause, including this paragraph, in subcontracts of any tier. The terms *contract*, *contractor*, and *contracting officer*, must be appropriately modified to preserve the Government's rights.

(g) Remedies. For breach of any of the above restrictions, or for intentional nondisclosure or misrepresentation of any relevant interest required to be disclosed concerning this contract or for such erroneous representations that necessarily imply bad faith, the Government may

terminate the contract for default, disqualify the contractor from subsequent contractual efforts, and pursue other remedies permitted by law or this contract.

(h) Waiver. A request for waiver under this clause must be directed in writing to the contracting officer in accordance with the procedures outlined in 48 CFR 2009.570–9.

(i) Follow-on effort. The contractor shall be ineligible to participate in NRC contracts, subcontracts, or proposals therefor (solicited or unsolicited), which stem directly from the contractor's performance of work under this contract. Furthermore, unless so directed in writing by the contracting officer, the contractor may not perform any technical consulting or management support services work or evaluation activities under this contract on any of its products or services or the products or services of another firm if the contractor has been substantially involved in the development or marketing of the products or services.

(1) If the contractor, under this contract, prepares a complete or essentially complete statement of work or specifications, the contractor is not eligible to perform or participate in the initial contractual effort which is based on the statement of work or specifications. The contractor may not incorporate its products or services in the statement of work or specifications unless so directed in writing by the contracting officer, in which case the restrictions in this paragraph do not apply.

(2) Nothing in this paragraph precludes the contractor from offering or selling its standard commercial items to the Government.

(End of Clause)

2052.210–70 Brand name products or equal.

As prescribed at 2010.004, insert the following clause in applicable solicitations and contracts:

Brand Name Products or Equal

Offers (proposers) offering other than brand name items identified herein should furnish with their offers adequate information to ensure that a determination can be made as to quality of the product(s) offered.

2052.210–71 Drawings, designs, specifications, and other data.

As prescribed at 2010.011, the following clause shall be submitted in applicable solicitations and contracts:

Drawings, Designs, Specifications, and Other Data

All drawings, sketches, designs, design data, specifications, notebooks, technical and scientific data, and all photographs, negatives, reports, findings, recommendations, other data and memoranda of every description relating thereto, as well as all copies of the foregoing relating to the work or any part thereto, are subject to inspection by the Commission at all reasonable times. Inspection of the proper facilities must be afforded the Commission by the contractor and its subcontractors. These data are the property of the Government and may be used by the Government for any purpose whatsoever without any claim on the part of the contractor and its subcontractors and vendors for additional compensation and must, subject to the right of the contractor to retain a copy of the material for its own use, be delivered to the Government, or otherwise disposed of by the contractor as the contracting officer may direct during the progress of the work or upon completion or termination of this contract. The contractor's right of retention and use is subject to the security, patent, and use of information provisions, if any, of this contract.

(End of Clause)

2052.212–70 Preparation of technical reports.

As prescribed at 2012.104–70(a), insert the clause in applicable solicitations and contracts:

Preparation of Technical Reports

All technical reports required by Section C and all Technical Progress Reports required by Section F are to be prepared in accordance with the attached Management Directive 3.8, "Unclassified Contractor and Grantee Publications in the NUREG Series." Management Directive 3.8 is not applicable to any Contractor Spending Plan (CSP) and any Financial Status Report that may be included in this contract. (See Section J for List of Attachments).

(End of Clause)

2052.212–71 Technical progress report.

As prescribed at 2012.104–70(b), insert the following clause in applicable solicitations and contracts:

Technical Progress Report

The contractor shall provide a monthly Technical Progress Report to the project officer and the contracting officer. The report is due within 15 calendar days after the end of the report period and must identify the title of the project, the contract number, Financial Identification Number (FIN), project manager and/or principal investigator, the contract period of performance, and the period covered by the report. Each report must include the following for each discrete task/task order:

(a) A listing of the efforts completed during the period, and milestones reached or, if missed, an explanation provided;

(b) Any problems or delays encountered or anticipated and recommendations for resolution. If the recommended resolution involves a contract modification, e.g., change in work requirements, level of effort (cost) or schedule delay, the contractor shall submit a separate letter to the contracting officer identifying the required change and estimated cost impact.

(c) A summary of progress to date; and

(d) Plans for the next reporting period.

(End of clause)

2052.212–72 Financial status report.

As prescribed at 2012.104–70(c), insert the following clause in applicable solicitations and contracts.

Financial Status Report

The contractor shall provide a monthly Financial Status Report to the project officer and the contracting officer. The report is due within 15 calendar days after the end of the report period and must identify the title of the project, the contract number, Financial Identification Number (FIN), project manager and/or principal investigator, the contract period of performance, and the period covered by the report. Each report must include the following for each discrete task:

(a) Provide total estimated cost (value) of the project as reflected in the contract, the amount of funds available in the contract to date, and the balance of funds required to complete the work as follows:

(1) Total estimated contract amount.

(2) Total funds obligated to date.

(3) Total costs incurred this reporting period.

(4) Total costs incurred to date.

(5) Provide a detail of all direct and indirect costs incurred during the reporting period for the entire contract or each task, if it is a task ordering contract.

(6) Balance of obligations remaining.

(7) Balance of funds required to complete contract/task order.

(8) Contractor Spending Plan (CSP) status:

(i) Projected percentage of completion cumulative through the report period for the project/task order as reflected in the current CSP.

(ii) Indicate if there has been a significant change in the original CSP projection in either dollars or percentage of completion. Identify the change, the reasons for the change, whether there is any projected overrun, and when additional funds would be required. If there have been no changes to the original NRC-approved CSP projections, a written statement to that effect is sufficient in lieu of submitting a detailed response to item 8.

(9) A revised CSP is required with the Financial Status Report whenever the contractor or the contracting officer has reason to believe that the total cost for performance of this contract will be either greater or substantially less than what had been previously estimated.

(b) If the data in this report indicates a need for additional funding beyond that already obligated, this information may only be used as support to the official request for funding required in accordance with the Limitation of Cost (LOC) Clause (FAR 52.232–20) or the Limitation of Funds (LOF) Clause FAR 52.232–22.

(End of Clause)

2052.212.73 Financial status report—Alternate 1.

Financial Status Report—Alternate 1

As prescribed in § 2012.104–70(c), insert the following provision in applicable solicitations:

The Contractor shall provide a monthly Financial Status Report to the Project Officer and the Contracting Officer. The report is due within 15 calendar days after the end of the report period and shall identify the title of the project, the contract number, project

manager and/or principal investigator, the contract period of performance, and the period covered by the report. Each report shall include the following for each discrete task:

(a) Provide total estimated cost (value) of the project as reflected in the contract, the amount of funds available in the contract to date, and the balance of funds required to complete the work as follows:

(1) Total Estimated Contract Amount.

(2) Total Funds Obligated to Date.

(3) Total Costs Incurred This Reporting Period.

(4) Total Costs Incurred to Date.

(5) Balance of Obligations Remaining.

(6) Balance of Funds Required To Complete Contract.

(b) Detail of all direct and indirect costs incurred during the reporting period for each task.

[End of Clause]

2052.214–70 Prebid conference.

As prescribed at 2014.201–670(a), insert the following provision in applicable solicitations:

Prebid Conference

(a) A prebid conference is scheduled for:
Date: * * *
Location: * * *
Time: * * *

(b) This conference is to afford interested parties an opportunity to present questions and clarify uncertainties regarding this solicitation. You are requested to mail written questions concerning those areas of uncertainty which, in your opinion, require clarification or correction. You are encouraged to submit your questions in writing not later than * working day(s) prior to the conference date. Receipt of late questions may result in the questions not being answered at the conference although they will be considered in preparing any necessary amendment to the solicitation. If you plan to attend the conference, notify * by letter or telephone *, no later than close of business *. Notification of your intention to attend is essential in the event the conference is rescheduled or canceled. (Optional statement: Due to space limitations, each potential bidder is limited to * representatives at the conference.)

(c) Written questions must be submitted to: U.S. Nuclear Regulatory Commission, Division of Contracts and Property Management, Attn: * * *, Mail Stop * * *, Washington, DC 20555.

(d) The envelope must be marked "Solicitation No. * /Prebid Conference."

(e) A transcript of the conference will be furnished to all prospective offerors through the issuance of an amendment to the solicitation.

*To be incorporated into the solicitation.

2052.214–71 Bidder qualifications and past experiences.

As prescribed in 2014.201–670(b), insert the following provision in applicable solicitations:

Bidder Qualifications and Past Experiences

(a) The bidder shall list * previous/current contracts for the same or similar products/services. This information will assist the contracting officer in his/her Determination of Responsibility. Lack of previous/current contracts for same or similar products/services or failure to submit this information will not necessarily result in an unfavorable Determination of Responsibility.

(1) Contract No.: _____
Name and address of Government agency or commercial entity:
_____
_____
_____
Point of Contact and Telephone Number:
_____
_____

(2) Contract No.: _____
Name and address of Government agency or commercial entity:
_____
_____
_____
Point of Contact and Telephone Number:
_____
_____

(3) Contract No.: _____
Name and address of Government agency or commercial entity:
_____
_____
_____
Point of Contact and Telephone Number:
_____
_____

(b) The bidder shall also provide the name, title and full telephone number for its technical representative and contracts/business representative:

(1) Technical Representative
Name _____
Title _____
Telephone No. ( ) _____

(2) Contracts/Business
Representative Name _____
Title _____
Telephone No. ( ) _____

*To be incorporated into the solicitation

(End of Provision)

2052.214–72 Bid evaluation.

As prescribed at 2014.201–670(b), insert the following provision in applicable solicitations:

Bid Evaluation

(a) Award will be made to that responsive, responsible bidder within the meaning of FAR subpart 9.1 whose total bid amount, as set forth by the bidder in Section B of this Invitation for Bid, constitutes the lowest overall evaluated final contract price to the Government based upon the requirements as set forth in the schedule. Bids will be evaluated for purposes of award by first ascertaining the sum of the total amount for each of the items specified in Section B of this solicitation. This will constitute the bidder's "Total Bid Amount."

(b) Bidders shall insert a definite price or indicate "no charge" in the blank space provided for each item and/or sub-item listed in Section B. Unless expressly provided for herein, no additional charge will be allowed for work performed under the contract other than the unit prices stipulated for each such item and/or sub-item.

(c) Any bid which is materially unbalanced as to price for the separate items specified in Section B of this IFB may be rejected as nonresponsive. An unbalanced bid is defined as one which is based on prices which, in the opinion of the NRC, are significantly less than cost for some work and/or prices that may be significantly overstated for other work.

(d) Separation charges, in any form, are not solicited. Bids containing charges for discontinuance, termination, failure to exercise an option, or for any other purpose will cause the bid to be rejected as nonresponsive.

(e) A preaward on-site survey of the bidder's facilities, equipment, etc., in accordance with FAR 9.105 and 9.106 may be made by representatives of the Commission for the purpose of determining whether the bidder is responsible within the meaning of FAR 9.1, and whether the bidder possesses qualifications that are conducive to the production of work that will meet the requirements, specifications, and provisions of this contract. Also, if requested by the Commission, the prospective contractor may be required to submit statements within * hours after receiving the request:

(1) Concerning their ability to meet any of the minimum standards set forth in FAR 9.104,

(2) Samples of work, and

(3) Names and addresses of additional clients, Government agencies and/or commercial firms which the bidder is now doing or had done business with.

(f) Notwithstanding paragraph (b) of this section, the award of any contract resulting from this solicitation will be made on an "all or none" basis. Thus, bids submitted on fewer than the items listed in Section B of this IFB, or on fewer than the estimated quantity, will cause the bid to be rejected as nonresponsive.

*To be inserted into solicitation.

(End of Provision)

2052.214–73 Timely receipt of bids.

As prescribed at 2014.670(b), insert the following provision in applicable solicitations:

Timely Receipt of Bids

Because the NRC is a secure facility with perimeter access control, bidders shall allow additional time for hand delivery (including express mail and delivery services) of bids to ensure that they are timely received in the depository at the address shown in Item 9 on the Standard Form 33.

(End of Provision)

2052.214–74 Disposition of bids.

As prescribed at 2014.670(b), insert the following provision in applicable solicitations:

Disposition of Bids

After award of the contract, one copy of each unsuccessful bid will be retained by NRC's Division of Contracts and Property

Management in accordance with the General Records Schedule 3(5)(b). Unless return of the additional copies of the bid is requested by the bidder upon submission of the bid, all other copies will be destroyed. This request should appear in a cover letter accompanying the bid.

(End of Provision)

2052.215–70 Key personnel.

As prescribed at 2015.407–70(a), insert the following clause in applicable solicitations and contracts:

Key Personnel

(a) The following individuals are considered to be essential to the successful performance of the work hereunder:

* * *

The contractor agrees that personnel may not be removed from the contract work or replaced without compliance with paragraphs (b) and (c) of this section.

(b) If one or more of the key personnel, for whatever reason, becomes, or is expected to become, unavailable for work under this contract for a continuous period exceeding 30 work days, or is expected to devote substantially less effort to the work than indicated in the proposal or initially anticipated, the contractor shall immediately notify the contracting officer and shall, subject to the concurrence of the contracting officer, promptly replace the personnel with personnel of at least substantially equal ability and qualifications.

(c) Each request for approval of substitutions must be in writing and contain a detailed explanation of the circumstances necessitating the proposed substitutions. The request must also contain a complete resume for the proposed substitute and other information requested or needed by the contracting officer to evaluate the proposed substitution. The contracting officer or his/her authorized representative shall evaluate the request and promptly notify the contractor of his or her approval or disapproval in writing.

(d) If the contracting officer determines that suitable and timely replacement of key personnel who have been reassigned, terminated, or have otherwise become unavailable for the contract work is not reasonably forthcoming, or that the resultant reduction of productive effort would be so substantial as to impair the successful completion of the contract or the service order, the contract may be terminated by the contracting officer for default or for the convenience of the Government, as appropriate. If the contracting officer finds the contractor at fault for the condition, the contract price or fixed fee may be equitably adjusted downward to compensate the Government for any resultant delay, loss, or damage.

(End of Clause)

*To be incorporated into any resultant contract

2052.215–71 Project officer authority.

As prescribed in 2015.70(a)(2)(i), insert the following clause in applicable solicitations and contracts:

Project Officer Authority

(a) The contracting officer's authorized representative hereinafter referred to as the project officer for this contract is:

Name: * * *

Address: * * *

Telephone Number: * * *

(b) Performance of the work under this contract is subject to the technical direction of the NRC project officer. The term *technical direction* is defined to include the following:

(1) Technical direction to the contractor which shifts work emphasis between areas of work or tasks, fills in details, or otherwise serves to accomplish the contractual statement of work.

(2) Provide advice and guidance to the contractor in the preparation of drawings, specifications, or technical portions of the work description.

(3) Review and, where required by the contract, approval of technical reports, drawings, specifications, and technical information to be delivered by the contractor to the Government under the contract.

(c) Technical direction must be within the general statement of work stated in the contract. The project officer does not have the authority to and may not issue any technical direction which:

(1) Constitutes an assignment of work outside the general scope of the contract.

(2) Constitutes a change as defined in the "Changes" clause of this contract.

(3) In any way cause an increase or decrease in the total estimated contract cost, the fixed fee, if any, or the time required for contract performance.

(4) Changes any of the expressed terms, conditions, or specifications of the contract.

(5) Terminates the contract, settles any claim or dispute arising under the contract, or issues any unilateral directive whatever.

(d) All technical directions must be issued in writing by the project officer or must be confirmed by the project officer in writing within ten (10) working days after verbal issuance. A copy of the written direction must be furnished to the contracting officer.

(e) The contractor shall proceed promptly with the performance of technical directions duly issued by the project officer in the manner prescribed by this clause and within the project officer's authority under the provisions of this clause.

(f) If, in the opinion of the contractor, any instruction or direction issued by the project officer is within one of the categories as defined in paragraph (c) of this section, the contractor may not proceed but shall notify the contracting officer in writing within five (5) working days after the receipt of any instruction or direction and shall request the contracting officer to modify the contract accordingly. Upon receiving the notification from the contractor, the contracting officer shall issue an appropriate contract modification or advise the contractor in writing that, in the contracting officer's opinion, the technical direction is within the scope of this article and does not constitute a change under the "Changes" clause.

(g) Any unauthorized commitment or direction issued by the project officer may result in an unnecessary delay in the contractor's performance and may even result in the contractor expending funds for unallowable costs under the contract.

(h) A failure of the parties to agree upon the nature of the instruction or direction or upon the contract action to be taken with respect thereto is subject to 52.233–1—Disputes.

(i) In addition to providing technical direction as defined in paragraph (b) of the section, the project officer shall:

(1) Monitor the contractor's technical progress, including surveillance and assessment of performance, and recommend to the contracting officer changes in requirements.

(2) Assist the contractor in the resolution of technical problems encountered during performance.

(3) Review all costs requested for reimbursement by the contractor and submit to the contracting officer recommendations for approval, disapproval, or suspension of payment for supplies and services required under this contract.

*To be incorporated into any resultant contract.

(End of Clause)

2052.215–71 Project officer authority—Alternate 1.

As prescribed at 2015.407–70(2)(ii), insert the following clause in applicable solicitations and contracts:

Project Officer Authority—Alternate 1

(a) The contracting officer's authorized representative, hereinafter referred to as the project officer for this contract is:

Name: * * *

Address: * * *

Telephone Number: * * *

(b) The project officer shall:

(1) Place delivery orders for items required under this contract.

(2) Monitor contractor performance and recommend to the contracting officer changes in requirements.

(3) Inspect and accept products/services provided under the contract.

(4) Review all contractor invoices/vouchers requesting payment for products/services provided under the contract and make recommendations for approval, disapproval, or suspension.

(c) The project officer may not make changes to the express terms and conditions of this contract.

*To be incorporated into any resultant contract

(End of Clause)

2052.215–73 Timely receipt of proposals.

As prescribed in 2015.407–70(a), insert the following provision in applicable solicitations:

Timely Receipt of Proposals

Because NRC is a secure facility with perimeter access control, offerors shall allow additional time for hand delivery (including express mail and delivery services) of proposals to ensure that they are timely received in the depository at the address shown in Item 9 on the Standard Form 33.

(End of Provision)

2052.215–74 Award notification and commitment of public funds.

As prescribed at 2015.407–70(a), insert the following clause in applicable solicitations and contracts:

Award Notification and Commitment of Public Funds

(a) All offerors will be notified of their selection or nonselection as soon as possible. Formal notification of nonselection for unrestricted awards may not be made until a contract has been awarded. Pursuant to requirements of FAR 15.1001(b)(2), preliminary notification will be provided before the award for small business set-aside procurements on negotiated procurements.

(b) It is also brought to your attention that the contracting officer is the only individual who can legally commit the NRC to the expenditure of public funds in connection with this procurement. This means that unless provided in a contract document or specifically authorized by the contracting officer, NRC technical personnel may not issue contract modifications, give informal contractual commitments, or otherwise bind, commit, or obligate the NRC contractually. Informal contractual commitments include:

(1) Encouraging a potential contractor to incur costs prior to receiving a contract;

(2) Requesting or requiring a contractor to make changes under a contract without formal contract modifications;

(3) Encouraging a contractor to incur costs under a cost-reimbursable contract in excess of those costs contractually allowable; and

(4) Committing the Government to a course of action with regard to a potential contract, contract change, claim, or dispute.

(End of Clause)

2052.215–75 Disposition of proposals.

As prescribed in 2015.407–70(a)(5), insert the following provision in applicable solicitations:

Disposition of Proposals

After award of the contract, one copy of each unsuccessful proposal is retained by the NRC's Division of Contracts and Property Management in accordance with the General Records Schedule 3(5)(b). Unless return of the additional copies of the proposals is requested by the offeror upon submission of proposal, all other copies will be destroyed. This request should appear in a cover letter accompanying the proposal.

(End of Provision)

2052.215–76 Proposal presentation and format.

As prescribed at 2015.407–70(b), insert the following provision in applicable solicitations:

Proposal Presentation and Format

(a) Proposals must be typed, printed, or reproduced on letter-size paper and each copy must be legible.

(b) Proposals in response to this Request for Proposal must be submitted in the following three (3) separate and distinct parts:

(1) Two (2) original signed copies of this solicitation package. All applicable sections must be completed by the offeror.

(2) One (1) original and * copies of the "Cost Proposal."

(3) One (1) original and * copies of the "Technical and Management Proposal."

(c) Correctness of the proposal. *Caution*—offerors are hereby notified that all information provided in its proposals, including all resumes, must be accurate, truthful, and complete to the best of the offeror's knowledge and belief. The Commission will rely upon all representations made by the offeror both in the evaluation process and for the performance of the work by the offeror selected for award. The Commission may require the offeror to substantiate the credentials, education, and employment history of its employees, subcontractor personnel, and consultants, through submission of copies of transcripts, diplomas, licenses, etc.

(d) Cost proposal.

(1) The offeror shall use Standard Form 1411, Contracting Pricing Proposal Cover Sheet, in submitting the Cost Proposal. A copy of the form and instructions are attached to this solicitation. The information must include pertinent details sufficient to show the elements of cost upon which the total cost is predicted. The Cost Proposal must be submitted separately from the Technical and Management Proposal.

(2) When the offeror's estimated cost for the proposed work exceeds $100,000 and the duration of the contract period exceeds six months, the offeror shall submit a Contractor Spending Plan (CSP) as part of its cost proposal. Guidance for completing the CSP is attached.

(3) For any subcontract discussed under the Technical and Management Proposal, provide supporting documentation on the selection process, i.e. competitive vs. noncompetitive, and the cost evaluation.

(e) Technical and management proposal.

(1) The Technical and Management Proposal may not contain any reference to cost. Resource information, such as data concerning labor hours and categories, materials, subcontracts, travel, computer time, etc., must be included in the Technical and Management Proposal so that the offeror's understanding of the scope of work may be evaluated.

(2) The offeror shall submit with the Technical and Management Proposal full and complete information as set forth below to permit the Government to make a thorough evaluation and a sound determination that the proposed approach will have a reasonable likelihood of meeting the requirements and objectives of this procurement.

(3) Statements which paraphrase the statement of work without communicating the specific approach proposed by the offeror or statements to the effect that the offeror's understanding can or will comply with the statement of work may be construed as an indication of the offeror's lack of understanding of the statement of work and objectives.

(4) The Technical and Management Proposal must be tailored to assure that all sections reflect a one-to-one relationship to the evaluation criteria. The following are examples of the type of information that should be included in a technical and management proposal.

(i) Discussion of the statement of work to substantiate the offeror's understanding of the requirement.

(ii) Discussion of the proposed method of approach to meet the contract objectives.

(iii) Discussion of potential problem areas and the approach to be taken to resolve these areas.

(iv) Statements of any interpretations, requirements, or assumptions made by the offeror.

(v) Discussion of support personnel and facilities available to assist the professional personnel.

(iv) Identify "Key Personnel," and for the person(s) so identified, specify the percentage of time that will be committed to other projects over the course of the proposed contract period of performance.

(vii) Resumes for all professional personnel, including subcontractors and consultants, to be utilized in the performance of any resulting contract. Include educational background, specific pertinent work experience, and a list of any pertinent publications authored by the individual.

(viii) Description of the source of personnel required for performance of each task, including those not presently employed by the offeror. If any of the personnel are under commitment, describe the terms of the commitment(s). Note specifically the personnel that will be employed at time of contract award.

(ix) If the offeror plans to obtain consultant services, explain the need for the services. List the proposed consultants by name, describe the work they will perform under this contract, and include related past experience. Individuals who are employees of the contractor or of the U.S. Government are prohibited from being paid as a consultant under this contract.

(x) If the offeror plans to subcontract any of the work to be performed, list proposed subcontractors, if known, by name. Provide a detailed description of the work to be performed by the subcontractor, and supporting documentation of technical evaluation leading to the selection.

(xi) Provide a detailed schedule for work to be performed and identification of significant milestones and completion dates for each subpart or task.

(xii) Project scheduling and contingency planning demonstrating a logical progression and integration of the tasks to ensure completion within the performance period and without program slippage.

(xiii) Describe of the management organizational structure delineating areas of responsibility and authority under the proposed effort. Describe the relationship of the project organization to corporate management and to subcontractors, if any. Discuss the functions and authorities of the project manager.

(xiv) Procedures to periodically review in-house organizational functions, program reviews and controls, subsequent coordination with the NRC.

(xv) Management controls expected to be utilized to preclude a contract cost growth.

(xvi) The offeror shall list of any commitments with other organizations, Government and/or commercial, for the same or similar effort.

(xvii) List of* previous contracts for the same or similar services, with the name, title, and full telephone number of a contact for each.

(xviii) List of the name, title, and full telephone number for the proposer's technical representative and contracts/business representative.

(xix) _____ _____ _____ _____ _____

* To be incorporated into the solicitation

(End of Provision)

2052.215–77 Proposal presentation and format—Alternate 1 (language for negotiated task order contracts.)

As prescribed at 2015.407–70(b)(1), insert the following language in provision 2052.215–76.

(d) Cost proposal.

(1) The offeror shall provide a cost proposal based on the Estimated Level of Effort. The total estimated cost proposed by the offeror is used for evaluation purposes only. Any resultant contract, except a requirements contract, contains an overall cost ceiling whereby individual task orders may be issued. The cost and fee, if any, for each task order is individually negotiated and also contains a cost ceiling.

2052.215–78 Proposal presentation and format—Alternate 2 (language for negotiated fixed prices, labor hour, or time and materials contracts).

As prescribed at 2015.407–70(b)(2), paragraph (d)(2) shall be deleted from the provision 2052.215–76.

(End of Provision)

2052.215–79 Preproposal conference.

As prescribed at 2015.407–70(c), insert the following provision in applicable solicitations:

(a) A preproposal conference is scheduled for:

Date: *

Location: *

Time: *

(b) This conference is to afford interested parties an opportunity to present questions and clarify uncertainties regarding this solicitation. You are requested to mail written questions concerning those areas of uncertainty which, in your opinion, require clarification or correction. You are encouraged to submit your questions in writing not later than * working day(s) prior to the conference date. Receipt of late questions may result in the questions not being answered at the conference although they will be considered in preparing any necessary amendment to the solicitation. If you plan to attend the conference, notify * by letter or telephone *, no later than close of business *. Notification of your intention to attend is essential in the event the conference is rescheduled or canceled. (Optional statement: Due to space limitations, each potential proposer is limited to * representatives at the conference.)

(c) Written questions must be submitted to: U.S. Nuclear Regulatory Commission, Division of Contracts and Property Management, ATTN: *, Mail Stop *, Washington, DC 20555.

(d) The envelope must be marked "Solicitation No. */Preproposal Conference."

(e) A transcript of the conference will be furnished to all prospective offerors through the issuance of an amendment to the solicitation.

*To be incorporated into the solicitation.

(End of Provision)

2052.215–80 Travel reimbursement.

As prescribed at 2015.407–70(d), insert the clauses or alternate in applicable solicitations and contracts:

Travel Reimbursement

(a) Total expenditure for domestic travel may not exceed *_____without the prior approval of the contracting officer.

(b) The contractor is encouraged to use Government contract airlines, AMTRAK rail services, and discount hotel/motel properties in order to reduce the cost of travel under this contract. The contracting officer shall, upon request, provide each traveler with a letter of identification which is required in order to participate in this program. The Federal Travel Directory (FTD) identifies carriers, contract fares, schedules, payment conditions, and hotel/motel properties which offer their services and rates to Government contractor personnel traveling on official business under this contract. The FTD, which is issued monthly, may be purchased from the U.S. Government Printing Office, Washington, DC 20402.

(c) The contractor will be reimbursed for reasonable travel costs incurred directly and specifically in the performance of this contract. The cost limitations for travel costs are determined in accordance with the specific travel regulations cited in FAR 31.205–46, as are in effect on the date of the trip. Travel costs for research and related activities performed at State and nonprofit institutions, in accordance with section 12 of Public Law 100–679, shall be charged in accordance with the contractor's institutional policy to the degree that the limitations of Office of Management and Budget (OMB) guidance are not exceeded. Applicable guidance documents include OMB Circular A–87, Cost Principles for State and Local Governments; OMB Circular A–122, Cost principles for Nonprofit Organizations; and OMB Circular A–21, Cost Principles for Educational Institutions.

(d) When the Government changes the Federal Travel Regulations, or other applicable regulations, it is the responsibility of the contractor to notify the contracting officer in accordance with the Limitations of Cost clause of this contract if the contractor will be unable to make all of the approved trips and remain within the cost and fee limitations of this contract due to the changes.

*To be incorporated into any resultant contract.

(End of Clause)

2052.215–81 Travel approvals.

As prescribed in 2015.407–70(d), insert the following clause in applicable solicitations and contracts:

Travel Approvals

(a) All domestic travel requires the prior approval of the project officer.

(b) All foreign travel must be approved in advance by the NRC on NRC Form 445 and must be in compliance with FAR 52.247–63 Preference for U.S. Flag Air Carriers. Foreign travel approval must be communicated in writing through the contracting officer.

(End of Clause)

*To be incorporated into any resultant contract

(End of Clause)

2052.215.82 Contract award and evaluation of proposals technical merit more important than cost.

As prescribed in 2015.670(a), insert the following provision in applicable solicitations:

Contract Award and Evaluation of Proposals

(a) By use of numerical and narrative scoring techniques, proposals are evaluated against the evaluation factors specified in paragraph * below. These factors are listed in their relative order of importance. Award is made to the offeror:

(1) Whose proposal is technically acceptable;

(2) Whose technical/cost relationship is most advantageous to the Government; and

(3) Who is considered to be responsbile within the meaning of Federal Acquisition Regulation Part 9.1.

(b) Although cost is a factor in the evaluation of proposals, technical merit in the evaluation criteria set forth below is a more significant factor in the selection of a contractor. Further, to be selected for an award, the proposed cost must be realistic and reasonable.

(c) The Government may:

(1) Reject any or all offers if the action is in the public interest;

(2) Accept other than the lowest offer; and

(3) Waive informalities and minor irregularities in offers received.

(d) The Government may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoints.

(e) A separate cost analysis is performed on each cost proposal. To provide a common base for evaluation of cost proposals, the level of effort data must be expressed in staff hours. Where a Contractor Spending Plan (CSP) is required by other provisions of this solicitation, consideration is given to the Plan for completeness, reasonableness, and as a measure of effective management of the effort.

(f) In making the above determination, an analysis is performed by the Government that takes into consideration the results of the technical evaluation and cost analysis.

* To be incorporated into the solicitation.
(End of Provision)

2052.215–83 Contract award and evaluation of propsoals—cost more important than technical merit.

As prescribed in 2015.670(a), substitute the following paragraph for paragraph (b) in the clause at 2052.215.82:

(b) Although technical merit in the evaluation criteria set forth below is a factor in the evaluation of proposals, cost is more a significant factor in the selection of a contractor. Further, to be selected for an award, the proposed cost must be realistic and reasonable.

2052.215–84 Contract award and evaluation of proposals—cost and technical merit of equal value.

As prescribed at 2015.670a(2), substitute the following paragraph for paragraph (b) in the clause at 2052.215.82:

(b) In the selection of a contractor, technical merit in the evaluation criteria set forth below and cost bear equal significance. To be selected for an award, the proposed cost must be realistic and reasonable.

2052.216–70 Level of effort.

As prescribed at 2016.307–70(a), insert the following provision in applicable solicitations:

Level of Effort

The NRC's estimate of the total effort for this project is approximately * professional and * clerical staff-years for the duration of this contract. This information is advisory and is not to be considered as the sole basis for the development of the staffing plan. For the purposes of the Government estimate, 2000 hours constitute a staff year.

* To be incorporated into any resultant contract.
(End of Provision)

2052.216–71 Indirect cost rates.

As prescribed at 2016.307–70(b), insert the following clause in applicable solicitations and contracts:

Indirect Cost Rates

(a) Pending the establishment of final indirect rates which must be negotiated based on audit of actual costs, the contractor shall be reimbursed for allowable indirect costs as follows:

*

(b) The contracting officer may adjust the above rates as appropriate during the term of the contract upon acceptance of any revisions proposed by the contractor. It is the contractor's responsibility to notify the contracting officer in accordance with FAR 52.232–20, Limitation of Cost, or FAR 52.232–22, Limitation of Funds, as applicable, if these changes affect performance of work within the established cost or funding limitations.

*To be incorporated into any resultant contract.
(End of Clause)

2052.216–72 Indirect cost rates—Alternate 1.

As prescribed at 2016.307–70(b), insert the following clause in applicable solicitations and contracts:

Indirect Cost Rates—Alternate 1

The contractor is reimbursed for allowable indirect costs in accordance with the following predetermined rates:

*To be incorporated into any resultant contract.
(End of Clause)

2052.216–73 Indirect cost rates—Alternate 2.

As prescribed at 2016.307–70(b), insert the following clause in applicable solicitations and contracts:

Indirect Cost Rates—Alternate 1

(a) For this contract, the amount reimbursable for indirect costs is as follows:

*

(b) In the event that indirect rates developed by the cognizant audit activity on the basis of actual allowable costs are less than the ceiling rates, the rates established by the cognizant audits must apply. The Government may not be obligated to pay any additional amounts for indirect costs above the ceiling rates set forth above for the applicable period.

*To be incorporated into any resultant contract.
(End of Clause)

2052.216–74 Task order procedures.

As prescribed at 2016.506–70(a), insert the following clause in applicable solicitations and contracts:

Task Order Procedures

(a) Task order request for proposal. When a requirement within the scope of work for this contract is identified, the contracting officer shall transmit to the contractor a Task Order Request for Proposal (TORP) which includes the following, as appropriate:

(1) Scope of work/meetings/travel and deliverables;
(2) Reporting requirements;
(3) Period of performance—place of performance;
(4) Applicable special provisions;
(5) Technical skills required; and
(6) Estimated level of effort.

(b) Task order proposal. By the date specified in the TORP, the contractor shall deliver to the contacting officer a written proposal that provides the following technical and cost information, as appropriate:

(1) Technical proposal content;

(i) A discussion of the scope of work requirements to substantiate the contractor's understanding of the requirements of the task order and the contractor's proposed method of approach to meet the objective of the order.

(ii) Resumes for professional personnel proposed to be utilized in the performance of any resulting task order. Include educational background, specific pertinent work experience, and a list of any pertinent publications authored by the individual.

(iii) Identification of administrative support personnel and/or facilities that are needed to assist the professional personnel in completing work on the task order.

(iv) Identification of "Key Personnel" and the number of staff hours that will be committed to completion of work on the task order.

(2) Cost proposal. The contractor's cost proposal for each task order must be prepared using Standard Form 1411, Contracting Pricing Proposal cover sheet. A copy of the form and instructions are attached to this contract. Each task order cost proposal must be fully supported by cost and pricing data adequate to establish the reasonableness of the proposed amounts. When the contractor's estimated cost for the proposed task order exceeds $100,000 and the period of performance exceeds six months, the contractor may be required to submit a Contractor Spending Plan (CSP) as part of its cost proposal. The TORP indicates if a CSP is required.

(c) Task order award. The contractor shall perform all work described in definitized task orders issued by the contracting officer. Definitized task orders include the following:

(1) Statement of work/meetings/travel and deliverables;
(2) Reporting requirements;
(3) Period of performance;
(4) Key personnel;
(5) Applicable special provisions; and
(6) Total task order amount including any fixed fee.
(End of Clause)

2052.216–75 Accelerated task order procedures.

As prescribed at 2016.506–70, insert the following clause in applicable solicitations and contracts:

Accelerated Task Order Procedures

(a) The NRC may require the contractor to commence work before receipt of a definitized task order from the contracting officer. Accordingly, when the contracting officer verbally authorizes the work, the contractor shall proceed with performance of the task order subject to the monetary limitation established for the task order by the contracting officer.

(b) When this accelerated procedure is employed by the NRC, the contractor agrees to begin promptly negotiating with the contracting officer the terms of the definitive task order and agrees to submit a cost proposal with supporting cost or pricing data. If agreement on a definitized task order is not reached by the target date mutually agreed upon by the contractor and contracting officer, the contracting officer may determine a reasonable price and/or fee in accordance with Subpart 15.8 and Part 31 of the FAR, subject to contractor appeal as provided in 52.233–1, Disputes. In any event, the contractor shall proceed with completion of the task order, subject only to the monetary limitation established by the contracting officer and the terms and conditions of the basic contract.
(End of Clause)

2052.222–70 Nondiscrimination because of age.

As prescribed at 2022.901–70, insert the following clause in applicable solicitations and contracts:

Nondiscrimination Because of Age

It is the policy of the Executive Branch of the Government that:

(a) Contractors and subcontractors engaged in the performance of Federal contracts may not, in connection with the employment, advancement, or discharge of employees or in connection with the terms, conditions, or privileges of their employment, discriminate against persons because of their age except upon the basis of a bona fide occupational qualification, retirement plan, or statutory requirements; and

(b) That contractors and subcontractors, or person acting on their behalf, may not specify, in solicitations or advertisements for employees to work on Government contracts, a maximum age limit for employment unless the specified maximum age limit is based upon a bona fide occupational qualification, retirement plan, or statutory requirement.

(End of Provision)

2052.231–70 Precontract costs.

As prescribed in § 2031.109–70, insert the following clause in applicable solicitations and contracts:

Precontract Costs

Allowable costs under this contract must include such costs, incurred by the contractor in connection with the work covered by this contract during the period from * and including * to the effective data of this contract, as would have been allowable pursuant to the terms of this contract if this contract had been in effect during that period; provided, however, that the costs may not in aggregate exceed * which is included in the estimated cost of this contract.

*To be incorporated into any resultant contract

(End of Clause)

2052.235–70 Publication of research results.

As prescribed in 2035.70, insert the following clause in applicable solicitations and contracts:

Publication of Research Results

(a) The principal investigator(s)/contractor shall comply with the provisions of NRC Handbook 3.8 (formerly MC 3202) and NRC Manual Chapter 3206 regarding publication in refereed scientific and engineering journals or dissemination to the public of any information, oral or written, concerning the work performed under this contract. Failure to comply with this clause shall be grounds for termination of this contract.

(b) The principal investigator(s)/contractor may publish the results of this work in refereed scientific and engineering journals or in open literature and present papers at public or association meetings at interim stages of work, in addition to submitting to NRC the final reports and other deliverables required under this contract. However, such publication and papers shall focus on advances in science and technology and minimize conclusions and/or recommendations which may have regulatory implications.

(c) Prior to any such publication, the contractor shall submit the proposed publication to the NRC Contracting Officer and Project Officer for review and approval.

(End of Clause)

2052.235–71 Publication of research results—universities

As prescribed at § 2035–70 substitute the following paragraph (c) for paragraph (c) in 2052.235–70.

(c) The principal investigator(s) shall coordinate all such publications with, and transmit a copy of the proposed article or paper to, the NRC Contracting Officer or Project Officer, prior to publication. The NRC agrees to review and provide comments within thirty (30) days after receipt of a proposed publication. However, in those cases where the information to be published is:

(1) subject to Commission approval:

(2) has not been ruled upon, or

(3) disapproved by the Commission, the NRC reserves the right to disapprove or delay the publication. "Further, if the NRC disagrees with the proposed publication for any reason, it reserves the right to require that any publication not identify the NRC's sponsorship of the work and that any associated publication costs shall be borne by the contractor.

(End of Clause)

2052.235–72 Safety, Health, and Fire Protection.

As prescribed in 2035.70, insert the following clause in applicable solicitations and contracts:

Safety, Health, and Fire Protection

The contractor shall take all reasonable precautions in the performance of the work under this contract to protect the health and safety of its employees and of members of the public, including NRC employees and contractor personnel, and to minimize danger from all hazards to life and property and shall comply with all applicable health, safety, and fire protection regulations and requirements (including reporting requirements) of the Commission and the Department of Labor. In the event that the contractor fails to comply with these regulations or requirements, the contracting office may, without prejudice to any other legal or contractual rights of the Commission, issue an order stopping all or any part of the work; thereafter, a start order for resumption of work may be issued at the discretion of the contracting officer. The contractor shall make no claim for an extension of time or for compensation or damages by reason of, or in connection with, this type of work stoppage.

(End of Clause)

Dated at Rockville, Maryland this 9th day of December, 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 92–30419 Filed 12–22–92; 8:45 am]

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Federal Register

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December 23, 1992

Part III

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 7 et al.

Electric Motor Assemblies; Electric Cables, Signaling Cables and Cable Splice Kits; Final Rules

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 7 and 18

RIN 1219–AA61

Electric Motor Assemblies

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule.

SUMMARY: This final rule establishes the specific requirements for MSHA approval of certain explosion-proof electric motor assemblies intended for use in approved equipment in underground mines. It will primarily affect manufacturers of equipment intended for use in underground mining. Applications for approval or extensions of approval submitted three years after the effective date of this rule will be required to be in compliance with subpart J of part 7. Those motors that incorporate features not specifically addressed in subpart J of part 7 will continue to be evaluated under part 18.

EFFECTIVE DATE: This regulation is effective February 22, 1993. The incorporation by reference in § 7.304(g) of the final rule is approved by the Director of the Federal Register as of February 22, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances (703) 235–1910.

SUPPLEMENTARY INFORMATION:

I. Background

On June 22, 1988, with the promulgation of part 7, MSHA implemented new procedures and requirements for testing and approving certain products used in underground mines (53 FR 23486). As explained in that rulemaking, products approved under part 7 are required to be tested by the applicant or tested by a third party selected by the applicant. All testing is to be conducted using MSHA specified test procedures with certification of test results by the applicant. In addition, the Agency has the right to observe all product testing. When requesting approval, the applicant is required to submit certain product information. This includes, for example, drawings and specifications to document compliance with the technical requirements. Based upon an evaluation of the technical documentation, MSHA observations of product testing, and a review of the certification statements, MSHA will issue an approval or notice denying approval of the product.

Once a product is approved under part 7, an approval holder is required to inspect or test critical characteristics of the product as part of its quality assurance program. Under the provisions of subpart A of part 7, the approval holder must report to MSHA any knowledge that a product has been distributed with critical characteristics not meeting required specifications. Upon receiving such a report, MSHA will work with the approval holder to implement appropriate corrective action. As critical characteristics are features of a product which, if not built to specification, can create a hazard, immediate notification is necessary. MSHA performs periodic audits of products approved under part 7 to ensure that they are being manufactured as approved. If a product fails to meet the technical requirements of part 7 or creates a hazard related to its use, MSHA will take immediate action to address the problem, including revocation of the approval if necessary. Although MSHA's experience with existing subparts to part 7 is limited, primarily due to delayed effective dates, this transition has been positively received by manufacturers and applied without complications.

On March 12, 1991 (56 FR 10464), MSHA published a proposed rule that addressed specific requirements for MSHA approval of certain explosion-proof motor assemblies intended for use in approved equipment in underground mines. Written comments were required to be submitted by June 14, 1991. The agency received written comments from all segments of the mining industry, and the final rule addresses these comments.

As a new subpart J to part 7, this final rule specifies the technical requirements and test procedures for the approval of electric motor assemblies. The rule is derived from existing part 18 and MSHA policies. It provides objective criteria for applicant or third party testing and replaces subjective technical requirements with performance-oriented tests. The tests are based on MSHA's engineering experience with the subjective criteria in the existing approval requirements. They are not intended to introduce more stringent testing methods, but rather to more explicitly state the tests used in MSHA's current testing program which have proven to be effective. Under the rule, manufacturers will use these test procedures to measure, evaluate, and certify compliance of their product with the requirements of subpart J of part 7 in order to receive an MSHA approval.

One commenter suggested that all testing should continue to be performed by MSHA. This commenter believed that the testing procedures would not be strictly adhered to and that there would be no health and safety benefit from applicant or third-party testing. As stated previously, the applicant must certify to product testing and performance, as required, and meet all of the applicable quality assurance requirements, including inspection or testing of the product's critical characteristics. False certifications are subject to criminal sanctions under section 110(f) of the Federal Mine Safety and Health Act of 1977 (Mine Act). MSHA will take immediate action to address any problems identified during product audits, including revocation of the approval if necessary.

The part 7 approach, when fully implemented, will allow the Agency to reallocate resources to product audit activities and the evaluation of technological improvements in mining products submitted for approval. MSHA continues to believe that implementation will result in improved quality assurance and more rapid introduction of technological improvements into the mines, thereby improving miner safety.

This commenter further expressed the opinion that the protections offered by the Mine Act under section 110(h) would not be guaranteed if the testing occurred outside the United States. The responsibilities of the applicant under this section are not affected by this change in approval procedure. The issue of product testing conducted outside the United States is addressed by 30 CFR 7.4(d), a general provision of part 7 which restricts such testing to where it is specifically required by international agreement.

Commenters also suggested that MSHA use consensus standards as the basis for approval of explosion-proof motors. The intent of part 7 is to provide objective technical subparts based on current MSHA regulations. The testing procedures incorporated into part 7 subparts are procedures that the Agency has used successfully for a number of years and for which objective criteria have been established. While these criteria may be revised and modified to clarify existing subjective requirements, they are not intended to introduce new technological requirements. Consensus standards have not been incorporated in this subpart because their use is inconsistent with this intent and was not an objective of this rulemaking.

This final rule is consistent with the Mine Act, Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act and is issued under the authority of section 508 of the Mine Act (30 U.S.C. 957).

II. Discussion of Final Rule

The following section-by-section analysis discusses each provision of subpart J and each revision to part 18 and addresses comments received in response to the proposed rule.

A. Section-by-Section Discussion of Part 7

Section 7.301 Purpose and Effective Date

This section, derived in part from existing § 18.1, revises and simplifies the statement of purpose and requires that certain electric motor assemblies be approved under part 7. The final rule establishes the specific requirements for approval of explosion-proof motor assemblies intended for use on-board approved equipment. Those motor assembly designs that contain devices not provided for under subpart J, such as devices for ventilation, pressure relief and drainage, will continue to be evaluated under existing part 18. In addition, designs incorporating parts common to explosion-proof enclosures other than conduit boxes and those incorporating new technology will also be addressed under part 18. These designs are not being covered under subpart J because their acceptance by MSHA requires an individual evaluation of design and performance tests. Designs incorporating parts common to explosion-proof enclosures other than conduit boxes and those incorporating new technology would also require evaluation on an individual basis.

MSHA specifies a three-year phase-in period for the implementation of subpart J. This three-year phase-in period will allow industry time to fully develop testing facilities. During the phase-in period, MSHA will accept applications for certification and extension of certification under existing part 18 or applications for approval under subpart J of part 7. After three years, all motor assemblies submitted for approval, except those with designs not covered under subpart J, will be required to be submitted under subpart J and meet its requirements.

One commenter questioned the availability of competent third-party test facilities within the proposed two-year phase-in period. The commenter also suggested the MSHA continue to provide testing for applicants under subpart J until cost-competitive test facilities are available. The Agency has reconsidered the length of time that may be needed for this implementation period and has increased the phase-in period to three years in the final rule. Some facilities are currently available to provide third-party testing, and the Agency estimates that full implementation can be accomplished within three years.

Section 7.302 Definitions

The following definitions apply to the approval of electric motor assemblies. Most are derived from existing § 18.2, although some are new. In order to address the specific requirements for motor assemblies, some of these definitions have been modified. All of these definitions are designed to clarify the requirements of subpart J.

Afterburning. The combustion of any flammable mixture that is drawn into an enclosure after an internal explosion in the enclosure. This definition clarifies the definition in § 18.2 by stating that afterburning is determined through detection of secondary pressure peaks occurring subsequent to the initial explosion. This phenomenon is characterized by the development of secondary pressure peaks following a negative or zero pressure at the termination of the preceding pressure peak.

Cylindrical joint. This definition is the same as that in § 18.2 and is a joint comprised of two contiguous, concentric, cylindrical surfaces.

Explosion-proof enclosure. The rule modifies the existing definition in § 18.2, which defines an explosion-proof enclosure as a metallic enclosure used as a winding compartment, conduit box, or a combination of both that complies with the applicable requirements of § 7.304 and that is constructed to withstand the explosion tests of § 7.306. This definition is modified to be specific to electric motor assemblies, as their subpart applies only to motor assemblies.

Fastening. This definition includes a bolt, screw or stud used to secure adjoining parts to prevent the escape of flame from an explosion-proof enclosure. Although the definition is new, it reflects the items included as fastenings in existing § 18.32.

Flame-arresting path. This definition identifies two or more adjoining or adjacent surfaces between which the escape of flame is prevented as a flame-arresting path. It is the same as that contained in § 18.2.

Internal free volume (of an empty enclosure). The rule identifies the internal free volume of an empty enclosure as that volume remaining after deducting the volume of any part that is essential to maintaining the explosion-proof integrity of the enclosure or necessary for operation of the motor. Essential parts would include the parts that constitute the flame-arresting path as well as those necessary to secure the parts that constitute a flame-arresting path. This definition is important because the volume of the enclosure defines the minimum design requirements of the explosion-proof enclosure. While the definition is new, it retains the interpretation of "volume of empty enclosure" currently used for the classification of construction requirements contained in existing § 18.31.

Motor assembly. This new definition defines a motor assembly as the winding compartment including a conduit box when specified. It also clarifies that the motor assembly would be comprised of one or more explosion-proof enclosures. This definition describes the typical arrangement currently used for motor assemblies in underground mines.

Plane joint. This definition identifies a plane joint to be a joint comprised of two adjoining surfaces in parallel planes. It is the same as that contained in § 18.2.

Step (rabbet) joint. This definition is derived from § 18.2. It retains its existing meaning and specifies a step or rabbet joint to be a joint comprised of two adjoining surfaces with one or more changes in direction between the inner and outer edges. Examples of a step joint would be one composed of a cylindrical portion and a plane portion or one composed of two or more plane portions.

Stuffing box. This new definition identifies and entrance that has a recess filled with packing material for cables extending through a wall of an explosion-proof enclosure.

Threaded joint. This definition maintains the definition in existing § 18.2 that a threaded joint is a joint consisting of a male- and a female-threaded member, both of which are the same type and gauge.

General definitions such as "applicant," "approval," and "post-approval product audit" are not included in this subpart. They are defined in the general provisions of subpart A of part 7.

Section 7.303 Application Requirements

Under the final rule, derived from existing § 18.6(a), an application for approval of a subpart J motor assembly is required to contain sufficient information to document compliance with the technical requirements of subpart J. The application must be accompanied by a composite drawing or drawings showing the design specifications for the motor assembly. For clear identification, each drawing is required to be titled, dated, and

numbered and include the latest revision number. A sample of a composite drawing is available upon request from the Approval and Certification Center, RR #1, Box 251, Industrial Park Road, Triadelphia, West Virginia 26059.

A commenter suggested that § 7.303 should include a statement that these application requirements are in addition to the procedures and requirements of existing § 7.3. This commenter was concerned that new applicants would be unfamiliar with the general requirements of part 7 subpart A. This final rule promulgates subpart J within part 7 and as such, all the general provisions of part 7 in subpart A are applicable. Consequently, it is necessary that applicants be familiar with all these general provisions.

Section 7.304 Technical Requirements

This section revises and updates the existing technical requirements for the approval of motor assemblies. The technical requirements for the approval of motor assemblies are derived from the existing requirements of part 18.

Paragraph (a) is derived from existing § 18.47 and specifies the maximum voltage rating as 4160 volts, which is the voltage limitation for machines approved under part 18. Paragraph (b) is derived from existing § 18.23 and limits the maximum temperature of the external sufaces of the motor assembly to 150°C (302°F) when operated at the manufacturer's specified ratings, which would be considered the normal operating conditions referred to in § 18.23. This is to prevent the thermal ignition of coal dust. A commenter suggested that the external motor surface temperature limitation of § 7.304(b) be applied when the motor is blanketed with dust. It was also suggested that because motors can be overloaded or have other abnormal operating conditions, additional tests should be conducted to verify that surface temperatures do not exceed 200°C under these conditions.

The motors approved under this subpart are intended for incorporation into permissible equipment approved under part 18 and used in gassy mines. Existing part 18 requirements limit the external surface temperature of motors to 150°C under normal operating conditions. Other requirements in part 18 address protection against motors running in overload or faulted conditions for prolonged periods. Part 75 prohibits excessive accumlations of coal dust and other combustibles on equipment. Therefore, the Agency believes that the limitation of 150°C, as specified in part 18 and incorporated in this subpart, provides adequate protection.

Paragraph (c) is derived from existing § 18.24 which requires the clearance between live parts and casings to be sufficient to minimize the possibility of arcs striking the casings. The rule establishes specific minimum clearance distances based upon the circuit voltage of the live parts. These minimum clearances are listed in table J–1. The minimums are applicable to the distance between uninsulated electrical conductor surfaces or between uninsulated electrical conductor surfaces and grounded metal surfaces within the enclosure. These minimum clearances are the result of an engineering study performed in conjunction with high voltage studies at MSHA's Approval and Certification Center.

One commenter suggested that reduced clearances for voltage ratings of 0–250 volts and 251–600 volts would be appropriate. The proposed rule addressed a voltage classification of 0–999 volts. Evaluation by the Agency of a further breakdown of voltage classifications as suggested has resulted in lesser clearances, consistent with the comment, for these voltage ranges. The final rule incorporates this modification. These clearances clarify existing requirements and will not result in additional costs to manufacturers nor impose new requirements.

Paragraph (d) of § 7.304, derived from existing § 18.34(a)(4), does not allow the use of parts such as bearings and seals for flame-arresting paths because they can become worn during the motor operation and therefore cause the explosion-proof integrity of the enclosure to be lost. Paragraph (e), derived from existing § 18.34(a)(6), adds o-ring grooves to the types of grooves to be deducted when determining the width of the flame-arresting paths. This change is consistent with existing MSHA policy that addresses the use of o-ring grooves.

Paragraph (f), derived from existing § 18.34(a)(8), allows an outer bearing cap to form part of a flame-arresting path only if it houses the bearing. A commenter suggested that this provision be modified to allow outer bearing caps that are not part of a bearing cartridge to form part of a flame-arresting path. A bearing cap that does not house the bearing is not essential for the motor operation and could inadvertently be removed from the motor assembly. If the bearing cap were part of the flame-arresting path, its removal would cause the motor assembly to lose its explosion-proof integrity. It is the Agency's experience that nonessential parts are sometimes inadvertently omitted; therefore, the final rule has not been modified.

The design requirements of paragraph (g) are derived from existing §§ 18.26, 18.29, 18.31 through 18.34, and current policy. Paragraph (g)(1), derived from existing § 18.31(a)(1), requires the motor assemblies to be constructed of metal, designed to withstand a minimum internal pressure of 150 pounds per square inch gauge (psig), to have castings free from blow holes and to be explosion-proof as determined by the tests of § 7.306. These requirements ensure that a motor assembly will withstand an internal methane explosion.

Paragraph (g)(2) of § 7.304, derived from existing § 18.31(a)(2), establishes the static pressure test requirements of § 7.307 as the minimum performance level for welded joints forming an enclosure. Submitting an enclosure to this performance test would be an alternative to welding in accordance with, or exceeding, American Welding Society (AWS) standard D14.4–77, which is incorporated by reference. This provides an objective requirement to replace the part 18 requirement that each application be evaluated individually as to the adequacy of the welding standards used. Existing § 18.31(a)(2) states that these welds are to be made in accordance with AWS standards, with no specific standard identified. MSHA policy has been to accept welds made in accordance with AWS D14–77. MSHA's experience with explosion-tested designs indicates that these minimum requirements provide a design adequate to maintain the explosion-proof integrity of the enclosure.

Paragraph (g)(3), derived from existing § 18.31(a)(3), limits the magnesium content of external rotating parts constructed of aluminum alloys to 0.6 percent. Existing § 18.31(a)(3) specifies this magnesium limit to be 0.5 percent. The Agency developed a policy approximately 20 years ago allowing a 0.6 percent magnesium content based upon experimental data demonstrating this value to be within the range of permissible safety limits. Paragraph (g)(3) is also derived from existing § 18.26 and requires that all nonmetallic rotating parts be provided with a means to prevent an accumulation of static electricity. This is to prevent a buildup of a static charge that could produce an incendive spark or arc. A commenter suggested that the requirements of this paragraph be applied to nonmetallic fan guards to evaluate their ability to dissipate static electricity. This comment was not adopted because

MSHA has not evaluated and certified any motors with nonmetallic fan guards. Future applications specifying these fan guards could be addressed as new technology under part 18.

Section 7.304(g)(4), derived from existing § 18.31(a)(5), requires threaded covers and mating parts to be designed with Class 1A and 1B coarse, loose-fitting threads. These are thread classifications from the American National Standard, ANSI B1.1–1982, "Unified Inch Screw Threads (UN and UNR Thread Form)". This provision retains the requirement contained in existing § 18.31(a)(5); however, the classification terms (Class 1A and 1B) are updated to reflect current terminology. The rule is still designed to minimize binding of threads. In addition, as in § 18.31(a)(5), the cover is required to be secured against loosening.

Paragraph (g)(5), derived from existing § 18.33, specifies requirements for the planarity, surface finish, and preparation of all flame-arresting path surfaces. These requirements are important because they relate to maintaining the maximum clearance between flame-arresting path surfaces to prevent the escape of flames and/or hot gases resulting from an internal explosion. One commenter suggested that the test method specified in a consensus standard be required for use to measure the surface finish. The maximum finish of the surface is critical, not the method of measurement. The final rule allows the applicant to determine the specific method, as long as the technical requirements are satisfied.

A second commenter recommended the following wording regarding rust inhibitors: "* * * so long as the final surface may be readily wiped free of any foreign materials." Because this was the intent of the requirement, the final rule includes this wording.

Paragraph (g)(6), derived from existing § 18.34(c), specifies clearance requirements between laminations and end rings for laminated stator frames. This also addresses hazards associated with the escape of flames and/or hot gases resulting from an internal explosion.

Paragraph (g)(7) of § 7.304 is derived from existing § 18.32(b) and requires locking devices to be provided for all fastenings securing parts which form flame-arresting path fits. The rule allows alternatives to lockwashers that meet the lockwasher equivalency test in § 7.308. The lockwasher equivalency test of § 7.308 provides an objective means of evaluating devices as currently permitted under existing § 18.32(b). One commenter suggested that lockwashers should not be required. As previously stated, the intent of part 7 subpart J is to objectively state the technical criteria presently required under part 18, not to introduce new or modified requirements. Therefore, the suggested modification is not included in this final rule.

Paragraph (g)(8), which is derived from existing § 18.32(c), requires all fastenings that hold a flame-arresting path part to be of uniform size, if practicable. This is intended to preclude improper assembly that may result in insufficient thread engagement or bottoming of the fastening. One commenter suggested that proposed § 7.304(g)(8) would change the requirement for uniformity of fasteners and would permit the use of nonuniform sized fasteners. However, the wording of this provision is identical to existing § 18.32(c), and it has been applied successfully. Therefore, this comment was not incorporated into the final rule.

Paragraph (g)(9), derived from § 18.32(d), requires that holes be threaded deeply enough so the fastenings would not bottom if the locking device is omitted. Paragraph (g)(10), which is also derived from existing § 18.32(d) and § 18.34(a)(9), requires that holes for fastenings not penetrate to the interior of the enclosure except as specified. This will prevent the existence of a through hole from the interior of the enclosure to the exterior through which flames and/or hot gases could escape in the event that a fastening were inadvertently omitted. Holes made through motor casings for bolts, studs or screws to hold parts that are essential for the motor operation are allowed.

Paragraph (g)(11) of § 7.304, derived from existing § 18.34(b), specifies requirements for the assembly of pole pieces to the frame of direct current motor assemblies, including the use of shims during assembly of the pole pieces. The pole bolts are necessary to maintain the pole pieces in the frame. The rule requires the total thickness of the shims to be specified, if used. This specification is required to determine the adequacy of the bolt engagement in the pole pieces. The rule also requires the shim assembly to meet the same requirements as the pole piece when mounted to the frame.

Paragraph (g)(12) allows for the use of coil-threaded inserts in holes for fastenings, provided they have conventional screw threads, the holes for the inserts are drilled and tapped consistent with the insert manufacturer's specifications, and the insert is long enough to ensure the required minimum thread engagement of the fastening in the insert. Although not addressed in existing part 18 requirements, current policy, based upon field experience, evaluation and testing by MSHA, permits their use. This provision allows correction of damaged threads for fastenings securing flame-arresting path parts that could lead to the expulsion of flames and/or hot gases due to an internal explosion. One commenter recommended that paragraph (g)(12)(ii) include the provision that the inserts be installed according to the manufacturer's specifications. This was specified in paragraph (g)(12)(iii) of the proposal and is addressed in the final rule.

Paragraph (g)(13) of § 7.304, derived from existing § 18.32 (e), clarifies the requirement for a minimum of ⅛ inch of stock at the bottom of each blind hole by identifying the subject holes as those that could penetrate into the interior of the explosion-proof enclosure. This requirement provides protection against failure of the enclosure surface beneath the blind hole in case fastenings are not present in the holes. One commenter suggested that under certain conditions a minimum of 1/16 inch be allowed in the bottom of blind holes. As previously stated, the intent of part 7 subpart J is to objectively state the established technical criteria presently required and successfully applied by MSHA under part 18, not to introduce new or modified requirements. Therefore, the suggested modification is not included in this final rule.

Paragraph (g)(14), derived from existing § 18.32(f), clarifies the requirement that fastenings hold only parts that are essential for maintaining the explosion-proof integrity of the motor or necessary for the operation of the motor. This ensures the proper thread engagement necessary to maintain the explosion-proof integrity of the enclosure. The rule also retains the requirement that the same fastenings not be used for making electrical connections. This addresses the concern that electrical energy could cause the connection to loosen or the hardware to deteriorate.

Paragraph (g)(15), derived from existing § 18.29(c), clarifies the requirements for through holes in explosion-proof enclosures. Although all through holes are required to be plugged, the plug for holes where future access is necessary only have to be spot welded or brazed, allowing for removal. However, plugs in through holes not requiring future access have to be continuously welded all around for permanent assembly. The rule also

requires removable plugs to meet the flame-arresting path requirements of § 7.304(g)(19). Figure J–1 in the appendix illustrates the alternate methods of securing the plug.

One commenter, concerned that spot welding or brazing can result in unnecessary damage, recommended that other means of securing plugs be allowed. Another commenter suggested alternate methods of securing plugs for holes where future access is not required. These methods that are accepted in some consensus standards include tack welding as a secondary securing measure. The methods specified in this paragraph provide the protection necessary to ensure the explosion-proof integrity of enclosures. Alternate methods would require an evaluation of the type of protection provided and therefore would be required to be evaluated under part 18.

Paragraph (g)(16) is new and specifies the acceptable location of o-rings in a flame-arresting path. Although not addressed in existing part 18, current policy specifies these locations when o-rings are installed to permit checking of flame-arresting path fits without interference from o-rings. This requirement is based upon the Agency's field experience and reflects proven methods needed for field inspection. Figures J–2, J–3, J–4 and J–5 in the appendix are included to clarify the required locations for o-rings.

One commenter expressed concern that the placement of o-rings specified in the proposed rule would result in trapped moisture, causing problems with rust, and suggested that alternate locations be allowed. The introduction of an o-ring does not increase the likelihood of rusting occurring on flame-arresting paths. Rust inhibitors may be used to protect against rust in these areas.

The commenter further suggested that the intent of the requirement of ½ inch in paragraph (g)(16)(ii) was for the o-ring to be located "at least one-half of the acceptable flame-arresting path in by the outer edge of the plane portion * * *". The intent of this requirement is, as stated in the final rule, for the o-ring to be located ½ inch within the outer edge of the plane portion.

Paragraph (g)(17) is new and sets requirements for the mating parts of a pressed fit. Although not addressed in existing part 18, these requirements are current policy developed to define pressed fits. A pressed fit must meet minimum interference and length requirements. These requirements are intended to ensure that the fit is sufficient to maintain the explosion-proof integrity of the motor assembly.

Paragraph (g)(18) of § 7.304, derived from existing § 18.31(a)(5), requires threaded joints to meet the applicable flame-arresting path requirements of § 7.304(g)(19). This addresses the hazards associated with the expulsion of flames and/or hot gases along these surfaces. One commenter suggested that threaded joints as specified under this paragraph must comply with the "minimum thread engagement of fastening" specified in Table J–2 of § 7.304(g)(19) and that an alternative construction based on the number of threads per inch be offered. The referenced minimum thread engagement requirement does not apply to the threaded joints addressed in this paragraph, but rather to hardware used to ensure the integrity of explosion-proof enclosures.

Paragraph (g)(19) references Table J–2 and footnotes that specify the design requirements for flame-arresting paths based on the volume of the empty enclosure. These provisions repeat requirements derived from existing § 18.31(a)(6), with a few clarifications and alternatives explained below.

One commenter requested clarification of the minimum requirements listed in the table concerning the tolerances in standard steel plate thicknesses. The minimum thicknesses included in the table apply to walls, covers, and flanges. While these dimensions are minimum values for flanges and covers, except where noted, they are intended to be the minimum nominal thickness of standard plate used for walls. The final rule includes a new Footnote 1 to clarify this requirement. The proposed footnotes have been renumbered accordingly in the final rule.

Under the maximum fastening spacing for joints, portions of which are in different planes, the specification of 8 inches with a minimum of 4 fastenings is added. This provides an objective requirement to replace the part 18 requirement that each application be evaluated individually. MSHA's experience with explosion-tested designs indicates that these minimum requirements provide a design adequate to maintain the explosion-proof integrity of the enclosure. The corresponding existing part 18 requirement has been retained to allow the continued individual evaluation of designs.

Footnote 5 of table J–2, derived from existing § 18.34(d), specifies alternate flame-arresting path dimension requirements for rabbet (step) joints on small motor assemblies having internal free volume not exceeding 350 cubic inches and joints not exceeding 32 inches in outer circumference. The requirements allow minimum total widths of rabbet (step) joints to be shorter than those specified in table J–2, provided the corresponding tighter clearances are maintained. Figure J–6 in the appendix is included to provide an illustration of a rabbet (step) joint.

Footnote 6 to the table in part 7, which is the same wording as Footnote 4 to the table specified in existing § 18.31, specifies the clearance requirements based on the length of flame-arresting path fits. One commenter questioned the need for this footnote. However, it provides additional clarification of the design requirements pertaining to these specific flame-arresting path fits and has been retained in the final rule.

Footnote 7 clarifies requirements pertaining to the use of studs as fasteners. One commenter requested clarification of the intent of this footnote. In response to this commenter, studs are included in the definition of fastening, and it is MSHA's intent that this footnote provide the basis for which studs are acceptable in lieu of mounting bolts.

Footnote 8 specifies clearance and location requirements for steel dowel pins. These pins are generally used in cover flanges to aid in aligning the covers. Although not addressed in existing part 18, these requirements are consistent with current policy. One commenter requested information on the need to reduce the spacing requirement from 6 inches to 5 inches for steel dowel pins. Where a steel dowel pin is located, an extra hole is created. Since a pin does not secure the cover, a reduction of bolt spacing is necessary to decrease the possibility of flame being admitted. This spacing requirement is based on MSHA's explosion-testing experience and has proven to be a safe design.

Footnotes 9 and 10 contain new performance-oriented criteria to evaluate fastenings not meeting the minimum diameter and thread engagement dimensions specified. Again, these footnotes provide an objective requirement to replace the part 18 requirements that each application be evaluated individually. MSHA's experience with explosion-tested designs indicates that these minimum requirements provide a design adequate to maintain the explosion-proof integrity of the enclosure. The corresponding existing part 18 requirement has been retained to allow the continued individual evaluation of designs. Footnote 9 allows the use of fastenings with diameters smaller than those specified in the table, provided

that the enclosure is first tested to meet the requirements of § 7.307 (static pressure test) and then § 7.306 (explosion-test). This new provision provides performance criteria upon which fastenings with smaller diameters will be evaluated. Footnote 10 allows minimum thread engagement less than the diameter of the fastening specified provided the enclosure meets these same test requirements. The criteria ensure adequate strength of the fastenings and threads for the motor design.

Footnote 11 of table J–2, which is new, specifies that the maximum clearance applies only when the fastening is located within the flame-arresting path. It clarifies when the requirement in the table is applicable. One commenter questioned whether the maximum diametrical clearance between fastening body and unthreaded holes through which it passes applied only when the fastening is located in the flame-arresting path. Footnote 11 specifically clarifies this concern.

Footnote 12, which addresses the deburring of holes, was inadvertently excluded from the proposal to this part 7 section. However, it is a footnote in existing § 18.31 and was proposed as a footnote to the revision of this section. For purposes of consistency, it is included in the final rule.

Footnote 13 states that the edge of the fastening hole must include the edge of any machining done to the fastening hole, such as chamfering. This is consistent with existing policy and is added for clarification.

Footnote 15 provides that shafts or operating rods not be less than ¼ inch in diameter. This provision has been changed in the final rule to be consistent with the comparable footnote published in proposed § 18.31(a)(6). This provision is also contained in existing part 18. The Agency's experience is that the ¼-inch minimum diameter provision for shafts and operating rods provides adequate strength for proper performance.

Commenters suggested that explosion-proof joint constructions specified in consensus standards be accepted as alternatives to the requirements of paragraph (g)(19). As previously stated, the intent of part 7 subpart J is to objectively state the established technical criteria presently required and successfully applied by MSHA under part 18, not to introduce new or modified requirements. Therefore, the suggested modification is not included in this final rule.

Paragraph (h) of § 7.304, derived from existing § 18.37, specifies the requirements for lead entrances. Except as explained below, the requirements are the same as those contained in existing § 18.37. Paragraph (h)(1) requires each cable extending through an outside wall of the motor assembly to pass through a stuffing-box lead entrance. This new provision reflects the Agency's belief that this is the only type of lead entrance for which objective criteria can be developed at this time.

Paragraph (h)(2) addresses the requirements for the proper packing of gland assemblies. Paragraph (h)(2)(i) specifies the minimum clearance distance for gland nuts. One commenter suggested that this provision clarify that there is no limitation on the maximum clearance distance as long as three effective engagement threads are maintained. It was MSHA's intent that the rule be applied in this way. Therefore, this clarification has been included in the final rule.

Paragraph (h)(2)(ii) provides for a minimum of three effective engagement threads for the packing gland nut. Although not contained in existing part 18, this minimum engagement is addressed by current policy. It was developed to define the minimum thread engagement for adequate mechanical strength.

Paragraph (h)(4) specifies a minimum of ½-inch contact distance for compressed packing material. One commenter requested that o-rings be allowed to be used to form a gas tight seal and further stated that if an appropriate o-ring were used it would not be necessary to maintain a minimum contact length of ½ inch. Such use of o-rings would constitute new technology and would not be subject to approval under this subpart. This category of design can be evaluated under part 18.

Paragraph (h)(5) replaces the term "asbestos packing material" with "MSHA accepted rope packing material" in order to address acceptable asbestos substitute materials. For clarification, Figures J–7 through J–14 in the appendix are included for use with the lead entrance requirements of paragraph (h).

Paragraph (i) specifies requirements for insulating material, with respect to combustible gases. These requirements are derived from existing § 18.25. Paragraph (i)(1) includes the existing part 18 requirement prohibiting the use of insulating materials that give off volatile gases when subjected to destructive electrical action. Paragraph (i)(2) allows any method of treatment to remove combustible solvents, instead of only heat as provided under existing § 18.25(b). As the desired result is removal of any combustible solvents, the method of removal is not critical.

Section 7.305 Critical Characteristics

This section is new and lists the critical characteristics that are required to be inspected on each motor assembly that has an approval marking. As defined in subpart A of part 7, a critical characteristic is a feature of a product that, if not manufactured as approved, could have an adverse effect on safety. This rule will assure the explosion-proof integrity of the motor assembly prior to use by requiring inspection of the critical characteristics of an approved motor assembly. This list of critical characteristics was developed using the applicable technical requirements in § 7.304 of this final rule. The same commenter who suggested that § 7.304(g)(7) omit the requirement for lockwashers also recommended that the critical characteristic pertaining to lockwashers be omitted. This suggestion was not incorporated into this provision for the reasons stated in the preamble discussion accompanying § 7.304 of this final rule.

Section 7.306 Explosion Tests

Section 7.306, derived from existing § 18.62, sets forth the equipment, test procedures, and acceptable performance criteria for the testing of a motor assembly to withstand an internal explosion of a combustible gas mixture. The provisions of this section provide objective criteria to evaluate the explosion-proof performance of a motor assembly.

Paragraph (a) requires the use of an explosion test chamber, methane gas supply, electric ignition source and a pressure recording system when conducting explosion tests. Factors that would affect the accuracy, reliability and repeatability of the testing procedures are specified.

The explosion test chamber is defined in paragraph (a)(1) as being designed and constructed to contain an explosive gas mixture. The gas mixture, as described in the testing procedures, would surround and fill the motor assembly being tested. The explosive gas contained within the chamber must envelop the motor assembly during testing. The amount of leakage from the chamber must be controlled so that the gas mixture is maintained within the specified tolerances for the duration of the testing. Therefore, a gas-tight chamber is not required. The chamber would be darkened and have flame-arresting path viewing capabilities enabling the testing personnel to discern the discharge of flame along flame-

arresting paths as well as the ignition of the explosive mixture surrounding the motor assembly being tested.

As specified in paragraph (a)(2) the methane gas supply must be composed of at least 98 percent of combustible hydrocarbons with inert products comprising the remainder. A minimum of 80 percent of the gas, by volume, is required to be methane. This composition of gas, which is specified to provide reliable and repeatable test results, is typical for commercial natural gas (methane) supplies.

Paragraph (a)(3) defines the coal dust to be used in the explosion tests. The existing identification of "Pittsburgh bed coal dust" in § 18.62(a) is replaced by a minimum volatile matter and BTU content. This change allows equivalent coal from other coal seams to be used in the tests. The requirement that the coal be ground to a fineness of minus 200 mesh is retained.

Paragraph (a)(4) establishes the minimum energy level for the electric spark ignition source as 100 millijoules. This minimum energy level ensures that there is sufficient energy available to ignite the explosive gas mixture within the motor assembly during each test. This provision retains the requirement in existing § 18.62(a) that an electric spark ignition source be used for the testing.

Paragraph (a)(5) is derived from § 18.62(a) and retains the existing requirement that the explosion pressure developed during testing be recorded. The rule clarifies this requirement by specifying that the pressure recording system must indicate the pressure peaks within the tested motor assembly as described in the test procedures.

Paragraph (b) of § 7.306 describes the general test procedures for conducting the explosion tests. The preparation of the motor for testing is described in paragraph (b)(1). this paragraph requires motor assemblies being tested to be equipped with unshielded bearings and have all parts not contributing to the operation or assuring the explosion-proof integrity of the enclosure removed. Examples of those parts to be removed include oil seals, grease fittings, hose conduit, cable clamps and outer bearing caps that do not house the bearings. Preparation of the motor assembly in this manner is consistent with existing MSHA policy.

The types of parts identified in paragraph (b)(1) could obstruct the observation of flame-arresting paths during testing and possibly inhibit the expulsion of flames and hot gases. Additionally, since these parts do not contribute to the operation or explosion-proof integrity of the motor, they can be omitted with no reduction in operational capabilities. Testing with these parts not present ensures that no reduction in safety results in such instances.

Paragraph (b)(2) addresses the general procedures of filling the chamber and motor assembly with explosive mixtures, the locations for pressure measurements, and the number of tests permitted before the chamber is purged and recharged. The motor assembly must be observed for discharge of flames during each test. In order to provide adequate observation of any discharge of flames, each externally visible flame-arresting path fit must be observed for discharge of flame for at least two tests, one with coal dust added.

The motor assembly must be filled with and surrounded by explosive methane mixtures for each test. Just before ignition, the gas concentration within the test chamber must be between 6.0 percent and the concentration within the motor assembly. This is specified in paragraph (c), which sets out test procedures. To ensure the accuracy of the test, the gas mixtures must be adequately mixed so that homogeneous gas concentrations within the explosive limits are present.

The rule also specifies that a single spark source is to be used for all testing, with test holes of sufficient quantity and location to permit ignition and pressure recording in each enclosure, as required in paragraph (c).

Finally, paragraph (b) also requires the motor assembly to be completely purged and recharged with a fresh explosive gas mixture from the chamber or by injection after each test. The chamber is required to be completely purged and recharged as necessary. The oxygen level will be maintained at no less than 18 percent. In the absence of oxygen monitoring equipment, the rule includes an alternative method for ensuring that this level is maintained. This method will limit the maximum number of tests between purgings to no more than the number obtained by dividing the chamber volume by forty times the motor assembly volume. This requirement for purging and recharging of the chamber is the result of testing and analysis of data obtained by MSHA.

The purging and recharging sequences are required in order to provide appropriate concentration levels of the combustion gases and the combustion by-products within the motor assembly chamber. The concentration levels of these various gases must be maintained within proper limits to ensure reliable and repeatable ignition and combustion of the explosive gas.

Paragraph (c) provides the specific testing procedures to be followed for each series of tests conducted on a motor assembly. The number of tests, methane concentration levels, stationary or rotating rotor, location of ignition source, and use of coal dust are specified. Existing § 18.62(a) requires testing under these various conditions; however, specific values are not stated. The values that are required under this rule have been developed from the Agency's testing experience and existing policy. The rule provides an objective testing procedure to evaluate all designs foreseen to be explosion tested under this subpart.

The methane concentrations of 7.0±.3 and 9.4±.4 percent are specified to accomplish testing at easily ignitable and violently explosive values, respectively. Ignitions while the rotor is rotating at rated speed test the motor assembly at maximum internal turbulence. Ignitions with the rotor stationary test the motor assembly with no turbulence along the flame-arresting path. Turbulence along the flame-arresting path might prevent flames from existing. If the motor assembly incorporates a nonisolated conduit box, two additional tests must be conducted with ignitions within the conduit box. These tests are designed to detect pressure piling in the winding compartment resulting from ignitions in the conduit box. Pressure piling from precompression of the gases in the winding compartment due to ignition of the gases in the conduit box could result in higher pressures being attained.

Four tests are then to be conducted with the gas concentration at 9.4±.4 percent methane and 0.05 ounces per cubic foot of internal free volume of the motor assembly of finely ground coal dust. The requirement of introducing coal dust is derived from § 18.62(a). The existing standard does not specify the quantity of coal dust to be added. The value of 0.05 ounces per cubic foot volume was established through MSHA's testing experience and engineering analysis to provide sufficient coal dust to coat all internal surfaces of the motor assembly.

These four tests, two with the rotor stationary and two with it rotating at rated speed, require ignitions within the motor assembly at varying locations. These locations were chosen, based on MSHA's testing experience, to produce the greatest potential for development of the highest pressures within the motor assembly upon ignition of the explosive mixture. Paragraph (c)(4) outlines additional testing procedures to be followed for motor assemblies that incorporate a conduit box isolated from

the winding compartment. Examples of isolating barriers would be terminals or potting compound, such as chico. Paragraph (4)(i) describes the location of ignition and pressure recording positions for the conduit box. Two ignition points are to be used for a conduit box with internal free volume greater than 150 cubic inches, one ignition point as near to the geometric center as practical and the other as far as possible from the isolating barrier between the conduit box and winding compartment. Pressure recording points are to be on the same and opposite sides of the conduit box as the latter ignition point. One ignition point as near to the geometric center as practical and one pressure recording point on a side of the conduit box are to be used for a conduit box with internal free volume equal to or less than 150 cubic inches.

Paragraph (4)(ii) requires the conduit box to be tested separately by performing the tests with the isolating barrier in place. A total of ten explosion tests must be performed on the conduit box, six tests with 9.4±.4 percent methane by volume followed by two tests with 7.0±.3 percent methane by volume. The remaining two tests must be conducted at 9.4±.4 percent methane with coal dust added. The quantity (per cubic foot) and specifications of the coal dust are the same as that provided for in paragraph (c)(3). If the internal free volume of the conduit box exceeds 150 cubic inches, the tests are to be equally divided between the two ignition points.

Paragraph (4)(iii) describes the testing sequence to be followed in removal of the isolating barrier. If the isolating barrier is comprised of multiple assemblies, such as terminals, one assembly is to be removed for the initial series of six explosion tests. Following this initial series of tests, one test will be conducted following the removal of each additional assembly. This procedure will continue until the motor assembly has been tested with all isolated barrier assemblies removed.

Each test conducted under this paragraph must be performed using an explosive gas mixture containing 9.4±.4 percent methane by volume within the conduit box and winding compartment. For the initial six tests, the rotor will be stationary for one test and rotating for another for each of three ignition points. The three ignition points must be opposite ends of the winding compartment and the conduit box ignition point which provided the highest pressures during the tests conducted in paragraph (c)(4)(ii). Of these three ignition points, the one that produces the highest recorded pressures will be used for testing following removal of each additional isolating assembly (sectionalizing terminal).

Paragraph (d) provides additional testing procedures or inclusion of a warning statement for any motor assemblies where recorded pressures exceeding 110 psig result following removal of any or all isolating barriers. The additional testing requires the motor assembly to withstand a static pressure test at a pressure of twice the maximum recorded explosion test pressure. As an alternative to conducting the static pressure testing, a warning statement is required. The warning statement, incorporated on the approval plate, states that the isolating barrier must be maintained to ensure the explosion-proof integrity of the motor assembly.

During maintenance and repair of electric motor assemblies, isolating barriers might not be included in the assembly procedure. Normally there is no evidence to indicate the prior existence of an isolating barrier. Deletion of this barrier could result in development of a hazardous situation with no prior warning. Paragraphs (c)(4)(iii) and (d) address this situation.

Some winding compartment-conduit box combination designs can result in increased explosion pressures due to pressure piling. The provisions of paragraphs (c)(4)(iii) and (d) allow the use of such designs while providing what MSHA believes to be adequate safeguards. A warning statement on the approval plate notifies the user that the integrity of the isolating barrier must be maintained to ensure the explosion-proof integrity of the motor assembly.

Paragraph (e) describes the acceptable performance criteria for explosion tests. These criteria are derived from existing § 18.62 (b) and (c). This rule requires that there be no flame discharge from the motor assembly or ignition of the explosive mixture surrounding the motor assembly. These conditions would indicate that the flame-arresting paths are inadequate to prevent the escape of flame and the enclosure is not constructed to withstand and contain internal explosions of methane-air mixtures. Rupture of any part of or any panel or divider within the motor assembly, clearances along accessible flame-arresting paths in excess of those specified in subpart J, and permanent deformation greater than 0.040 inches per linear foot are all indications of structural deficiencies of the motor assembly.

The criterion which considers development of afterburning as an unacceptable result of explosion tests is derived from § 18.62(b)(3). The term "afterburning" is applied to combustion, immediately after an internal explosion, of a gaseous mixture that was not in the enclosure at the time of that explosion. Sometimes the external gases are drawn into a motor interior immediately after an explosion as a result of the cooling of the product of the original explosion or otherwise and continue to burn. If prolonged, afterburning may damage the insulation. What is more serious is that the heating may allow flames to pass to the outside of the apparatus along flame-arresting paths that would otherwise be effective in cooling them. This condition reflects deficiencies in the motor assembly and would represent an increased hazard in an explosive atmosphere.

The occurrence of subsequent pressure peaks within an electric motor assembly in conjunction with an internal explosion is not an unusual event. This phenomenon occurs in multiple compartmented enclosures when the explosion is initiated in one compartment and propagates to the others. This occurrence differs from afterburning in that the secondary pressure peaks result from the combustion of the gases already present in the enclosure at the time of ignition. The pressure developed from the initial explosion is not completely dissipated at the time the secondary peaks develop.

Development of pressures exceeding 110 psig during explosion tests is not acceptable, unless the enclosure has met the acceptable performance criteria of the static pressure tests conducted at twice the maximum recorded explosion test pressure or a warning statement in accordance with § 7.306(d) is included on the approval plate. This provision modifies the existing requirements contained in § 18.62(c).

The ignition and pressure recording locations specified in the explosion test procedures are designed to provide the maximum pressure development and sensing for the enclosures. However, variations in enclosure designs may cause the specified locations to differ slightly from the "optimum" locations. To provide for this potential variation, the rule requires additional testing at a pressure indication of 110 psig rather than the 125 psig required in existing § 18.62(d). The rule also requires this testing to be done statically rather than dynamically, as specified in the existing regulations. The Agency believes that static pressure testing at two times the highest recorded explosion test pressure will provide an adequate safety margin to ensure a safe design. The static pressure test at these higher pressures also provides greater safety to the testing personnel since the development and

release of the testing pressure can be controlled.

The Agency received comments recommending alternate test methods, including the use of different gases and different test parameters. The test procedures contained in the final rule and discussed above are based on the current test procedures and part 18 requirements. Subjective areas were clarified and restated in an objective manner in order to formulate tests that can be repeatedly used by third parties. The use of other test procedures and test requirements was not an objective of this rulemaking. Therefore, test methods alternate to MSHA's established procedures were not included in the proposal and are not in the final rule.

Section 7.307 Static Pressure Test

Section 7.307 describes the test procedures and the acceptable performance criteria for conducting static pressure tests. The static pressure test is new and provides an alternative means of satisfying the technical requirements of § 7.304(g)(2) for welded joints, § 7.304(g)(19) (footnote 8) for diameters of fasteners, and § 7.304(g)(19) (footnote 9) for engagement of fasteners. The test will also be used, as specified in § 7.306(d) and (e)(6), for motor assemblies where explosion test pressures exceed 110 psig. The test procedures are based on the static test procedures developed as part of the approval criteria for high-voltage machines containing on-board switching of high-voltage circuits. These criteria resulted from engineering investigation and testing experience. The acceptable performance criteria are the same performance requirements of § 18.62 with regard to physical failure conditions.

The static pressure test provides an alternative means of satisfying the requirements of the above sections because the concern addressed by those sections was that of failure due to physical stress and deformities.

One commenter recommended the use of air as the pressurizing agent for the static pressure test with the inclusion of additional low-pressure tests. MSHA believes that while the suggested test procedures would meet the requirements and would provide acceptable testing, this is not the only means available to satisfy the test requirement. Therefore, the final rule does not require a specific pressurizing agent or test procedure. Additional tests can be conducted if desired by the applicant.

Another commenter suggested alternate test requirements for the static pressure test. As previously stated, the intent of part 7 subpart J is to objectively state the established technical criteria presently required and successfully applied by MSHA under part 18, not to introduce new or modified requirements. Therefore, the suggested modification is not included in this final rule.

Section 7.308 Lockwasher Equivalency Test

Section 7.308 specifies new test procedures and acceptable performance criteria when conducting tests on locking devices other than lockwashers. The lockwasher equivalency test provides an alternative means of satisfying the technical requirement of § 7.304(g)(7) if a locking device other than a lockwasher is used. The test has been developed based upon testing procedures specified in Society of Automotive Engineers (SAE) recommended practice, Torque-Tension Test Procedure for Steel Threaded Fasteners (SAE J174, 1971) and Military Specification, Inserts, Screw-Thread, Helical Coil (MIL–I–8846B, 1973). The same commenter who suggested that §§ 7.304(g)(7) and 7.305 omit the requirement for lockwashers recommended omitting the lockwasher equivalency test of this section. This suggestion was not incorporated into this provision for the reasons stated in the preamble discussion accompanying § 7.304 of this final rule.

Section 7.309 Approval Marking

Section 7.309, derived from § 18.13, requires a legible and permanent approval plate with the assigned MSHA approval number inscribed. The plate is required to be securely attached to the motor assembly in a manner that does not adversely affect the explosion-proof integrity of the motor assembly. The rule allows identification of approved subpart J motor assemblies in a manner that facilitates field identification of the motor assembly as approved by MSHA.

Section 7.310 Post-Approval Product Audit

Section 7.310 is new and requires an approval holder, upon request, to make available to MSHA at no cost an approved subpart J motor assembly for audit. This request will be made no more than once a year by MSHA, except for cause. The audit will be conducted at a mutually agreeable site and time. This will be in addition to MSHA's ongoing quality assurance program for which the agency can obtain products for audit at any time at MSHA's expense.

Section 7.311 Approval Checklist

Section 7.311 is new and requires the manufacturer to include with each motor assembly bearing an MSHA approval marking a list of items that should be checked by the user to ensure the motor assembly is maintained in approved condition. This is consistent with existing checklist requirements contained in §§ 7.51 and 7.71 of part 7.

B. Section-by-Section Discussion of Part 18

Part 18 includes various provisions by which MSHA can allow variations in design in the evaluation and testing of explosion-proof enclosures. Under these provisions MSHA can evaluate certain variations in designs based upon its experience, engineering judgment and testing results. This flexibility exists in part 18 but is not appropriate in a part 7 subpart. As a result, some specific modifications to part 18 requirements have been incorporated into part 7 requirements, but not part 18. Additionally, modifications judged appropriate for inclusion as part 18 requirements and necessary to make part 18 consistent with subpart J of part 7 are discussed below.

Section 18.4 Equipment for Which Approval Will Be Used

This section is revised to specify that components approved under part 7 will also be acceptable for incorporation in the assembly of a complete machine or accessory.

Section 18.24 Electrical Clearances

This section is revised to establish specific minimum clearance distances based upon the voltage of the energized parts. It specifies these minimum distances to define the adequacy of spacing required under the existing section. The minimums are applicable to the distance between uninsulated electrical conductor surfaces or between uninsulated electrical conductor surfaces and grounded metal surfaces within the enclosure. These minimum clearances are the result of an engineering study performed in conjunction with high voltage studies at MSHA's Approval and Certification Center. The clearances specified in the final rule are consistent with those specified in subpart J, which were modified as discussed earlier in response to a comment.

Section 18.31 Enclosures—Joints and Fastenings

Paragraph (a)(3) is revised to change the maximum allowable magnesium content of external rotating parts constructed of aluminum alloys to 0.6

percent from 0.5 percent. As stated in the preceding preamble discussion for § 7.304(g)(3), this is consistent with MSHA policy.

Paragraph (a)(5) is revised to change the Class 1 thread terminology of the existing requirement to the present Class 1A and 1B terminology, consistent with that of § 7.304(g)(4).

Paragraph (a)(6) is revised for consistency with subpart J of part 7. The introductory paragraph is changed to include an explanation of "internal volume of an empty enclosure." This explanation is expanded to include the parts necessary for use (operation), making it consistent with MSHA's existing policy.

The rule identifies the internal free volume of an empty enclosure as that remaining after the volume of any part that is essential to maintaining the explosion-proof integrity of the enclosure or necessary for operation. Essential parts include the parts that constitute the flame-arresting path, as well as those necessary to secure the parts that constitute the flame-arresting path. This explanation is important because the volume of the enclosure defines the minimum design requirements of the explosion-proof enclosure. The interpretation of "volume of empty enclosure" currently used is retained for the construction requirements in § 18.31.

The tabulated construction requirements are modified in several areas. The requirements for minimum thickness of material for flanges and covers are combined into one category. This change represents a format change only, since the technical requirements are unchanged. The maximum bolt spacing requirements for joints all in one plane are modified to include the requirement for "a minimum of 4 bolts" to be used in the category of "more than 124 cu. ins." of volume. This modification clarifies the Agency's belief and experience that a minimum of 4 bolts is necessary, regardless of the enclosure's volume or the configuration of the parts forming the joints.

The cylindrical joint portion of the table also includes several modifications. The maximum clearance along shafts centered by ball or roller bearings is expressed in terms of diametrical rather than radial dimensions for clarity. The parts that constitute these fits are generally expressed in terms of diametrical rather than radial dimensions.

The categories of "shafts through journal bearings" and "other than shafts" are combined into a single classification of "other cylindrical joints." The clearances specified are the diametrical equivalent for the radial clearances listed in § 18.31(a)(6) for shafts through journal bearings. Except as discussed below, the contents of the footnotes of § 18.31(a)(6) are retained.

Footnote 4 is derived from § 18.34(a)(6) and includes the requirement to deduct the width of oil grooves and grooves for oil seals in measuring the widths of flame-arresting paths. This provision is expanded to include any groove, because the minimum flame-arresting path length is still required to be met.

Footnote 8 is added to specify clearance and location requirements for steel dowel pins. These pins are generally used in cover flanges to aid in aligning the covers. These requirements are consistent with current policy.

Footnote 12, which is new, specifies that the maximum clearance applies only when the fastening is located within the flame-arresting path. It clarifies when the specification in the table is applicable.

Footnote 13 is added to state that the edge of the fastening hole must include the edge of any machining done to the fastening hole, such as chamfering. This is consistent with existing policy and is added for clarification.

Paragraph (a)(7) of § 18.31 is new and specifies the acceptable location of o-rings in a flame-arresting path. When o-rings are installed, current policy requires these locations to permit checking of flame-arresting path fits without interference from o-rings. This requirement is based upon the Agency's field experience. Figures J–2, J–3, J–4 and J–5 in the appendix to subpart J of part 7 are referenced to clarify the required locations for o-rings.

Section 18.32 Fastenings—Additional Requirements

Paragraph (i) is added to allow for the use of coil-threaded inserts in holes for fastenings, provided they have conventional screw threads, the holes for the inserts are drilled, tapped, and installed consistent with the insert manufacturer's specifications and the insert is long enough to ensure the required minimum thread engagement of the fastening in the insert. Although not addressed in existing part 18, as a result of evaluation and testing by MSHA, current policy permits their use. This provision allows correction of damaged threads for fastenings securing flame-arresting path parts that could lead to the expulsion of flames or hot gases due to an internal explosion.

Section 18.33 Finish of Surface Joints

This section is revised to read that a rust inhibitor is acceptable provided the final surface may be readily wiped free of any foreign materials. This change is consistent with the one previously discussed under § 7.304(g)(5) and was the intent of the requirement. This clarifies the type of preparation that might be used to inhibit rusting. The addition of foreign particles to a flame-arresting path is not desirable because it could interfere with maintaining the proper clearance to prevent the escape of flame and/or hot gases.

Section 18.34 Motors

This section is revised by adding an introductory paragraph to specify that explosion-proof electric motor assemblies intended for use in approved equipment in underground mines that are addressed by part 7 are to be approved under part 7. Explosion-proof motor assemblies incorporating designs not specifically addressed under part 7 will continue to be submitted for acceptance or certification under part 18. Those motor assembly designs that, for example, contain devices for ventilation, pressure relief and drainage will continue to be evaluated under part 18. In addition, designs incorporating parts common to explosion-proof enclosures other than conduit boxes and those incorporating new technology will also be addressed under part 18. These designs are not being covered under subpart J of part 7 because their acceptance by MSHA requires an individual evaluation of design and performance tests. Designs incorporating parts common to explosion-proof enclosures other than conduit boxes and those incorporating new technology will also require evaluation on an individual basis. Paragraph (a)(6) is revised by deleting the present wording "The widths of oil grooves and grooves for holding oil seals will be deducted in measuring the widths of flame-arresting paths," as this requirement is incorporated into footnote 3 of § 18.31(a)(6). The wording of the present "note" is retained, as removing the oil seals is standard practice on motors submitted for testing.

Section 18.37 Lead Entrances

Paragraph (b) is revised to provide for a minimum of three effective engagement threads for the packing gland nut. This minimum engagement is addressed by current policy. It was developed to define what the minimum thread engagement is for adequate mechanical strength.

Section 18.62 Tests To Determine Explosion-Proof Characteristics

Paragraph (a) of § 18.62 is revised with respect to the definition of coal

dust used in the explosion tests. The identification of "Pittsburgh bed coal dust" in § 18.62(a) is replaced by a minimum volatile matter and BTU content. This change allows equivalent coal from other coal seams to be used in the tests. The requirement that the coal be ground to a fineness of minus 200 mesh is retained.

Derivation Table

The following derivation tables list: (1) Each section number of the final rule (New Section); and (2) The section number of the standard from which the section is derived (Old Section).

DERIVATION TABLE.—PART 7

New section	Old section
7.301	18.1
7.302	18.2
7.303	18.6(a)
7.304(a)	18.47
7.304(b)	18.23
7.304(c)	18.24
7.304(d)	18.34(a)(4)
7.304(e)	18.34(a)(6)
7.304(f)	18.34(a)(8)
7.304(g)(1)	18.31(a)(1)
7.304(g)(2)	18.31(a)(2)
7.304(g)(3)	18.31(a)(3) and 18.26
7.304(g)(4)	18.31(a)(5)
7.304(g)(5)	18.33
7.304(g)(6)	18.34(c)
7.304(g)(7)	18.32(b)
7.304(g)(8)	18.32(c)
7.304(g)(9)	18.32(d) and 18.34(a)(9)
7.304(g)(10)	18.32(d)
7.304(g)(11)	18.34(b)
7.304(g)(12)	New
7.304(g)(13)	18.32(e)
7.304(g)(14)	18.32(f)
7.304(g)(15)	18.29(c)
7.304(g) (16) and (17)	New
7.304(g)(18)	18.31(a)(5)
7.304(g)(19)	18.31(a)(6) and 18.34(d)
7.304(h)	18.37
7.304(i)	18.25
7.305	New
7.306	18.62
7.307	New
7.308	New
7.309	18.13
7.310	New
7.311	New
18.4	18.4
18.24	18.24
18.31(a)(3)	18.31(a)(3)
18.31(a)(5)	18.31(a)(5)
18.31(a)(6)	18.31(a)(6) and 18.34(a)(6)
18.31(a)(7) and 18.32(l)	New
18.33	18.33
18.34	18.34
18.37(b)	18.37(b)
18.62(a)	18.62(a)

Distribution Table

The following distribution tables list: (1) Each section number of the part 18 standard (Old Section); and (2) Each section number of the final rule (New Section). Unless indicated in the part 18 Distribution Table, the existing sections of part 18 are retained.

DISTRIBUTION TABLE.—PART 7

Old section	New section
18.1	7.301
18.2	7.302
18.6	7.303
18.13	7.309
18.23	7.304(b)
18.24	7.304(c)
18.25	7.304(l)
18.26	7.304(g)(3)
18.29(c)	7.304(g)(15)
18.31(a)(1)	7.304(g)(1)
18.31(a)(2)	7.304(g)(2)
18.31(a)(3)	7.304(g)(3)
18.31(a)(5)	7.304(g) (4) and (18)
18.31(a)(6)	7.304(g)(19)
18.32(b)	7.304(g)(7)
18.32(c)	7.304(g)(8)
18.32(d)	7.304(g) (9) and (10)
18.32(e)	7.304(g)(13)
18.32(f)	7.304(g)(14)
18.33	7.304(g)(5)
18.34(a)(4)	7.304(d)
18.34(a)(6)	7.304(e)
18.34(a)(8)	7.304(f) and 7.304(g)(10)
18.34(b)	7.304(g)(11)
18.34(c)	7.304(g)(6)
18.34(d)	7.304(g)(19)
18.37	7.304(h)
18.47	7.304(a)
18.62	7.306

DISTRIBUTION TABLE.—PART 18

Old section	New section
18.4	18.4
18.24	18.24
18.31(a)(3)	18.31(a)(3)
18.31(a)(5)	18.31(a)(5)
18.33	18.33
18.34	18.31(a)(6) and 18.34
18.37(b)	18.37(b)
18.62(a)	18.62(a)

III. Executive Order 12291 and Regulatory Flexibility Act

In accordance with Executive Order 12291, MSHA prepared a Regulatory Impact Analysis (RIA). MSHA determined that the final rule will not result in major cost increases nor have an incremental effect of $100 million or more on the economy. This RIA also formed the basis for the analysis required by the Regulatory Flexibility Act. The Regulatory Flexibility Act requires that, in developing regulatory proposals, agencies evaluate compliance alternatives that minimize any adverse impact on small businesses. Subpart J clarifies the standards that industry must meet for approval of certain explosion-proof electric motor assemblies intended for use in approved equipment in underground mines. MSHA designed its product testing requirements to be as performance oriented as possible to allow manufacturers to choose the most cost effective option. Performance-oriented standards benefit both large and small manufacturers.

The rule will increase private-sector involvement in the approval of mining products. For the first time, instead of testing only by MSHA, the applicant or a third party selected by the applicant will test explosion-proof electric motor assemblies. The Agency anticipates that this new procedure will in some cases reduce associated testing costs and potential delay in product approvals.

MSHA also will be able to shift resources from the more standard approvals covered under part 7 to those approvals covered under part 18 that involve new technology and substantial design changes. MSHA anticipates that the increase in resources devoted to part 18 approvals will reduce the time needed to approve new technology from the current 4 months to 6 months to an expected 2 months to 3 months.

MSHA estimates that the total annual compliance cost to electric motor assembly manufacturers under the existing standards is about $65,700. The total annual compliance cost under the new rule will be about $78,600 for the first few years after the effective date, gradually decreasing to $45,800 after manufacturers and MSHA become more familiar with applications under part 7. The cost increase is associated with the requirements for MSHA observation of testing, annual product audits, and quality assurance procedures. These costs, however, are offset by decreased costs for MSHA fees for processing applications and testing products. Even though there are many small firms, MSHA lacks data on them to identify the potential impact on small entities.

MSHA estimates that the incremental cost of the final rule is an increased annual cost of about $12,900 for the first few years, gradually decreasing to a net annual cost reduction of about $19,900. Incremental annual cost increases total about $18,100 and are offset by cost savings of about $5,200 for the first few years after the effective date of this Subpart J and a savings of about $38,000 annually thereafter.

This final rule will not significantly alter the existing technical requirement for electric motor assemblies. Any necessary testing of products required by MSHA either is not substantially different from the currently undertaken or does not impose significant costs compared to the sales value of the product. The annual incremental compliance cost, for the 40 firms which may be affected by the final rule, averages about $322 per firm for the first few years, gradually decreasing to a cost reduction of about $498 per firm in subsequent years.

IV. Paperwork Reduction Act

This final rule contains information collection requirements subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. The burden hour estimate includes the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collected information. the information collection requirements contained in the rule are discussed below.

Section 7.303 requires applicants seeking approval of an electric motor assembly to submit an application for approval. MSHA estimates that there will be 42 applications submitted per year, each requiring 1.5 hours to prepare for a total of 63 burden hours.

Existing § 7.4(a) requires records of test results and procedures to be retained for at least 3 years. Standard testing protocols used by the manufacturing community include the keeping of records of product testing; therefore, no additional burden hours are assigned to this requirement.

Existing § 7.7(d) requires applicants to report to MSHA any knowledge of a product distributed with critical characteristics not in accordance with the approval specifications. MSHA estimates that under subpart J manufacturers will submit 40 reports per year requiring 15 minutes per report for a total of 10 burden hours. The rule requires applicants to maintain records on the distribution of each product bearing an approval marking as set forth in § 7.7(c). This provision does not specify the type of record, and MSHA believes applicants will use existing sales record systems to comply.

In accordance with Section 3504(h) of the Paperwork Reduction Act of 1980, the collection of information requirements contained in § 7.303 of the final rule have been approved by OMB under control No. 1219015.

V. Metric Measurements

In accordance with section 5164 of the Omnibus Trade and Competitiveness Act of 1988, MSHA requested comments on the availability of metric equipment and supplies and metric nominal safety equivalences of the English inch-pound measurements. One commenter recommended issuance of separate metric approval rules, believing that more than a simple conversion of the present dimensions into metric values is required. MSHA agrees that more than a simple direct conversion of dimensions into metric values is appropriate. However, to effectively accomplish this conversion, metric values that establish equivalent safety would have to be developed for all the technical requirements specified in parts 7 and 18. Such an approach would require a broader rulemaking effort than intended under the establishment of part 7, subject J. Therefore, technical requirements specified in metric units are not included in this final rule. However, current applications under part 7 and part 18 can be and are submitted with metric measurements. The Agency will continue efforts to work towards metric equivalents to ensure the approval of safe products.

List of Subjects in 30 CFR Parts 7 and 18

Approval of equipment, Incorporation by reference, Mine safety and health, Underground mining.

Dated: December 14, 1992.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

Accordingly subchapter B, chapter I, title 30 of the Code of Federal Regulations is amended as follows:

PART 7—TESTING BY APPLICANT OR THIRD PARTY [AMENDED]

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

Authority: 30 U.S.C. 957.

2. A new subpart J is added to part 7 to read as follows:

Subpart J—Electric Motor Assemblies

Sec.

7.301 Purpose and effective date.
7.302 Definitions.
7.303 Application requirements.
7.304 Technical requirements.
7.305 Critical characteristics.
7.306 Explosion tests.
7.307 Static pressure test.
7.308 Lockwasher equivalency test.
7.309 Approval marking.
7.310 Post-approval product audit.
7.311 Approval checklist.

Appendix I to Subpart J of Part 7

Subpart J—Electric Motor Assemblies

§ 7.301 Purpose and effective date.

This subpart establishes the specific requirements for MSHA approval of certain explosion-proof electric motor assemblies intended for use in approved equipment in underground mines. Applications for approval or extensions of approval submitted after (insert date three years after effective date of this subpart) shall meet the requirements of this part. Those motors that incorporate features not specifically addressed in this subpart will continue to be evaluated under part 18 of this chapter.

§ 7.302 Definitions.

The following definitions apply in this subpart:

Afterburning. The combustion of any flammable mixture that is drawn into an enclosure after an internal explosion in the enclosure. This condition is determined through detection of secondary pressure peaks occurring subsequent to the initial explosion.

Cylindrical joint. A joint comprised of two contiguous, concentric, cylindrical surfaces.

Explosion-proof enclosure. A metallic enclosure used as a winding compartment, conduit box, or a combination of both that complies with the applicable requirements of § 7.304 of this part and is constructed so that it will withstand the explosion tests of § 7.306 of this part.

Fastening. A bolt, screw, or stud used to secure adjoining parts to prevent the escape of flame from an explosion-proof enclosure.

Flame-arresting path. Two or more adjoining or adjacent surfaces between which the escape of flame is prevented.

Internal free volume (of an empty enclosure). The volume remaining after deducting the volume of any part that is essential in maintaining the explosion-proof integrity of the enclosure or necessary for operation of the motor. Essential parts include the parts that constitute the flame-arresting path and those necessary to secure parts that constitute a flame-arresting path.

Motor assembly. The winding compartment including a conduit box when specified. A motor assembly is comprised of one or more explosion-proof enclosures.

Plane joint. A joint comprised of two adjoining surfaces in parallel planes.

Step (rabbet) joint. A joint comprised of two adjoining surfaces with a change or changes in direction between its inner and outer edges. A step joint may be composed of a cylindrical portion and a plane portion or of two or more plane portions.

Stuffing box. An entrance with a recess filled with packing material for cables extending through a wall of an explosion-proof enclosure.

Threaded joint. A joint consisting of a male- and a female-threaded member, both of which are the same type and gauge.

§ 7.303 Application requirements.

(a) An application for approval of a motor assembly shall include a composite drawing or drawings with the following information:

(1) Model (type), frame size, and rating of the motor assembly.

(2) Overall dimensions of the motor assembly, including conduit box if applicable, and internal free volume.

(3) Material and quantity for each of the component parts that form the explosion-proof enclosure or enclosures.

(4) All dimensions (including tolerances) and specifications required to ascertain compliance with the requirements of § 7.304 of this part.

(b) All drawings shall be titled, dated, numbered, and include the latest revision.

§ 7.304 Technical requirements.

(a) Voltage rating of the motor shall not exceed 4160 volts.

(b) The temperature of the external surfaces of the motor assembly shall not exceed 150 °C (302 °F) when operated at the manufacturers' specified ratings.

(c) Minimum clearances between uninsulated electrical conductor surfaces, or between uninsulated conductor surfaces and grounded metal surfaces, within the enclosure shall meet the requirements of table J–1 of this section.

TABLE J–1.—MINIMUM CLEARANCES BETWEEN UNINSULATED SURFACES

Phase-to-phase voltage (rms)	Clearances (inches)	
	Phase-to-phase	Phase-to-ground or control circuit
0 to 250	0.25	0.25
251 to 600	0.28	0.25
601 to 1000	0.61	0.25
1001 to 2400	1.4	0.6
2401 to 4160	3.0	1.4

(d) Parts whose dimensions can change with the motor operation, such as ball and roller bearings and oil seals, shall not be used as flame-arresting paths.

(e) The widths of any grooves, such as grooves for holding oil seals or o-rings, shall be deducted in measuring the widths of flame-arresting paths.

(f) An outer bearing cap shall not be considered as forming any part of a flame-arresting path unless the cap is used as a bearing cartridge.

(g) Requirements for explosion-proof enclosures of motor assemblies.

(1) Enclosures shall be—

(i) Constructed of metal;

(ii) Designed to withstand a minimum internal pressure of 150 pounds per square inch (gauge);

(iii) Free from blowholes when cast; and

(iv) Explosion proof as determined by the tests set out in § 7.306 of this part.

(2) Welded joints forming an enclosure shall be—

(i) Continuous and gas-tight; and

(ii) Made in accordance with or exceed the American Welding Society Standard AWS D14.4–77, "Classification and Application of Welded Joints for Machinery and Equipment," or meet the test requirements set out in § 7.307 of this part. AWS D14.4–77 is incorporated by reference and has been 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 American Welding Society, Inc., 2501 NW 7th Street, Miami, FL 33125. Copies may be inspected at the Mine Safety and Health Administration, Department of Labor, Approval and Certification Center, RR 1, Industrial Park Road, Triadelphia, WV 26059, or at the Office of the Federal Register, 800 N. Capitol Street, NW., 7th Floor, Suite 700, Washington, DC 20408.

(3) External rotating parts shall not be constructed of aluminum alloys containing more than 0.6 percent magnesium. Non-metallic rotating parts shall be provided with a means to prevent an accumulation of static electricity.

(4) Threaded covers and mating parts shall be designed with Class 1A and 1B (coarse, loose fitting) threads. The covers shall be secured against loosening.

(5) Flat surfaces between fastening holes that form any part of a flame-arresting path shall be plane to within a maximum deviation of one-half the maximum clearance specified in paragraph (g)(19) of this section. All surfaces forming a flame-arresting path shall be finished during the manufacturing process to not more than 250 microinches. A thin film of nonhardening preparation to inhibit rusting may be applied to these finished metal surfaces as long as the final surface can be readily wiped free of any foreign materials.

(6) For a laminated stator frame, it shall be impossible to insert a 0.0015 inch thickness gauge to a depth exceeding ⅛ inch between adjacent laminations or between end rings and laminations.

(7) Lockwashers, or equivalent, shall be provided for all fastenings. Devices other than lockwashers shall meet the requirements of § 7.308 of this part. Equivalent devices shall only be used in the configuration in which they were tested.

(8) Fastenings shall be as uniform in size as practicable to preclude improper installation.

(9) Holes for fastenings in an explosion-proof enclosure shall be threaded to ensure that all specified bolts or screws will not bottom even if the washers are omitted.

(10) Holes for fastenings shall not penetrate to the interior of an explosion-proof enclosure, except holes made through motor casings for bolts, studs, or screws to hold essential parts, such as pole pieces, brush rigging, and bearing cartridges. The attachments of such parts shall be secured against loosening. The threaded holes in these parts shall be blind unless the fastenings are inserted from the inside, in which case the fastenings shall not be accessible with the rotor in place.

(11) For direct current motor assemblies with narrow interpoles, the distance from the edge of the pole piece to any bolt hole in the frame shall be at least ⅛ inch. If the distance is ⅛ to ¼ inch, the diametrical clearance for the pole bolt shall not exceed 1/64 inch for not less than ½ inch through the frame. Furthermore, the pole piece shall have the same radius as the inner surface of the frame. Pole pieces may be shimmed as necessary. If used, the total resulting thickness of the shims shall be specified. The shim assembly shall meet the same requirements as the pole piece.

(12) Coil-thread inserts, if used in holes for fastenings, shall meet the following:

(i) The inserts shall have internal screw threads.

(ii) The holes for the inserts shall be drilled and tapped consistent with the insert manufacturer's specifications.

(iii) The inserts shall be installed consistent with the insert manufacturer's specifications.

(iv) The insert shall be of sufficient length to ensure the minimum thread engagement of fastening specified in paragraph (g)(19) of this section.

(13) A minimum of ⅛ inch of stock shall be left at the center of the bottom of each blind hole that could penetrate into the interior of an explosion-proof enclosure.

(14) Fastenings shall be used only for attaching parts that are essential in maintaining the explosion-proof integrity of the enclosure, or necessary for the operation of the motor. They shall not be used for making electrical connections.

(15) Through holes not in use shall be closed with a metal plug. Plugs, including eyebolts, in through holes where future access is desired shall meet the flame-arresting paths, lengths, and clearances of paragraph (g)(19) of this section and be secured by spot welding or brazing. The spot weld or braze may be on a plug, clamp, or fastening (for example see figure J–1). Plugs for holes where future access is

not desired shall be secured all around by a continuous gas-tight weld.

(16) O-rings, if used in a flame-arresting path, shall meet the following:

(i) When the flame-arresting path is in one plane, the o-ring shall be located at least one-half the acceptable flame-arresting path length specified in paragraph (g)(19) of this section from within the outside edge of the path (see figure J–2).

(ii) When the flame-arresting path is one of the plane-cylindrical type (step joint), the o-ring shall be located at least ½ inch from within the outer edge of the plane portion (see figure J–3), or at the junction of the plane and cylindrical portion of the joint (see figure J–4), or in the cylindrical portion (see figure J–5).

(17) Mating parts comprising a pressed fit shall result in a minimum interference of 0.001 inch between the parts. The minimum length of the pressed fit shall be equal to the minimum thickness requirement of paragraph (g)(19) of this section for the material in which the fit is made.

(18) The flame-arresting path of threaded joints shall conform to the requirements of paragraph (g)(19) of this section.

(19) Explosion-proof enclosures shall meet the requirements set out in table J–2 of this section, based on the internal free volume of the empty enclosure.

TABLE J–2.—EXPLOSION-PROOF REQUIREMENTS BASED ON VOLUME

	Volume of empty enclosure		
	Less than 45 cu. ins.	45 to 124 cu. ins. inclusive	More than 124 cu. ins.
Minimum thickness of material for walls[1]	1/8"	3/16"	1/4"
Minimum thickness of material for flanges and covers	[2] 1/4"	[3] 3/8"	[3] 1/2"
Minimum width of joint; all in one plane	1/2"	3/4"	1"
Maximum clearance; joint all in one plane	0.002"	0.003"	0.004"
Minimum width of joint, portions of which are in different planes; cylinders or equivalent	[4] 3/8"	[4] 5/8"	[4] 3/4"
Maximum clearances; joint in two or more planes, cylinders or equivalent:[5]			
(a) Portion perpendicular to plane[6]	0.008"	0.008"	0.008"
(b) Plane portion	0.006"	0.006"	0.006"
Maximum fastening[7,8] spacing; joints all in one plane	([16])	([16])	([16])
Maximum fastening spacing; joints, portions of which are in different planes	([17])	([17])	([17])
Minimum diameter of fastening[9] (without regard to type of joint)	1/4"	1/4"	3/8"
Minimum thread engagement of fastening[10]	1/4"	1/4"	3/8"
Maximum diametrical clearance between fastening body and unthreaded holes through which it passes[8,11,12]	1/64"	1/32"	1/16"
Minimum distance from interior of enclosure to the edge of a fastening hole:[8,13]			
Joint—minimum width 1"			[14] 7/16"
Joint—less than 1" wide	1/8"	3/16"	
Cylindrical Joints			
Shaft centered by ball or roller bearings:			
Minimum length of flame-arresting path	1/2"	3/4"	1"
Maximum diametrical clearance	0.020"	0.025"	0.030"
Other cylindrical joints:[15]			
Minimum length of flame-arresting path	1/2"	3/4"	1"
Maximum diametrical clearance	0.006"	0.008"	0.010"

[1] This is the minimal nominal dimension when applied to standard steel plate.
[2] 1/32 inch less is allowable for machining rolled plate.
[3] 1/16 inch less is allowable for machining rolled plate.
[4] If only two planes are involved, neither portion of a joint shall be less than 1/8 inch wide, unless the wider portion conforms to the same requirements as those for a joint that is all in one plane. If more than two planes are involved (as in labyrinths or tongue-and-groove joints) the combined lengths of those portions having prescribed clearances are considered.
[5] For winding compartments having internal free volume not exceeding 350 cubic inches and joints not exceeding 32 inches in outer circumference and provided with step joints between the stator frame and the end bracket the following dimensions shall apply:

DIMENSIONS OF RABBET (STEP) JOINTS-INCHES

[See figure J–6 in appendix]

Minimum total width	Minimum width of clamped radial portion	Maximum clearance of radial portion	Maximum diametrical clearance at axial portion
3/8	3/64	0.0015	0.003
1/2	3/64	0.002	0.003
1/2	3/32	0.002	0.004

[6] The allowable diametrical clearance is 0.008 inch when the portion perpendicular to the plane portion is 1/4 inch or greater in length. If the perpendicular portion is more than 1/8 inch but less than 1/4 inch wide, the diametrical clearance shall not exceed 0.006 inch.
[7] Studs, when provided, shall bottom in blind holes, be completely welded in place, or have the bottom of the hole closed with a plug secured by weld or braze. Fastenings shall be provided at all corners.
[8] The requirements as to diametrical clearance around the fastening and minimum distance from the fastening hole to the inside of the explosion-proof enclosure apply to steel dowel pins. In addition, when such pins are used, the spacing between centers of the fastenings on either side of the pin shall not exceed 5 inches.
[9] Fastening diameters smaller than specified may be used if the enclosure meets the test requirements of 30 CFR 7.307 and then 7.308 in that order.
[10] Minimum thread engagement shall be equal to or greater than the diameter of the fastening specified, or the enclosure must meet the test requirements of 30 CFR 7.307 and then 7.308 in that order.
[11] This maximum clearance applies only when the fastening is located within the flame-arresting path.
[12] Threaded holes for fastening bolts shall be machined to remove burrs or projections that affect planarity of a surface forming a flame-arresting path.
[13] Edge of the fastening hole shall include the edge of any machining done to the fastening hole, such as chamfering.
[14] If the diametrical clearance for fastenings does not exceed 1/32 inch, then the minimum distance shall be 1/4 inch.
[15] Shafts or operating rods through journal bearings shall be at least 1/4" in diameter. The length of the flame-arresting path shall not be reduced when a pushbutton is depressed. Operating rods shall have a shoulder or head on the portion inside the enclosure. Essential parts riveted or bolted to the inside portion are acceptable in lieu of a head or shoulder, but cotter pins and similar devices shall not be used.
[16] 6" with a minimum of 4 fastenings.
[17] 8" with a minimum of 4 fastenings.

(h) *Lead entrances.* (1) Each cable, which extends through an outside wall of the motor assembly, shall pass through a stuffing-box lead entrance (see figure J–7). All sharp edges shall be removed from stuffing boxes, packing nuts, and other lead entrance (gland) parts, so that the cable jacket is not damaged.

(2) When the packing is properly compressed, the gland nut shall have—

(i) A clearance distance of ⅛ inch or more, with no maximum, to travel without interference by parts other than packing; and

(ii) A minimum of three effective threads engaged (see figures J–8, J–9, and J–10).

(3) Packing nuts (see figure J–7) and stuffing boxes shall be secured against loosening (see figure J–11).

(4) Compressed packing material shall be in contact with the cable jacket for a length of not less than ½ inch.

(5) Requirements for lead entrances in which MSHA accepted rope packing material is specified, are:

(i) Rope packing material shall be acceptable under § 18.37(e) of this chapter.

(ii) The width of the space for packing material shall not exceed by more than 50 percent the diameter or width of the uncompressed packing material (see figure J–12).

(iii) The maximum diametrical clearance, using the specified tolerances, between the cable and the through holes in the gland parts adjacent to the packing (stuffing box, packing nut, hose tube, or bushings) shall not exceed 75 percent of the nominal diameter or width of the packing material (see figure J–13).

(6) Requirements for lead entrances in which grommet packing made of compressible material is specified, are:

(i) The grommet packing material shall be accepted by MSHA as flame-resistant material under § 18.37(f)(1) of this chapter.

(ii) The diametrical clearance between the cable jacket and the nominal inside diameter of the grommet shall not exceed 1/16 inch, based on the nominal specified diameter of the cable (see figure J–14).

(iii) The diametrical clearance between the nominal outside diameter of the grommet and the inside wall of the stuffing box shall not exceed 1/16 inch (see figure J–14).

(i) Combustible gases from insulating material.

(1) Insulating materials that give off flammable or explosive gases when decomposed electrically shall not be used within explosion-proof enclosures where the materials are subjected to destructive electrical action.

(2) Parts coated or impregnated with insulating materials shall be treated to remove any combustible solvent before assembly in an explosion-proof enclosure.

§ 7.305 Critical characteristics.

The following critical characteristics shall be inspected on each motor assembly to which an approval marking is affixed:

(a) Finish, width, and planarity of surfaces that form any part of a flame-arresting path.

(b) Clearances between mating parts that form flame-arresting paths.

(c) Thickness of walls, flanges, and covers that are essential in maintaining the explosion-proof integrity of the enclosure.

(d) Spacing of fastenings.

(e) Length of thread engagement on fastenings and threaded parts that assure the explosion-proof integrity of the enclosure.

(f) Use of lockwasher or equivalent with all fastenings.

(g) Dimensions which affect compliance with the requirements for packing gland parts in § 7.304 of this part.

§ 7.306 Explosion tests.

(a) The following shall be used for conducting an explosion test:

(1) An explosion test chamber designed and constructed to contain an explosive gas mixture to surround and fill the motor assembly being tested. The chamber must be sufficiently darkened and provide viewing capabilities of the flame-arresting paths to allow observation during testing of any discharge of flame or ignition of the explosive mixture surrounding the motor assembly.

(2) A methane gas supply with at least 98 by volume per centum of combustible hydrocarbons, with the remainder being inert. At least 80 percent by volume of the gas shall be methane.

(3) Coal dust having a minimum of 22 percent dry volatile matter and a minimum heat constant of 11,000 moist BTU (coal containing natural bed moisture but not visible surface water) ground to a fineness of minus 200 mesh U.S. Standard sieve series.

(4) An electric spark ignition source with a minimum of 100 millijoules of energy.

(5) A pressure recording system that will indicate the pressure peaks resulting from the ignition and combustion of explosive gas mixtures within the enclosure being tested.

(b) *General test procedures.* (1) Motor assemblies being tested shall—

(i) Be equipped with unshielded bearings regardless of the type of bearings specified; and

(ii) Have all parts that do not contribute to the operation or assure the explosion-proof integrity of the enclosure, such as oil seals, grease fittings, hose conduit, cable clamps, and outer bearing caps (which do not house the bearings) removed from the motor assembly.

(2) Each motor assembly shall be placed in the explosion test chamber and tested as follows:

(i) The motor assembly shall be filled with and surrounded by an explosive mixture of the natural gas supply and air. The chamber gas concentrations shall be between 6.0 by volume per centum and the motor assembly natural gas concentration just before ignition of each test. Each externally visible flame-arresting path fit shall be observed for discharge of flames for at least two of the tests, including one with coal dust added.

(ii) A single spark source is used for all testing. Pressure shall be measured at each end of the winding compartment simultaneously during all tests. Quantity and location of test holes shall permit ignition on each end of the winding compartment and recording of pressure on the same and opposite ends as the ignition.

(iii) Motor assemblies incorporating a conduit box shall have the pressure in the conduit box recorded simultaneously with the other measured pressures during all tests. Quantity and location of test holes in the conduit box shall permit ignition and recording of pressure as required in paragraphs (c)(1) and (c)(4)(i) of this section.

(iv) The motor assembly shall be completely purged and recharged with a fresh explosive gas mixture from the chamber or by injection after each test. The chamber shall be completely purged and recharged with a fresh explosive gas mixture as necessary. The oxygen level of the chamber gas mixture shall be no less than 18 percent by volume for testing. In the absence of oxygen monitoring equipment, the maximum number of tests conducted before purging shall be less than or equal to the chamber volume divided by forty times the volume occupied by the motor assembly.

(c) *Test procedures.* (1) Eight tests at 9.4±0.4 percent methane by volume within the winding compartment shall be conducted, with the rotor stationary during four tests and rotating at rated speed (rpm) during four tests. The ignition shall be at one end of the winding compartment for two stationary and two rotating tests, and then switched to the opposite end for the remaining four tests. If a nonisolated conduit box is used, then two additional tests, one stationary and one rotating, shall be conducted with ignition in the conduit box at a point furthest away from the opening between the conduit box and the winding compartment.

(2) Four tests at 7.0±0.3 percent methane by volume within the winding compartment shall be conducted with

the rotor stationary, 2 ignitions at each end.

(3) Four tests at 9.4±0.4 percent methane by volume plus coal dust shall be conducted. A quantity of coal dust equal to 0.05 ounces per cubic foot of internal free volume of the winding compartment plus the nonisolated conduit box shall be introduced into each end of the winding compartment and nonisolated conduit box to coat the interior surface before conducting the first of the four tests. The coal dust introduced into the conduit box shall be proportional to its volume. The remaining coal dust shall be equally divided between the winding compartment ends. For two tests, one stationary and one rotating, the ignition shall be either in the conduit box or one end of the connected winding compartment, whichever produced the highest pressure in the previous tests. The two remaining tests, one stationary and one rotating, shall be conducted with the ignition in the winding compartment end furthest away from the conduit box.

(4) For motor assemblies incorporating a conduit box which is isolated from the winding compartment by an isolating barrier the following additional tests shall be conducted—

(i) For conduit boxes with an internal free volume greater than 150 cubic inches, two ignition points shall be used, one as close to the geometric center of the conduit box as practical and the other at the furthest point away from the isolating barrier between the conduit box and the winding compartment. Recording of pressure shall be on the same and opposite sides as the ignition point furthest from the isolating barrier between the conduit box and the winding compartment. Conduit boxes with an internal free volume of 150 cubic inches or less shall have one test hole for ignition located as close to the geometric center of the conduit box as practical and one for recording of pressure located on a side of the conduit box.

(ii) The conduit box shall be tested separately. Six tests at 9.4±0.4 percent methane by volume within the conduit box shall be conducted followed by two tests at 7.0±0.3 percent methane by volume. Then two tests at 9.4±0.4 percent methane by volume with a quantity of coal dust equal to 0.05 ounces per cubic foot of internal free volume of the conduit box and meeting the specifications in paragraph (c)(3) of this section shall be conducted. For conduit boxes with an internal free volume of more than 150 cubic inches, the number of tests shall be evenly divided between each ignition point.

(iii) The motor assembly shall be tested following removal of the isolating barrier or one sectionalizing terminal (as applicable). Six tests at 9.4±0.4 percent methane by volume in the winding compartment and conduit box shall be conducted using three ignition locations. The ignition shall be at one end of the winding compartment for one stationary and one rotating test; the opposite end for one stationary and one rotating test; and at the ignition point that produced the highest pressure on the previous test in paragraph (c)(4)(ii) of this section in the conduit box for one stationary and one rotating test. Motor assemblies that use multiple sectionalizing terminals shall have one test conducted as each additional terminal is removed. Each of these tests shall use the rotor state and ignition location that produced the highest pressure in the previous tests.

(d) A motor assembly incorporating a conduit box that is isolated from the winding compartment that exhibits pressures exceeding 110 psig, while testing during removal of any or all isolating barriers as specified in paragraph (c)(4) of this section, shall have a warning statement on the approval plate. This statement shall warn that the isolating barrier must be maintained to ensure the explosion-proof integrity of the motor assembly. A statement is not required when the motor assembly has withstood a static pressure of twice the maximum pressure recorded in the explosion tests of paragraph (c)(4) of this section. The static pressure test shall be conducted on the motor assembly with all isolating barriers removed, and in accordance with § 7.307 of this part.

(e) *Acceptable performance.* Explosion tests of a motor assembly shall not result in—

(1) Discharge of flames.

(2) Ignition of the explosive mixture surrounding the motor assembly in the chamber.

(3) Development of afterburning.

(4) Rupture of any part of the motor assembly or any panel or divider within the motor assembly.

(5) Clearances, in excess of those specified in this subpart, along accessible flame-arresting paths, following any necessary retightening of fastenings.

(6) Pressure exceeding 110 psig, except as provided in paragraph (d) of this section unless the motor assembly has withstood a static pressure of twice the maximum pressure recorded in the explosion tests of this section following the static pressure test procedures of § 7.307 of this part.

(7) Permanent deformation greater than 0.040 inches per linear foot.

§ 7.307 Static pressure test.

(a) *Test procedure.* (1) The enclosure shall be internally pressurized to a minimum of 150 psig and the pressure maintained for a minimum of 10 seconds.

(2) Following the pressure hold, the pressure shall be removed and the pressurizing agent removed from the enclosure.

(b) *Acceptable performance.* (1) The enclosure during pressurization shall not exhibit—

(i) Leakage through welds or casting; or

(ii) Rupture of any part that affects the explosion-proof integrity of the enclosure.

(2) The enclosure following removal of the pressurizing agent shall not exhibit—

(i) Visible cracks in welds;

(ii) Permanent deformation exceeding 0.040 inches per linear foot; or

(iii) Clearances, in excess of those specified in this subpart, along accessible flame-arresting paths, following any necessary retightening of fastenings.

§ 7.308 Lockwasher equivalency test.

(a) *Test procedure.* (1) Each test sample shall be an assembly consisting of a fastening with a locking device. Each standard sample shall be an assembly consisting of a fastening with a lockwasher.

(2) Five standard samples and five test samples shall be tested.

(3) Each standard and test sample shall use a new fastening of the same specifications as being used on the motor assembly.

(4) A new tapped hole shall be used for each standard and test sample. The hole shall be of the same specifications as used on the motor assembly.

(5) Each standard and test sample shall be inserted in the tapped hole and continuously and uniformly tightened at a speed not to exceed 30 rpm until the fastening's proof load is achieved. The torquing device shall not contact the locking device or the threaded portion of the fastening.

(6) Each standard and test sample shall be engaged and disengaged for 15 full cycles.

(b) *Acceptable performance.* The minimum torque value required to start removal of the fastening from the installed position (minimum breakway torque) for any cycle of any test sample shall be greater than or equal to the average breakway torque of each removal cycle of every standard sample.

§ 7.309 Approval marking.

Each approved motor assembly shall be identified by a legible and permanent approval plate inscribed with the assigned MSHA approval number and a warning statement as specified in § 7.306(d) of this part. The plate shall be securely attached to the motor assembly in a manner that does not impair any explosion-proof characteristics.

§ 7.310 Post-approval product audit.

Upon request by MSHA but not more than once a year, except for cause, the approval holder shall make a motor assembly available for audit at no cost.

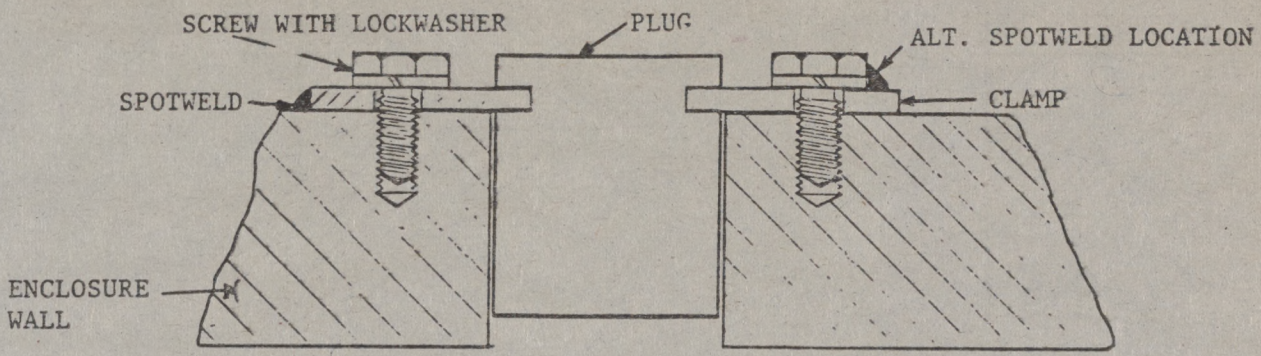
Appendix I to Subpart J of Part 7

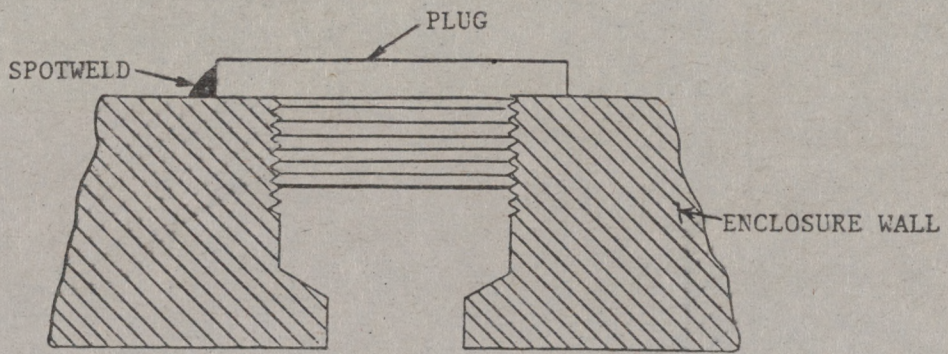
§ 7.311 Approval checklist.

Each motor assembly bearing an MSHA approval marking shall be accompanied by a list of items necessary for maintenance of the motor assembly as approved.

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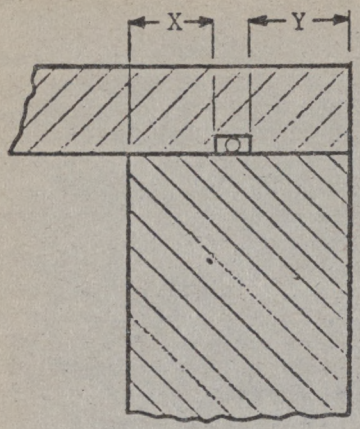
Appendix I to Subpart J—Figures J–1 through J–14





WELD (OR BRAZE) MAY BE ON PLUG, CLAMP, OR FASTENING

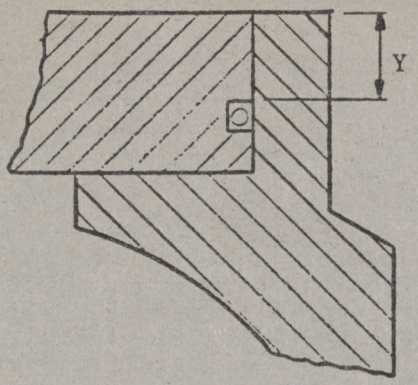
FIGURE J-1



X + Y = MIN. ACCEPTABLE FLAME-ARRESTING PATH LENGTH

$$Y = \frac{X + Y}{2}$$

FIGURE J-2



Y = 1/2" MIN.

FIGURE J-3

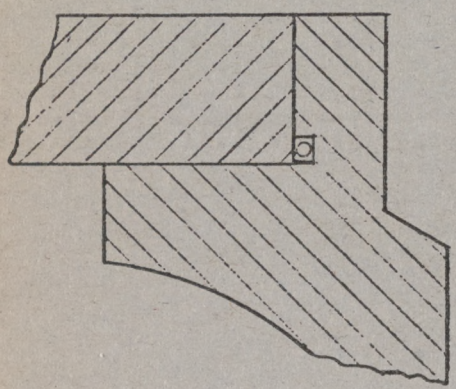
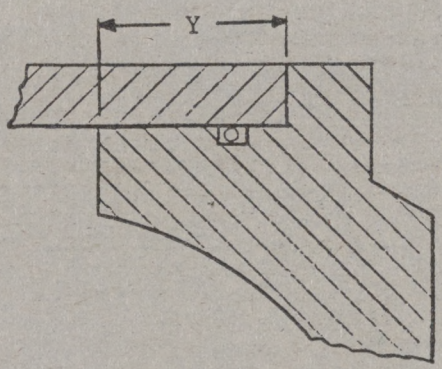
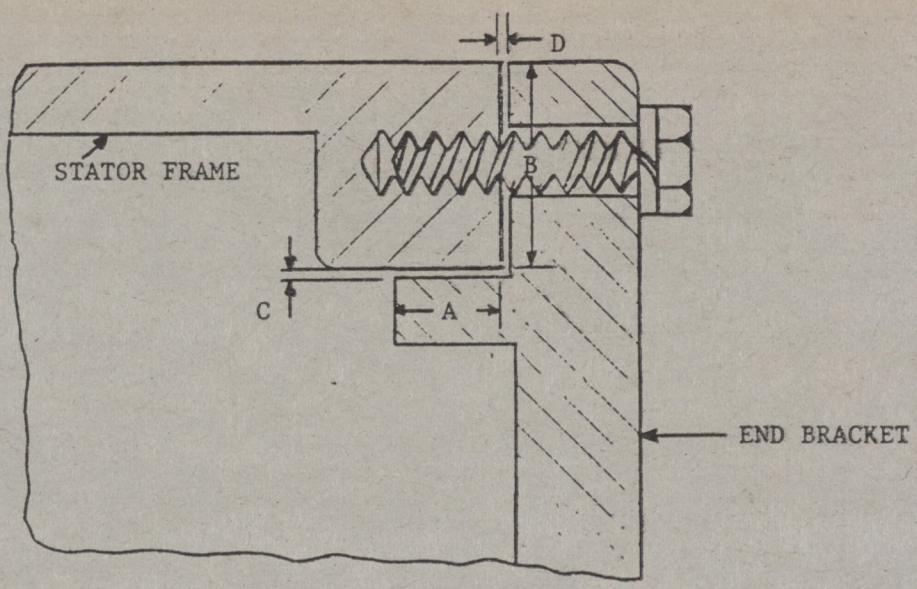


FIGURE J-4



O-RING CAN BE LOCATED ANYWHERE ALONG LENGTH OF (Y).

FIGURE J-5



A = Width of Axial Portion

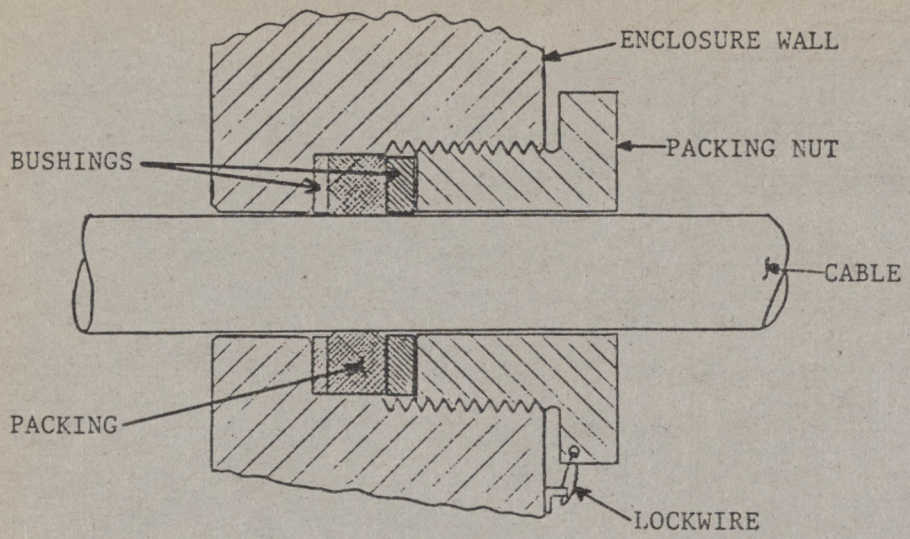
B = Width of Clamped Radial Portion

C = Clearance of Axial Portion

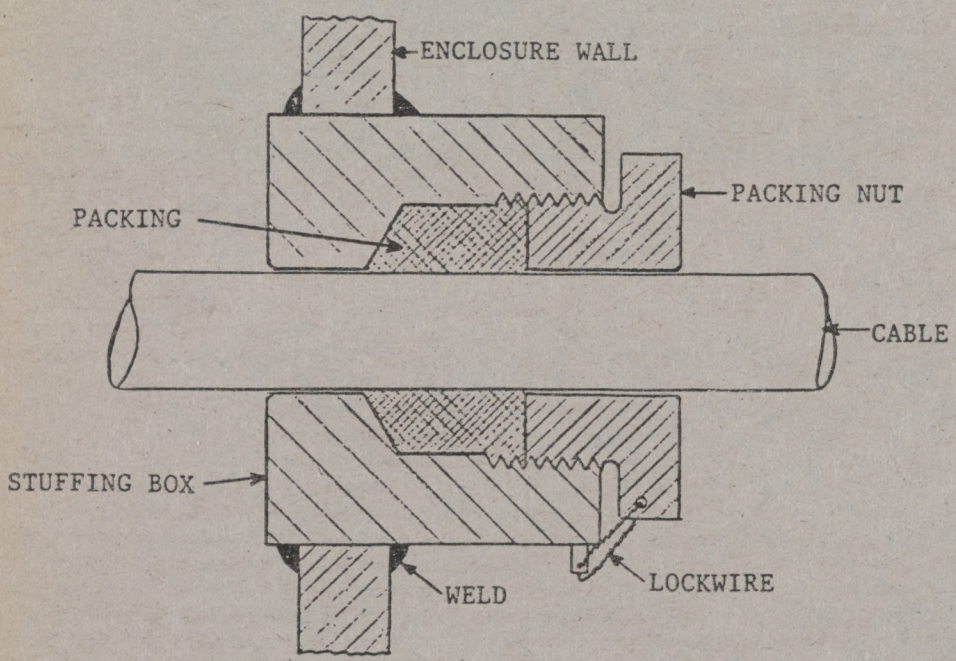
D = Clearance of Radial Portion

Total Width of Flamepath = A + B

FIGURE J-6

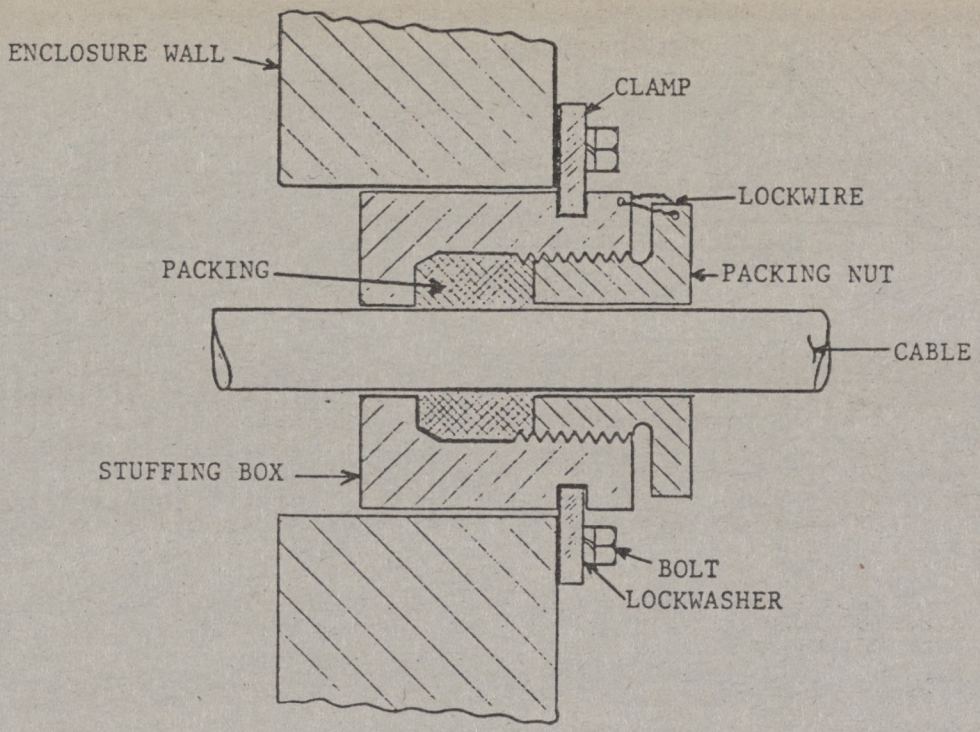


MACHINED-IN STUFFING BOX



WELD-IN STUFFING BOX

FIGURE J-7



SLIP-FIT STUFFING BOX

FIGURE J-7

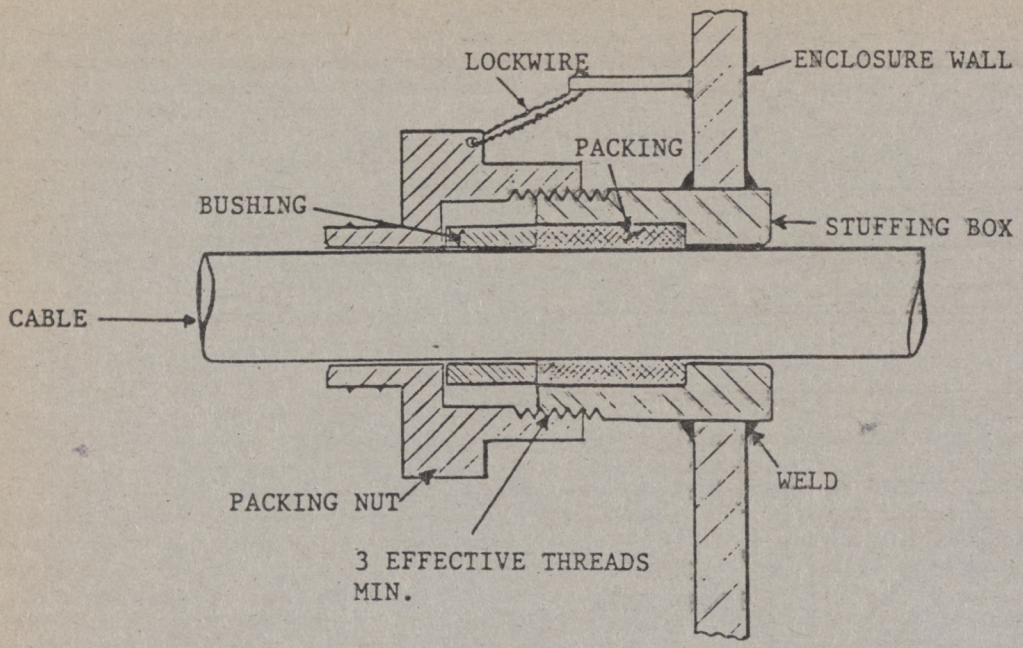


FIGURE J-8

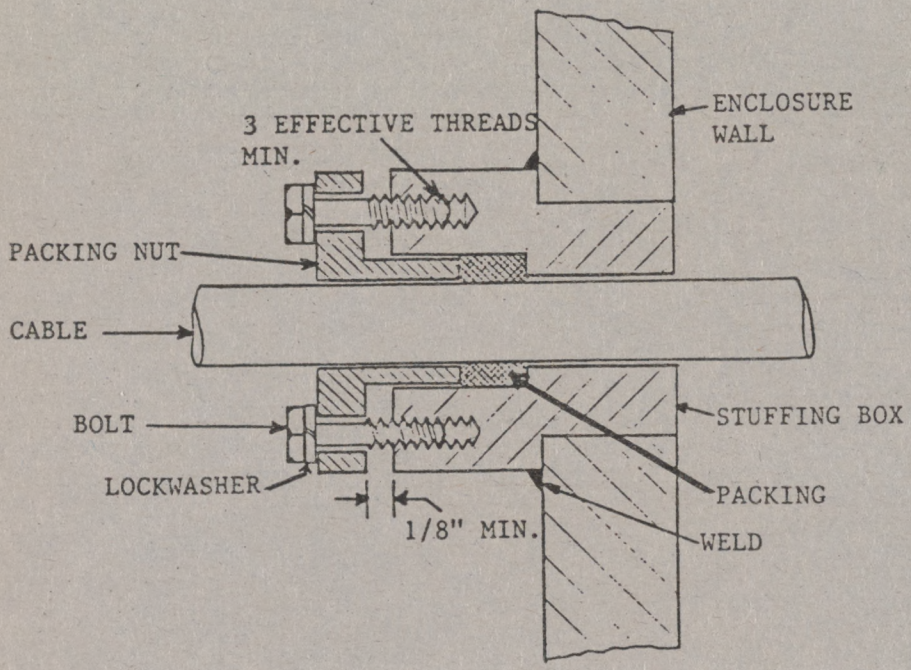


FIGURE J-9

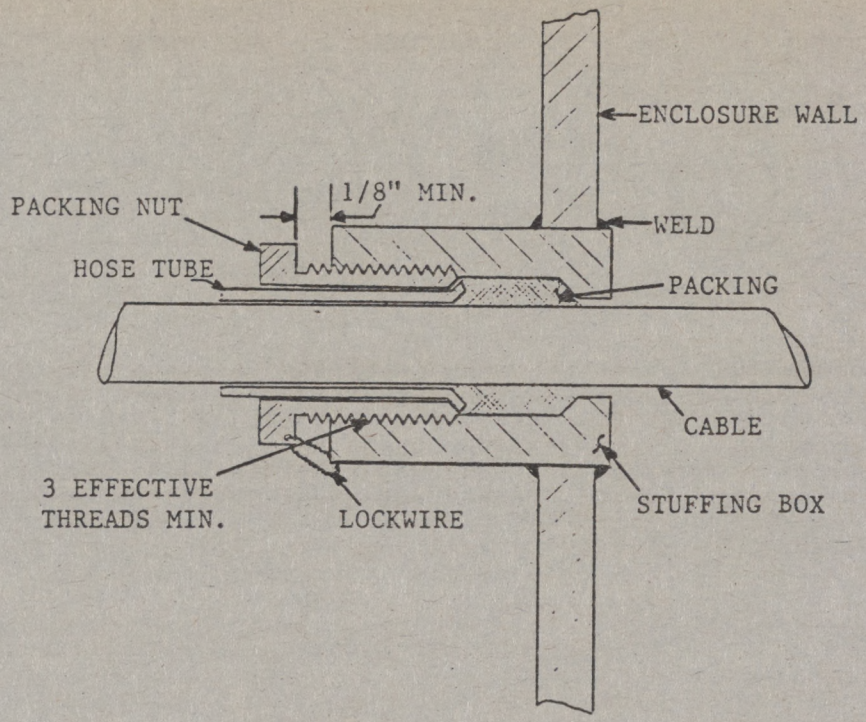

ENCLOSURE WALL
1/8" MIN.
PACKING NUT
WELD
HOSE TUBE
PACKING
CABLE
3 EFFECTIVE
THREADS MIN.
LOCKWIRE
STUFFING BOX

FIGURE J-10

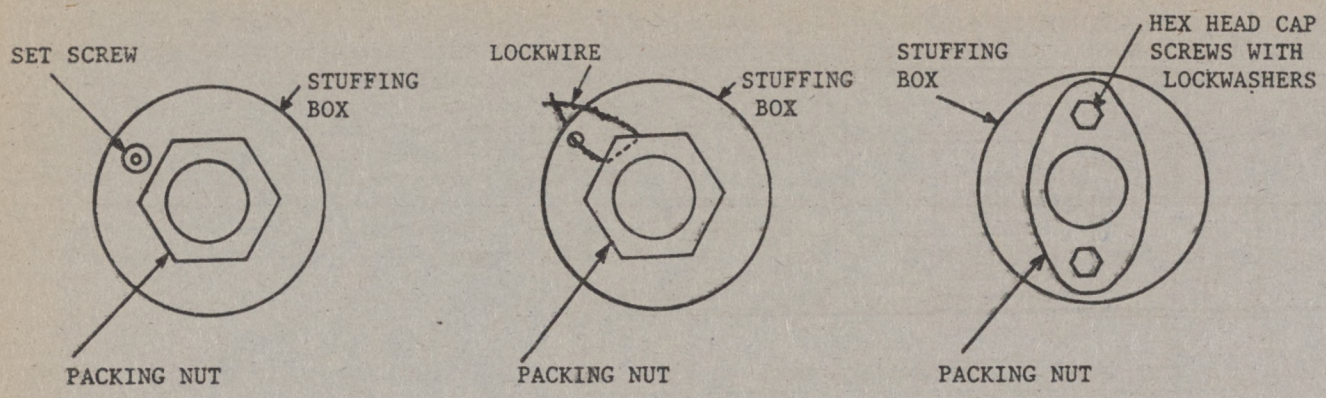
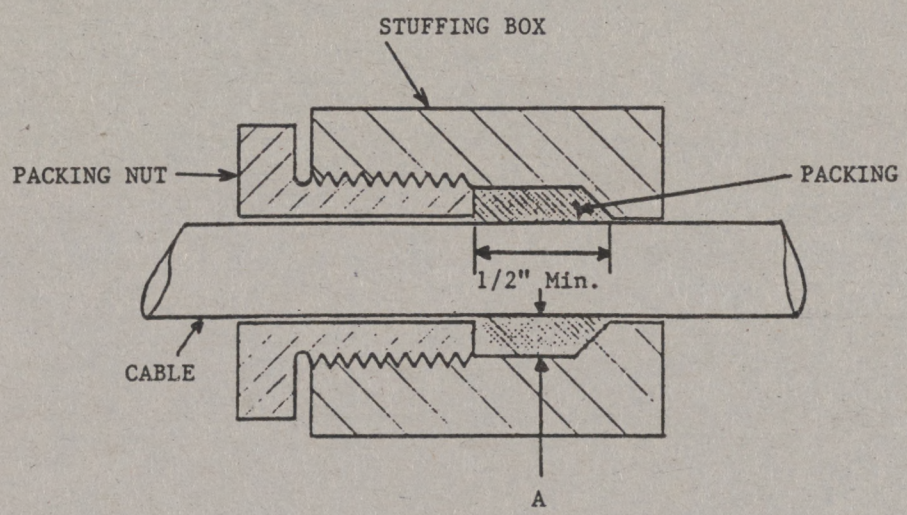
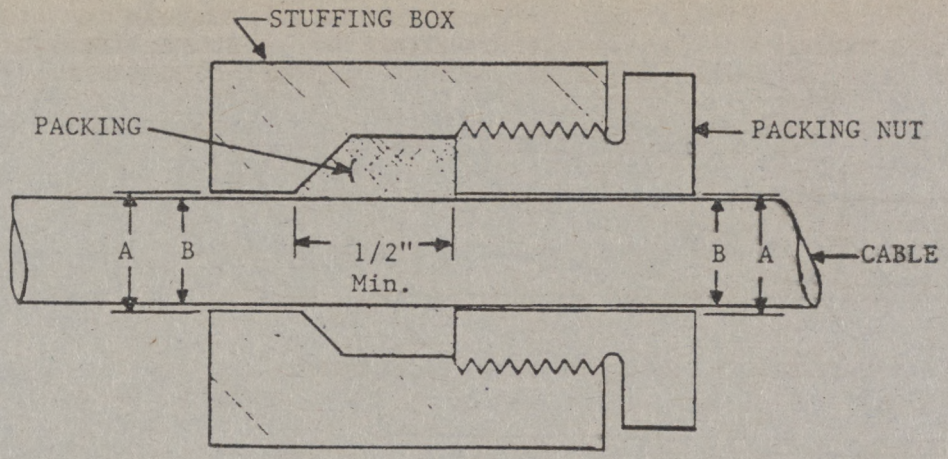


FIGURE J-11



A ≤ 150% of Packing Material Diameter or Width

FIGURE J-12



A - B ≤ 75% of Packing Material Diameter or Width

FIGURE J-13

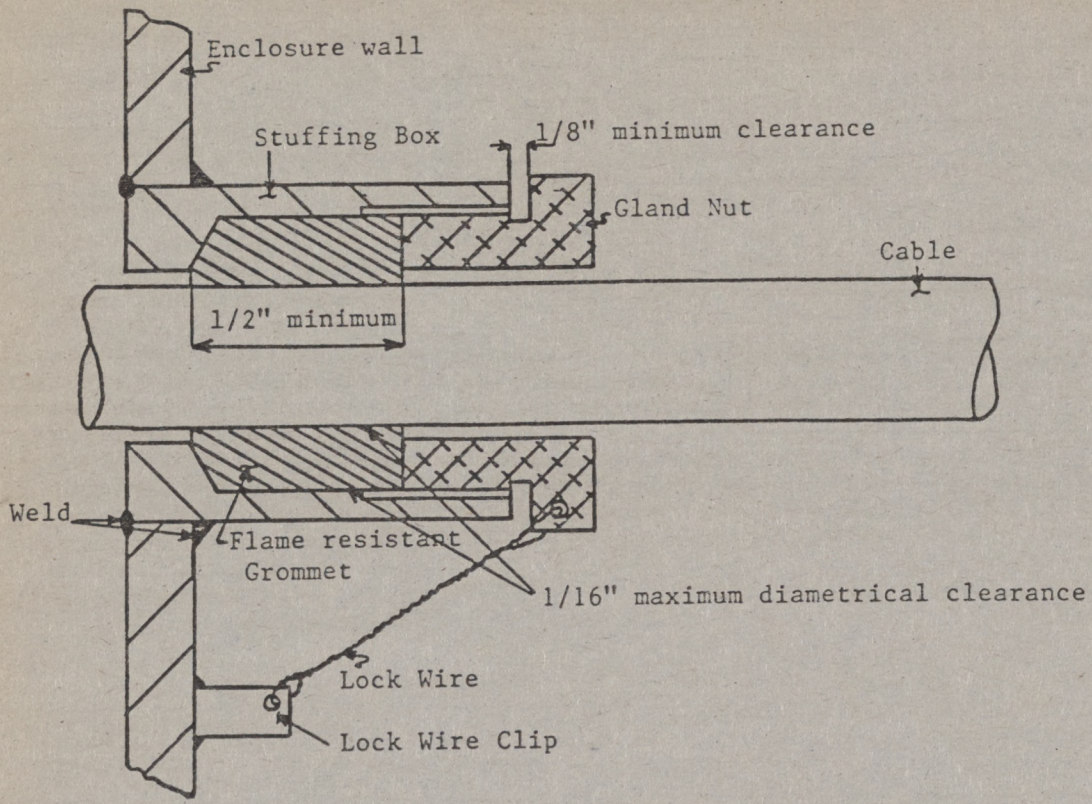


FIGURE J-14

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PART 18—ELECTRIC MOTOR-DRIVEN MINE EQUIPMENT AND ACCESSORIES [AMENDED]

1. The authority citation for part 18 continues to read as follows:

Authority: 30 U.S.C. 957 and 961.

2. Section 18.4 is revised to read as follows:

§ 18.4 Electrical equipment for which approval is issued.

An approval will be issued only for a complete electrical machine or accessory. Only components meeting the requirements of subpart B of this part or those approved under part 7 of this chapter, unless they contain intrinsically safe circuits, shall be included in the assemblies.

3. Section 18.24 is revised to read as follows:

§ 18.24 Electrical clearances.

Minimum clearances between uninsulated electrical conductor surfaces, or between uninsulated conductor surfaces and grounded metal surfaces, within the enclosure shall be as follows:

MINIMUM CLEARANCES BETWEEN UNINSULATED SURFACES

Phase-to-Phase Voltage (rms)	Clearances (inches)	
	Phase-to-Phase	Phase-to-Ground or Control Circuit
0 to 250	0.25	0.25
251 to 600	0.28	0.25
601 to 1000	0.61	0.25
1001 to 2400	1.4	0.6
2401 to 4160	3.0	1.4

4. Section 18.31 is amended by revising paragraphs (a)(3), (a)(5), and (a)(6) and by adding paragraphs (a) (7) and (8) to read as follows:

§ 18.31 Enclosures—joints and fastenings.

(a) * * *

(3) External rotating parts shall not be constructed of aluminum alloys containing more than 0.6 percent magnesium.

* * * * *

(5) Threaded covers and mating parts shall be designed with Class 1A and 1B (coarse, loose-fitting) threads. The flame-arresting path of threaded joints shall conform to the requirements of paragraph (a)(6) of this section.

(6) Enclosure requirements shall be based on the internal volumes of the empty enclosure. The internal volume is the volume remaining after deducting the volume of any part that is essential in maintaining the explosion-proof integrity of the enclosure or necessary for the operation. Essential parts include the parts that constitute the flame-arresting path and those necessary to secure parts that constitute a flame-arresting path. Enclosures shall meet the following requirements:

EXPLOSION-PROOF REQUIREMENTS BASED ON VOLUME

	Volume of empty enclosure		
	Less than 45 cu. in.	45 to 124 cu. in. inclusive	More than 124 cu. in.
Minimum thickness of material for walls [1]	1/8"	3/16"	1/4"
Minimum thickness of material for flanges and covers	[2] 1/4"	[3] 3/8"	[3] 1/2"
Minimum width of joint; all in one plane [4]	1/2"	3/4"	1"
Maximum clearance; joint all in one plane	0.002"	0.003"	0.004"
Minimum width of joint, portions of which are in different planes; cylinders or equivalent [4,5]	3/8"	5/8"	3/4"
Maximum clearances; joint in two or more planes, cylinders or equivalent:			
(a) Portion perpendicular to plane [6]	0.008"	0.008"	0.008"
(b) Plane portion	0.006"	0.006"	0.006"
Maximum bolt [7,8] spacing; joints all in one plane	([16])	([16])	([16])
Maximum bolt spacing; joints, portions of which are in different planes	([9])	([9])	([9])
Minimum diameter of bolt (without regard to type of joint)	1/4"	1/4"	3/8"
Minimum thread engagement [10]	1/4"	1/4"	3/8"
Maximum diametrical clearance between bolt body and unthreaded holes through which it passes [8,11,12]	1/64"	1/32"	1/16"
Minimum distance from interior of enclosure to the edge of a bolt hole: [8,13]			
Joint—minimum width 1"	.....	.....	[14] 7/16"
Joint—less than 1" wide	1/8"	3/16"	.....
Cylindrical joints			
Shaft centered by ball or roller bearings:			
Minimum length of flame-arresting path	1/2"	3/4"	1"
Maximum diametrical clearance	0.020"	0.025"	0.030"
Other cylindrical joints: [15]			
Minimum length of flame-arresting path	1/2"	3/4"	1"
Maximum diametrical clearance	0.006"	0.008"	0.010"

[1] This is the minimal nominal dimension when applied to standard steel plate.
[2] 1/32 inch less is allowable for machining rolled plate.
[3] 1/16 inch less is allowable for machining rolled plate.
[4] The widths of any grooves, such as grooves for holding oil seals or O-rings, shall be deducted in measuring the widths of flame-arresting paths.
[5] If only two planes are involved, neither portion of a joint shall be less than 1/8 inch wide, unless the wider portion conforms to the same requirements as those for a joint that is all in one plane. If more than two planes are involved (as in labyrinths or tongue-and-groove joints) the combined lengths of those portions having prescribed clearances are considered.
[6] The allowable diametrical clearance is 0.008 inch when the portion perpendicular to the plane portion is 1/4 inch or greater in length. If the perpendicular portion is more than 1/8 inch but less than 1/4 inch wide, the diametrical clearance shall not exceed 0.006 inch.
[7] Where the term "bolt" is used, it refers to a machine bolt or a cap screw, and for either of these studs may be substituted provided the studs, bottom in blind holes, are completely welded in place, or the bottom of the hole is closed with a plug secured by weld or braze. Bolts shall be provided at all corners.
[8] The requirements as to diametrical clearance around the bolt and minimum distance from the bolt hole to the inside of the explosion-proof enclosure apply to steel dowel pins. In addition, when such pins are used, the spacing between centers of the bolts on either side of the pin shall not exceed 6 inches.
[9] Adequacy of bolt spacing will be judged on the basis of size and configuration of the enclosure, strength of materials, and explosion test results.
[10] In general, minimum thread engagement shall be equal to or greater than the diameter of the bolt specified.
[11] Threaded holes for fastening bolts shall be machined to remove burrs or projections that affect planarity of a surface forming a flame-arresting path.
[12] This maximum clearance applies only when the bolt is located within the flamepath.
[13] The edge of the bolt hole shall include the edge of any machining done to the bolt hole, such as chamfering.
[14] Less than 7/16" (1/4" minimum) will be acceptable provided the diametrical clearance for fastening bolts does not exceed 1/32".
[15] Shafts or operating rods through journal bearings shall be at least 1/4" in diameter. The length of fit shall not be reduced when a push button is depressed. Operating rods shall have a shoulder or head on the portion inside the enclosure. Essential parts riveted or bolted to the inside portion are acceptable in lieu of a head or shoulder, but cotter pins and similar devices shall not be used.
[16] 6" with a minimum of 4 bolts.

(7) O-rings, if used in a flame-arresting path, shall meet the following:

(i) When the flame-arresting path is in one plane, the o-ring shall be located at least one-half the acceptable flame-arresting path length specified in paragraph (a)(6) of this section within the outside edge of the path (see figure J–2 in the appendix to subpart J of part 7 of this chapter).

(ii) When the flame-arresting path is one of the plane-cylindrical type (step joint), the o-ring shall be located at least ½ inch within the outer edge of the plane portion (see figure J–3 in the appendix to subpart J of part 7 of this chapter), or at the junction of the plane and cylindrical portion of the joint (see figure J–4 in the appendix to subpart J of part 7 of this chapter); or in the cylindrical portion (see figure J–5 in the appendix to subpart J of part 7 of this chapter).

(8) Mating parts comprising a pressed fit shall result in a minimum interference of 0.001 inch between the parts. The minimum length of the pressed fit shall be equal to the minimum thickness requirement of paragraph (a)(6) of this section for the material in which the fit is made.

* * * * *

5. Section 18.32 is amended by adding paragraph (i) to read as follows:

§ 18.32 Fastenings—additional requirements.

* * * * *

(i) Coil-thread inserts, if used in holes for fastenings, shall meet the following:

(1) The inserts shall have internal screw threads.

(2) The holes for the inserts shall be drilled and tapped consistent with the insert manufacturer's specifications.

(3) The inserts shall be installed consistent with the insert manufacturer's specifications.

(4) The insert shall be of sufficient length to ensure the minimum thread engagement of fastening specified in § 18.31(a)(6) of this part.

6. Section 18.33 is revised to read as follows:

§ 18.33 Finish of surface joints.

Flat surfaces between bolt holes that form any part of a flame-arresting path shall be plane to within a maximum deviation of one-half the maximum clearance specified in § 18.31(a)(6). All metal surfaces forming a flame-arresting path shall be finished during the manufacturing process to not more than 250 microinches. A thin film of nonhardening preparation to inhibit rusting may be applied to these finished metal surfaces as long as the final surface can be readily wiped free of any foreign materials.

7. Section 18.34 is amended by adding an introductory paragraph and revising paragraph (a)(6) to read as follows:

§ 18.34 Motors.

Explosion-proof electric motor assemblies intended for use in approved equipment in underground mines that are specifically addressed in part 7 of this chapter shall be approved under part 7 of this chapter after February 22, 1996. Those motor assemblies not specifically addressed under part 7 of this chapter shall be accepted or certified under this part.

(a) * * *

(6) Oil seals shall be removed from motors prior to submission for explosion tests.

* * * * *

8. Section 18.37 is amended by revising paragraph (b) to read as follows:

§ 18.37 Lead entrances.

* * * * *

(b) Stuffing boxes shall be so designed, and the amount of packing used shall be such, that with the packing properly compressed, the gland nut still has a clearance distance of ⅛ inch or more to travel without meeting interference by parts other than packing. In addition, the gland nut shall have a minimum of three effective threads engaged. (See Figures 8, 9 and 10 in Appendix II.)

* * * * *

9. Section 18.62 is amended by revising the fifth sentence of paragraph (a) to read as follows:

§ 18.62 Tests to determine explosion-proof characteristics.

(a) * * * Coal dust having a minimum of 22 percent dry volatile matter and a minimum heat constant of 11,000 moist BTU (coal containing natural bed moisture but not visible surface water) ground to a fineness of minus 200 mesh U.S. Standard sieve series. * * *

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 7, 18, 57 and 75

RIN 1219–AA57

Electric Cables, Signaling Cables and Cable Splice Kits

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule.

SUMMARY: This final rule implements new procedures for testing and approval of electric cables, signaling cables and cable splice kit designs. The final rule revises the existing requirements for acceptance of cables in 30 CFR part 18, establishes the flame-resistant requirements for approval of cable splice kit designs, and contains the approval requirements for signaling cables, all of which are currently being granted acceptance by MSHA. The final rule also makes conforming changes to 30 CFR parts 57 and 75 to require certain cables and splices to be accepted or approved by MSHA as flame resistant.

EFFECTIVE DATE: Subpart K of part 7 and §§ 7.44(k), 18.35(a)(3), 18.94(a)(2), and conforming amendments to parts 18, 57, and 75 will be effective on February 22, 1993. Sections 18.1, 18.2, 18.6(a), 18.6(b), 18.6(i), 18.9, and 18.64 will be effective on December 23, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule will replace, in one year, the current regulations and acceptance programs covering the testing and approval for flame resistance of electric cables, signaling cables, and cable splice kits found in 30 CFR part 18. These revisions are issued pursuant to section 508 of the Federal Mine Safety and Health Act of 1977 (Mine Act) (30 U.S.C. 957). In addition, pursuant to section 101 of the Mine Act (30 U.S.C. 811), the final rule makes conforming changes to 30 CFR parts 57 and 75 to require certain cables and splices to be accepted or approved by MSHA as flame resistant.

MSHA published a proposed rule in the **Federal Register** on October 1, 1990 (55 FR 40124). The proposal did not retain the existing regulations and acceptance programs covering the testing and approval for flame resistance of electric cables, signaling cables, and

cable splice kits found in part 18. Instead, it proposed that electric cables, signaling cables, and splice kits be evaluated for approval by the applicant or a third party selected by the applicant under the provisions of 30 CFR part 7, Underground Mining Equipment; Product Testing by Applicant or Third Party. These products meet the criteria for applicant or third party testing because they possess characteristics that can be objectively tested in a routine and readily reproducible manner with no elements of subjective analysis.

Part 7 initiated a revised role for MSHA in the evaluation and testing of selected products used in underground mines. Products approved under part 7 are required to be tested by the applicant or by a third party selected by the applicant to conduct the testing. All testing is to be conducted using MSHA-specified test procedures with certification of test results by the applicant. In addition, the Agency has the right to observe all product testing. When requesting approval, the applicant is required to submit certain product information. This includes, for example, drawings and specifications to document compliance with the technical requirements. Based upon an evaluation of the technical documentation, MSHA observations of product testing, and a review of the certification statements, MSHA will issue an approval or notice denying approval of the product.

Once a product is approved under part 7, an approval holder is required to inspect or test critical characteristics of the product as part of its quality assurance program. Under the provisions of subpart A, the approval holder will report to MSHA any knowledge that a product has been distributed with critical characteristics not meeting required specifications. Upon receiving such a report, MSHA will work with the approval holder to implement appropriate corrective action. Since critical characteristics are features of a product which, if not built to specification, can create a hazard, immediate notification should be by expeditious means, such as by telephone. MSHA will perform periodic audits of products approved under part 7 to ensure that they are being manufactured as approved. If a product fails to meet the technical requirements of part 7 or creates a hazard related to its use, MSHA will take immediate action to address the problem, including revocation of the approval, if necessary.

MSHA reviewed all written statements submitted in response to the proposed rule. No public hearing was requested or held on subpart K. Comments were received from all segments of the mining community, including equipment manufacturers, testing laboratories, trade associations, mine operators, and representatives of miners. This final rule was developed after a full evaluation of the entire public record.

II. Discussion and Summary of the Final Rule

MSHA's regulations found in 30 CFR part 18 governing the approval of electric cables were last reviewed in 1968. Since that time, technological advances in insulation and jacket material, as well as manufacturing techniques, have led to the development of improved electric cables suitable for use in underground mines having potentially explosive atmospheres.

As subpart K to part 7, this rule specifies the technical requirements and test procedures for the approval of electric cables, signaling cables, and cable splice kits. The rule is derived from existing part 18 and current MSHA policies interpreting parts 18 and 75. It provides objective criteria for applicant or third party testing, replacing subjective technical requirements with performance-oriented tests. These tests are based on MSHA's engineering experience with the subjective criteria in the existing approval requirements. Except where indicated, they are not intended to introduce more stringent testing methods but rather to explicitly state the tests used in MSHA's current testing program which have proven to be effective. By using these test procedures, manufacturers can measure, evaluate, and certify compliance of their product with the requirements of this subpart in order to receive an MSHA approval.

The Agency's final rule addresses the comments received and is consistent with Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act.

III. Section-by-Section Discussion

The following section-by-section analysis discusses each provision of subpart K and addresses the comments received on the proposed rule.

Section 7.401 Purpose and Effective Date

This section is derived from § 18.1 and defines the purpose and scope of electric cable, splice kit, and signaling cable approvals issued under this subpart.

Electric cables are used for the transmission and distribution of electric energy for powering equipment in both gassy metal/nonmetal mines and coal mines. Splice kits are used in the repair of damaged electric cables. Signaling cables are used in the transmission of optical signals or electric signals in current-limited applications which include low-energy communication circuits and intrinsically safe remote control circuits. Because of the hazard presented by fire in underground coal mines and gassy underground metal/nonmetal mines, MSHA safety standards such as 30 CFR 57.4057, 57.22310, 57.22311 and 75.600 require the use of flame-resistant cables. In addition, MSHA safety standards in 30 CFR 75.604 address flame-resistant splices in electric cables; however, the flame-resistant performance requirements for splices are not specified.

This final rule modifies the existing requirements for acceptance of cables contained in §§ 18.6(b), 18.6(i), and 18.64 of this chapter and establishes the flame-resistant requirements for approval of electric cable splice kit designs. Additionally, it contains approval requirements for signaling cables which are currently being granted acceptance by MSHA. Conforming amendments to 30 CFR parts 7, 18, 57, and 75 resulting from the approval requirements in this subpart K final rule are included as part of this rulemaking. The conforming amendments revising parts 57 and 75 require the use of cables and splices that have been accepted or approved by the Agency as flame resistant. Although amendatory language was not in the actual proposed rule, in the preamble to the proposal the Agency published its intent to modify these safety standards with this final rule and set forth the actual language the Agency intended to use in requiring that such cables and splices be accepted or approved as flame resistant.

Section 7.401 provides that the requirements of subpart K take effect 60 days after publication of the final rule. It further provides that manufacturers may continue to submit requests for acceptance or extension of acceptance for electric cables, signaling cables, and splice kits under existing procedures until one year from the effective date of this subpart K. After this one-year phase-in period, the applicable portions of part 18 referring to cables will be modified and the signaling cable and splice kit acceptance programs will be discontinued. All new cable and splice kit designs submitted for approval or extension of approval after one year will be required to meet the requirements of this subpart.

This subpart K has been developed to include a product-specific phase-in period, consistent with the preamble

discussion to the final rule on part 7, subpart A (53 FR 23488, June 22, 1988). This phase-in period is based on an assessment of the amount of time needed to prepare for testing and reflects commenters' concerns addressed to subpart A that a phase-in period of sufficient duration be provided to ensure that competent third-party testing facilities be available for prompt testing of products at a reasonable cost. This one-year phase-in period will provide sufficient time for cable and splice kit manufacturers and independent testing laboratories to establish testing capabilities for part 7 testing. The phase-in period is not intended to limit the use or manufacture of preivously approved electric cables, signaling cables, and splice kits.

Several commenters expressed concern that a sufficient amount of phase-in time be allocated in order for existing inventories of electric cables, signaling cables, and splice kits to be exhausted. They also requested that electric cables, signaling cables, and splices installed prior to the effective date of the final rule continue to be usable without immediately having to replace them with products approved under this subpart K. Another commenter questioned the need for a one-year phase-in period. This commenter believed that upon implementation of the final rule, existing approvals should be valid for a transition period of only one year and all applications for approval should be made under this subpart. According to this commenter, all existing approvals that had not been issued under the provisions of this subpart should no longer be valid after this one-year period.

In revising the technical requirements for the approval of electric cables, signaling cables, and splice kits under the procedures of part 7, the final rule does not significantly alter the approval criteria for these products. Furthermore, as discussed under § 7.407(b) in the proposal (55 FR 40128, October 1, 1990), the test results of cable and splice acceptance applications for the past several years indicate the products currently being manufactured and marketed meet the final rule's acceptable performance criteria. MSHA does not intend to revoke, except for cause, any cable or splice approvals previously granted. Cable and splice products accepted under prior regulations and in compliance with those regulations may continue to be manufactured and offered for sale in the mining community as long as no changes are made which would deviate from conformance with the approval documentation. Furthermore, MSHA will consider any cable or splice kit, evaluated and issued an acceptance under the provisions of part 18 or approved under this subpart, to meet the requirements for flame resistance stated in MSHA's safety standards as set forth in 30 CFR parts 57 and 75. Therefore, MSHA will not require mine operators to replace existing inventories or to install only those products approved under this subpart.

Part 7 revises MSHA's role in the evaluation and testing of certain products used in underground mines. Where the Agency's role had been one which emphasized testing by MSHA, part 7 requires testing by the applicant or a third party selected by the applicant to make the approval process more efficient for those products capable of being tested outside the Agency using Agency-developed, standardized and repeatable tests and procedures. As such, the various product subparts have been developed to include product-specific phase-in periods appropriate to provide manufacturers and independent testing laboratories sufficient time to prepare for part 7 testing responsibility. The topic of phase-in periods was discussed in the preamble discussion to the final rule on part 7, subpart A. During this one-year phase-in period, both part 18 and subpart K will be in effect. Applicants can, therefore, choose to submit applications for acceptance under part 18 and have cable and splice products tested by MSHA or submit them under subpart K where the obligation to test will be with the applicant. Furthermore, applicants will be required to submit extensions of approval in accordance with the approval regulations under which the original approval was granted. At the expiration of one year, all applications for extension of approval will be treated as new applications and applicants will be required to apply for an original approval under subpart K. MSHA believes that this procedure will minimize confusion and allow for the continued introduction of cable and splice products to the mining industry without unnecessary delay.

Section 7.402 Definitions

The following definitions applying to the approval of electric cables, cable splice kits, and signaling cables are new. They are designed to clarify the requirements of subpart K.

Component. This definition includes any material in a splice kit which becomes part of the splice. Materials such as conductor insulation, outer jacket, and shielding are included in this definition. Assembly instructions, cleaning solvents, abrasive strips and other materials included in the splice kit, necessary for preparing the splice but not part of the final assembly, have been excluded from this definition.

Conductor. This definition specifies a conductor to be a bare or insulated wire or combination of wires not insulated from one another, suitable for carrying an electric current.

Electric Cable. This definition identifies an electric cable as the assembly of one or more insulated conductors of electric current under a common or integral jacket. Additionally, an electric cable may also contain one or more uninsulated conductors. Under the definition, single conductor cables as well as multiple conductor cables are covered. While the minimum materials comprising an electric cable are specified, materials such as filler and metallic shielding are also included. The cable construction and type determine those additional materials which are included as part of the assembly.

Jacket. This definition specifies a jacket to be a nonmetallic abrasion-resistant outer covering of a cable or splice. The jacket is intended to provide protection against physical damage. Commonly used jacket materials include neoprene and polyvinyl chloride.

Power Conductor. This definition identifies a power conductor to be an insulated conductor of a cable assembly through which the primary electric current or power is transmitted.

Signaling Cable. This definition identifies a signaling cable to be either a fiber optic cable or a cable containing electric conductors, of cross-sectional area less than #14 AWG, used where the circuit cannot deliver electric currents which could increase conductor temperatures beyond the normal operating temperature as established for the current-carrying capacity of the conductors. These cables are normally used to transmit signals for audio or visual annunciation. Equipment using these cables is typically powered by regulated power supplies or batteries. This equipment generally includes, but is not limited to, intrinsically safe systems.

Splice. This definition specifies a splice to be the mechanical joining of one or more severed conductors in a single length of a cable and includes the replacement of insulation and jacket. A splice is intended as a repair to a damaged electric cable.

Splice Kit. This definition identifies a cable splice kit as a group of materials and related instructions for making a flame-resistant splice in an electric

cable. The materials typically contained in a splice kit include replacement jacket, insulation, shielding (if for shielded cable), cable cleaner, abrasive strips, and assembly instructions.

A commenter noted that the proposed language for this definition did not include signaling cable splice kits, while there is a need to repair some types of signaling cables. The commenter believed that subpart K should be modified with language to accommodate splice kits for the repair of those types of signaling cables. The commenter further stated that some signaling cable may also meet the definition of an electric cable and it would be unnecessarily restrictive to preclude an applicant from developing a splice kit for signaling cable that does not qualify as an electric cable.

Present federal regulations require flame-resistant properties only for trailing cables and for the cables installed on equipment that must be maintained in permissible condition. Flame-resistant splices are required on trailing cables and, except for shearer and motor cables on longwall mining systems, cables on permissible equipment are not permitted to be spliced. Furthermore, present MSHA policy does not allow splicing of any cables used in intrinsically safe systems, and splice kits used to repair cables in areas where permissibility is not required to be maintained are not required to be approved for flame resistancy.

As stated previously, signaling cables are normally used to transmit signals for audio or visual annunciation. Equipment using these cables is typically powered by regulated power supplies or batteries. This equipment generally includes, but is not limited to, intrinsically safe systems. Therefore, in most applications where flame-resistant signaling cables are required, a splice kit would not be permitted to be used to repair a damaged cable.

To date, MSHA has not tested or otherwise evaluated splice kits designed solely for the repair of signaling cables. For this reason, MSHA has not included approval requirements for these products in this final rule. The final rule includes provisions under § 7.411 to accommodate the approval of splice kits for which the requirements of this subpart are not applicable. If an applicant submits an application for approval of a splice kit designed to repair a signaling cable that does not qualify as an electric cable as defined in this subpart, MSHA will evaluate the product as new technology under the provisions of § 7.411.

The proposed rule included a definition for filler to identify the materials used to fill the interstices of a cable to provide for a substantially uniform cross section of the completed assembly. This definition has not been included in the final rule since this term is not used.

Section 7.403 Application Requirements

Section 7.403(a) contains the application requirements for approval of electric cables and signaling cables. The requirements stated in this section are derived from existing requirements of 30 CFR 18.6 and the standard application procedures presently in use.

Under this final rule, an application for approval is required to provide product identification information to include cable type, construction, number and size of conductors, and voltage rating for all cables containing electric conductors. This final rule allows for a single application to address two or more sizes, types, and constructions if the products do not differ in composition of materials or basic design. The final rule also requires applications to include technical specifications related to the flame resistance of the product, including the type of material and identifying number for each material comprising the finished assembly, as well as current-carrying capacity (rated ampacity) with the corresponding ambient temperature upon which the current rating is based. Since current-carrying capacity is not a factor in determining the flame resistance of signaling cables, the final rule does not require this information to be provided for these products. Technical information related to jacket, conductor insulation, and filler materials is required for all electric cables and signaling cables approved under this subpart K. Because applicable design factors such as material thickness, conductor configuration, kind and position of shield or braid coverings, and type of construction may affect the flame-resistant performance of electric cables or signaling cables, the final rule requires that complete design specifications or a reference to an existing consensus design standard specification such as the Insulated Cable Engineer's Association (ICEA) Publication No. S–19–81, Fourth Edition, be included with the application. If a product submitted for approval is not based on an existing consensus design standard specification, the application must be accompanied by complete specifications related to the design of the product or include information which details differences in design between the product and an existing consensus design standard specification.

Section 7.403(b) contains the application requirements for approval of electric cable splice kit designs which are similarly based on existing procedures. Under the final rule, applications for approval are required to include product identification information including trade names, style, code numbers, and voltage rating. Applications are also required to include complete splice assembly instructions and technical specifications related to the flame resistance of the splice, including the type of material and identifying number for each component used in the finished product. Design factors such as material thickness, conductor configuration, kind and position of shield or braid coverings, and type of construction could affect the flame-resistant performance of a splice. Therefore, the final rule requires that the complete design specifications or a reference to a published design standard be provided with the application. This information includes identification of the type of splice (shielded, nonshielded) and final assembly dimensions for all components required for splices in each cable that the splice kit is designed to repair.

MSHA will use the application information to evaluate electric cables, signaling cables, and splice kit designs submitted for approval or extension of approval, as well as to identify those bearing an MSHA approval marking as those approved by the Agency.

One commenter believed that a single application is not sufficient to determine the flame resistance of more than one size, type or construction of electric cable or signaling cable because various design factors may affect the flame-resistant performance of the cables. Further, this commenter stated that it would not be a substantial burden for manufacturers to submit a separate application for each product for which they are seeking approval. At the present time, MSHA permits a single application to include two or more sizes, types, and constructions of cables as long as the products do not differ in composition of materials or basic design. Furthermore, MSHA does not currently test each cable product submitted for approval since it has determined that it is unnecessary to test each size, type, and construction to assess the flammability characteristics inherent in the basic design of any particular cable. Instead, only selected sizes, types, and constructions are flame

tested and, based on the results of this testing, similarly designed cable products are granted acceptance without additional tests begin performed. These policies and procedures reflect the experience of over 40 years in testing and evaluating the flame-resistant properties of cable products.

As stated in subpart A of part 7, manufacturers will be required to submit applications detailing the information necessary to evaluate all facets of the design and construction of the product relative to the approval requirements. The application procedures require submission of all the technical specifications that the Agency has determined affect the flame resistance of the cable product designs. Applicants requesting approval or extension of approval must indicate whether, in their opinion, changes in a previously approved product require testing. If tests are not planned, the applicant will be required to explain the technical reasons for not conducting testing. Under this final rule, manufacturers will be required to provide detailed information relative to the design and testing for each size, type, and construction for each product addressed in the application. MSHA will evaluate the need for testing in each case, taking into account the applicant's explanation for not planning to test. MSHA's decision will be based on its evaluation of the effect of any proposed changes on the safe performance of the product. In those cases where the Agency decides that testing is necessary, the applicant will be notified so that testing can be scheduled.

MSHA has granted acceptances for cable products using these procedures over a period of several years and the Agency is not aware of any administrative or technical problems related to permitting more than one size, type, and construction to be evaluated in a single application. The Agency believes that a change in testing policies or this provision, which is based on current application procedures and practice, will result in unnecessary paperwork without improving the integrity of the approval program. Therefore, based on this information, MSHA has not modified this provision in the final rule and will continue to permit a single application for approval to cover two or more sizes, types, and constructions if the products do not differ in composition of material or basic design. It will be the Agency, however, who will be the arbiter of whether any such differences exist.

Fees

In accordance with 30 CFR part 5, fees for MSHA processing of an application under part 7 are subject to an hourly charge. Fee schedules are updated at least once every 3 years and published in the Federal Register.

An application fee of $100 must be submitted with each request for approval or extension of approval for electric cables, signaling cables and splice kits under subpart K of part 7. Under the 1992 rate schedule, the Agency will charge $39 per hour for processing new approvals and $38 per hour for processing extensions of approval.

Section 7.404 Technical Requirements

Section 7.404 is derived from and retains the existing technical requirement of § 18.35(a)(3) for flame resistance of electric cables and applies the same criteria to splices in electric cables. The test presently used for signaling cables is also incorporated into the final rule. Flame resistance will be demonstrated by successful completion of the applicable flame test, as specified in this final rule. A complete description of the flame test is contained in the discussion of §§ 7.407 and 7.408.

Section 7.405 Critical Characteristics

This section is new and lists the critical characteristics that are required to be inspected or tested from each production run, batch, or lot of cables or splice kits manufactured having an approval marking. As defined in subpart A of this part, a "critical characteristic" is a feature of a product that, if not manufactured as approved, could have a direct adverse effect on safety. The critical characteristic identified for inspection or testing of cable and splice kits is flame resistance.

One commenter recommended that manufacturers be required to perform flame tests as well as other physical and chemical tests in order to assure compliance. Other commenters were concerned that an unrealistic number of tests would be required to be performed on a sample of each production run, lot, or batch, since some manufacturers can produce different constructions in a 24-hour period, resulting in up to 100 flame tests being run per week. While MSHA agrees that flame testing samples is the most reliable method to make a determination as to whether an electric cable, signaling cable, or splice made from a splice kit meets the technical requirements of this subpart, inspections and tests other than flame testing can be used to determine compliance with this final rule.

Section 7.405(a) provides for the flame testing of a sample of each production run, batch, or lot as one method to ensure continued compliance with the flame-resistant requirements. As an alternate to flame testing, § 7.405(b) provides that materials that contribute to the flame-resistant characteristic, along with a sample of the cable or splice kit assembly for each production run, batch, or lot, be inspected or tested. Such inspections or tests will be conducted to verify material composition, thickness, and, for cables, position within the finished product in relationship to the approved design. Appropriate inspection or test procedures, other than flame testing, that satisfy the requirements of § 7.405(b) are dependent upon the materials used that contribute to the flame-resistant characteristic of the product as well as the manufacturing process used. MSHA, therefore, has not identified these inspection and test procedures specifically. Inspections could include observation of the color or consistency of the materials or sample of the assembly. Tests could include chemical or physical analysis of the materials that comprise the product.

Although current regulations do not specifically require flame testing of samples or inspection or testing of the physical properties of the finished product, they do require manufacturers to maintain the quality of approved products. Further, use of the MSHA marking obligates the manufacturer to produce cable and slice products as accepted to meet flame resistance. Based on product audits, MSHA has no evidence to show that cable and splice products being supplied to the mining community do not meet the technical requirement for flame resistance. Thus, the Agency has concluded that existing manufacturing techniques and quality assurance methods have been effective in assessing the critical flame-resistant characteristic of cable and splice products. Furthermore, MSHA believes that there will be minimal impact upon manufacturers in determining compliance of their final products, as existing methods and procedures have proven to be adequate and are likely to continue to be used for cable and splice products approved under this subpart K to part 7. Finally, MSHA disagrees with the comment proposing that additional physical tests be required to be performed on every product approved under this subpart in order to determine compliance with this section. MSHA maintains that a manufacturer is obligated to perform only tests and inspections necessary to assure that the

technical requirement is met. The manufacturer should not be required to perform superfluous testing.

Section 7.406 Flame Test Apparatus

The flame test apparatus described in § 7.406 is the same as that presently used by MSHA for conducting tests under § 18.64(a) and (b). Because variations in design may change the conditions of the test or disturb the burning process, the design factors essential to obtaining uniform and consistent test results are stated for each principal part of the flame test apparatus. They are based on equipment presently used by MSHA. However, where variations do not affect the reliability of the test results, MSHA has not specified design characteristics and will allow design flexibility. Apart from a comment directed to § 7.406(c), which is discussed below, commenters had no objections to the provisions on the flame test apparatus.

Section 7.406(a) addresses requirements concerning the size of the test chamber and is derived from § 18.64. It requires that the chamber be completely open at the top and front as well as have provisions (supports) for mounting the test specimen and energizing electric cable or splice specimens with electric current. It also requires that the floor of the chamber be fabricated or lined with a noncombustible material, such as metal, that will not readily extinguish burning matter which may fall from the specimen during testing. This reduces the possibility that burning matter will either ignite the floor of the chamber or be extinguished due to the composition of the floor material. Disturbance of the burning process by such events will affect the reliability of the test results.

Section 7.406(b) is derived from § 18.64(b) and requires that the specimen holder (support) be constructed of three metal rods and be designed to support and maintain the specimen at a specific level within the test chamber. The existing requirement stated in § 18.64(b)(4) that the metal rods be wrapped with asbestos tape to reduce the cooling effect has been replaced in the final rule with a new requirement that the rods have a nominal diameter of approximately 3/16 inch. Further, the length of the horizontal portion of the rod which contacts the test specimen is specified to be approximately 12 inches in length. Existing regulations do not specify rod size, and MSHA believes that this new specification will provide uniform control of the cooling effects of the rods upon the test specimen, thereby improving the repeatability of the test.

Section 7.406(c) is derived from existing requirements stated in § 18.64 concerning the type of fuel and gas burner used to ignite the test specimen. It continues to specify a natural gas type Tirrill burner as the gas ignition source and requires the natural gas fuel for the burner to be composed of at least 96 percent combustible hydrocarbons, with a methane content of at least 80 percent. These fuel specifications, derived from the fuel used by MSHA in flame testing, are considered necessary in order to ensure proper operation of the gas burner.

One commenter suggested that MSHA consider methods other than gas composition, since variations in gas composition affect BTU output as well as the flame temperature during the igniting process. These could include measuring flame temperature or specifying a range of heating values as an alternative to that which was proposed. The commenter offered these recommendations to assist the Agency in developing a natural gas specification which would minimize local variances and thus preclude the possibility of affecting the reliability of test results.

Based on these suggestions, MSHA reevaluated the appropriateness of the natural gas specification requirements stated in proposed § 7.406(c). MSHA has had extensive experience in conducting flame tests of cable and splice products and has performed these tests using natural gas with the full range of gas constituents specified in the proposed rule. The description of the allowable gas concentration in the proposed rule has been slightly modified to accurately reflect the variations that have been present during the testing performed by MSHA. The Agency has not observed any significant variations in test results using these natural gas supplies and has concluded that the effects of any variations in heat content or flame temperature, due to varying gas compositions, were inconsequential with respect to the outcome of the flame test. Thus, there is no data to support a change in the natural gas requirements and no experience to show how much variation may be tolerated by specifying the natural gas requirements in another manner. For these reasons, the method used in the final rule to identify the quality of the natural gas supply remains unchanged from the proposal. The specified gas compositions stated in final § 7.406(c) will allow the use of most natural gas supplies while still ensuring the consistency and reliability of the test results.

Section 7.406(d) is derived from § 18.64(b)(1) and requires a source of either alternating current or direct current to energize and regulate electric current flow through the electric cable or spliced test specimen. It also specifies the type of conductors which are subject to heating current. A new requirement concerning the output voltage of the current source has been added because use of an incompatible voltage to energize test specimens during the flame test may provide unpredictable results.

Section 7.406(e) is derived from § 18.64(b)(2) and requires that an instrument be provided to measure current flow through the power conductors of the test specimens within an accuracy of ±1 percent. This monitoring accuracy is necessary to attain a consistent heating rate of the cable.

Section 7.406(f) is derived from § 18.64(b)(3) and requires a device to measure the conductor temperature of the electric cable and spliced test specimen. It allows for design flexibility in the type of device provided and does not require the use of a thermocouple-type instrument as specified in existing regulations. However, MSHA requires that the device measure conductor temperature within an accuracy of ±2 percent. In addition, the device used must be capable of measuring the temperature without removing any cable material from the test specimen in order to make the temperature measurements. Any material disturbed in inserting the device, such as a thermocouple, is required to be returned as closely as possible to its original location and be maintained there for the duration of the testing. If such material were removed or unduly displaced, unpredictable cooling effects could occur which would affect the repeatability of the test. Paragraphs (d) through (f) do not apply to signaling cables because signaling cables are not tested with any preheating requirements.

Section 7.407 Test for Flame Resistance of Electric Cables and Cable Splices

The flame test described in § 7.407(a) is derived from § 18.64 (a), (c), and (d). It is the same as that presently used, with some minor changes detailed below. MSHA's experience with this procedure is that it produces repeatable, objective test results which assess the flame-resistant properties of electric cables and is considered equally effective for testing splices.

Existing requirements concerning the size and preparation of test specimens are maintained in § 7.407(a)(1). Section 7.407(a)(2) adds a new requirement for conditioning all specimens before testing and for maintaining the same

environmental conditions during testing. Temperature and moisture content of the specimen at the start of and during the flame resistance test may affect the repeatability of test results and for this reason have been addressed in this final rule.

Section 7.407(a)(3) is derived from existing requirements concerning the location for measuring conductor temperature of electric cables and spliced cables. It provides flexibility in the method of securing the sensing element of the temperature measuring instrument. The existing requirement for tying the flap of jacket and insulation material with wire has been replaced by the more performance-oriented requirement that any disturbed jacket or insulation material be restored as closely as possible to its original location and be maintained there for the duration of the test. Unpredictable cooling effects could occur if such material were displaced.

Section 7.407(a)(4) retains existing requirements concerning the mounting of the applicable test specimen on the rods positioned within the chamber. It provides flexibility in the placement of the test chamber by deleting the existing requirement for using a ventilated hood or canopy, although the use of a hood or canopy is still acceptable. The existing requirement for the test specimen to be free from external air currents during testing has been retained and, as stated previously, the test chamber must be placed in an area having controlled temperature and humidity, because uncontrolled environmental conditions could affect the burning process.

Section 7.407(a)(5) specifies the adjustment of the flame from the gas ignition source and retains present specifications concerning flame height and size. Also, a new requirement has been added that requires the flame to be blue in color without a persistence of yellow coloration. The persistence of yellow coloration indicates maladjustment or impurities in the fuel. This will provide for a controlled and consistent flame during the igniting process and will provide for more consistent repeatable test results.

Section 7.407(a)(6) retains the existing requirement for connecting electric cable and spliced test specimens to the current source. It requires that connections be secure and compatible with the size of the specimen's power conductors, as improper connections may produce undesirable heating effects affecting temperature measurement and yielding unreliable results.

Section 7.407(a)(7) is derived from existing test procedure requirements for electric cable and spliced test specimens and specifies that all power conductors be energized with electric current. It retains the intent of existing regulations that the value of the effective heating current be five times the rated power conductor ampacity, but specifically states that the rating be based on using an ambient temperature of 104 °F (40 °C), for consistency. One commenter noted that ampacity tables are not included in this subpart K but do appear in existing regulations in part 18. The commenter indicated that it is not clear whether existing conductor ampacity tables, per ICEA standards, will be applied to the test method. To properly conduct the test, the final rule requires that each power conductor be energized with a current that is five times the power conductor rating at 104 °F (40 °C). MSHA has noted differences in power cable ampacity ratings, for identical sizes and cable types, due to the design standard used in their manufacture. For this reason, MSHA has chosen to require that flame tests be performed using current values determined from the ampacity rating stated by the manufacturer of the product in its application for approval. To permit advances in technology and to accommodate the testing of a wide variety of cable constructions, including standard and nonstandard designs, that result in various current ratings, MSHA has not published ampacity tables in this final rule.

Section 7.407(a)(8) is derived from the existing requirement for monitoring the current flow through the power conductors. It requires that the effective heating current be adjusted to within #5 percent, as required, to maintain the proper value. This provides for a controlled and consistent heating process, thus improving the repeatability of the test results.

Section 7.407(a)(9) is derived from the existing procedure for the location and application of the flame. For electric cables, the tip of the inner cone from the flame of a gas burner is to be applied directly beneath the test specimen for 60 seconds at a location 14 inches from one end of the cable and between the supports separated by a 16-inch distance. For spliced cable specimens, the tip of the inner cone from the flame of a gas burner is to be applied for 60 seconds beneath the midpoint of the splice jacket.

Paragraphs 7.407(a) (10) and (11) retain the existing requirements concerning the duration of exposure to external flame and the measurement and recording of burn time of the specimen, respectively. Section 7.407(a)(10) requires the flame from the gas burner and the electric current to be removed simultaneously from the test specimen after the specified time period. It further requires that the flame from the gas burner be removed from beneath the test specimen in a manner which does not disturb air currents created during the burning process within the test chamber. If special care is not taken, unnatural turbulence could be produced which may affect the burning process and the results of the tests. MSHA has not specified a method for removing the flame or electric current in order to provide more performance-related requirements and to allow design flexibility. Section 7.407(a)(11) requires that the duration of burning be recorded and that the measurement of the time the specimen continues to burn after the flame from the gas burner has been removed begin concurrently with flame removal. The duration of burning includes the burn time of material that falls from the test specimen after the flame from the gas burner has been removed. This requirement is based on an interpretation of the existing requirement for measuring burn time and is currently considered as a factor for evaluating the flame-resistant properties of electric cables and splices under existing procedures.

Sections 7.407(a) (12) and (13) retain the existing requirements for measuring the length of burned area of the test specimen for testing three cable specimens, respectively. It requires that the measurement be made longitudinally along the cable axis to provide for a consistent measurement parameter and that the burned length include any charred length.

Section 7.407(b) is derived from § 18.64(e). It modifies and expands the requirements to include splices. This section sets forth the criteria for acceptable performance for this test. It requires that each of the three specimens tested exhibit burn times not exceeding 240 seconds and the length of burned area in each specimen be less than 6 inches. This change from the present requirement that two of three specimens meet the acceptable performance criteria addresses advances in technology. The existing criteria for acceptable performance for testing were developed approximately 40 years ago based upon the use of natural rubber-jacketed cables. Two out of three specimens represented optimal performance and was acceptable for these cables. Jacket materials presently used have better flame-resistant properties, and three out of three represents the optimal performance for these synthetic compounds and

produces reliable test results. The technology currently used in the manufacturing process has advanced to provide more consistent flame-resistant properties for the manufactured product. The test results of cable and splice acceptance applications for the past several years indicate the products currently being manufactured and marketed will meet this final rule without requiring modification to the manufacturing process.

Section 7.408 Test for Flame Resistance of Signaling Cables

The flame test described in § 7.408 is derived from § 18.64 (a), (c), and (d). It is the same as that presently performed under the signaling cable acceptance program. The test apparatus for signaling cables is the same as that for electric cables except that there is no preheating requirement. Preheating is not required to be performed for these cables due to their intended use. Fiber optic cables do not carry electric current and therefore are not subject to electric current heating. Cables having electric conductors of cross-sectional area less than #14 AWG for use as signaling cables are used in low-current applications, as stated earlier. Equipment using these signaling cables is typically powered by batteries or by regulated power supplies which are not capable of delivering currents which exceed the current-carrying capacities of the conductors. As a result, the signaling cables are not subject to excessive currents that could cause the conductors to become overheated. Electrically preheating the cable during testing would simulate a condition to which these cables would not be subjected.

The requirements concerning the size and preparation of test specimens are specified in § 7.408(a)(1). It requires three samples of signaling cable to be prepared, each three feet long.

Section 7.408(a)(2) adds a new requirement for conditioning all specimens before testing and maintaining the same environmental conditions while conducting the testing. Temperature and moisture content of the specimen at the start of and during the flame-resistance test may affect the repeatability of test results.

Section 7.408(a)(3) retains existing testing procedures concerning the mounting of the applicable test specimen on the rods positioned within the chamber. It provides flexibility in the placement of the test chamber by removing the existing requirement for using a ventilated hood or canopy, although use of a hood or canopy is still acceptable. The existing requirement for the test specimen to be free from external air currents during testing has been retained, and the test chamber must be placed in an area having controlled temperature and humidity because uncontrolled environmental conditions could affect the burning process.

Section 7.408(a)(4) specifies the adjustment of the flame from the gas ignition source and retains present specifications concerning flame height and size. Also, a new requirement has been added to require that the flame be blue in color without a persistence of yellow coloration. The persistence of yellow coloration indicates maladjustment or impurities in the fuel. This adjustment will provide for a controlled and consistent flame during the igniting process and will provide for more consistent repeatable test results. Section 7.408(a)(5) retains the existing procedure for locating and applying the flame. The flame is applied for 30 seconds directly beneath the sample centered between either end support and the center support.

The existing requirements concerning the duration of exposure to external flame and the measurement and recording of burn time of the specimen, respectively, are retained in § 7.408(a)(6) and (7). Section 7.408(a)(6) requires the flame from the gas burner to be removed from the test specimen after the specified time period. It further requires that the flame from the gas burner be removed from beneath the test specimen in a manner which does not disturb air currents created during the burning process within the test chamber. If special care is not taken, unnatural turbulence could be produced which may affect the burning process and the results of the tests. MSHA has not specified a method for removing the flame in order to provide a more performance-oriented requirement and to allow design flexibility. Section 7.408(a)(7) requires that the duration of burning be recorded and that the measurement of the time the specimen continues to burn after the flame from the gas burner has been removed begin concurrently with flame removal. The duration of burning includes the burn time of material that falls from the test specimen after the flame from the gas burner has been removed. This requirement is based on an interpretation of the existing requirement for measuring burn time and is currently considered as a factor for evaluating the flame-resistant properties of signaling cables under existing procedures.

The existing requirements for measuring the length of burned area of the test specimen and for testing three cable specimens, respectively, are retained in § 7.408(a) (8) and (9). These provisions require that the measurement be made longitudinally along the cable axis to provide for a consistent measurement parameter and that the burned length include any charred length.

Section 7.408(b) is derived from § 18.64(e) and the existing signaling cable acceptance program. It specifies the criteria for acceptable performance for this test. It requires that each of the three specimens tested exhibit burn times not exceeding 60 seconds, which is the same as is presently required under the signaling cable flame test program. This time is shorter than for electric cables and splices because the signaling cables are not preheated. The allowable length of burned (charred) area specified; i.e., not exceeding 6 inches, remains the same as the present criteria for this product. The requirement that each of the three specimens meet the acceptable performance criteria of this section is consistent with the existing signaling cable acceptance program.

Section 7.409 Approval Markings

Section 7.409 implements the general provisions of subpart A of this part, which requires each product issued approval under part 7 to have an approval marking. This section of the final rule is derived from existing § 18.64(f) which requires approval markings on electric cables so that mine operators know which cables meet the flame-resistance specifications of the Secretary. It expands the marking requirements to include signaling cables and splices and adds additional marking requirements for electric cables and signaling cables.

One commenter disagreed with the marking of signaling cables and stated that these marking requirements would result in added cost to the industry, while not enhancing safety in any manner. At the present time, MSHA has issued signaling cable acceptances to a number of manufacturers according to guidelines established in the Signaling Cable Acceptance Program developed by the Agency to evaluate these products. Under this program, signaling cable manufacturers are required to mark products that have been granted acceptance by MSHA with permanent and legible approval markings at intervals not exceeding three feet. MSHA believes that products are being marked in this manner without placing a significant financial burden upon the industry and that the presence of an approval marking enhances safety by

providing, for mine operators, identification of those products which have met the flame-resistant criteria of the Agency.

Under part 18, MSHA requires trailing cables to be marked at intervals not exceeding 12 feet, with the marking impressed in the jacket or as raised letters and figures on an impressed background. Other types of cable may be marked in the same manner or have a durable marking printed on the surface of the cable at intervals not exceeding 3 feet. As proposed, the 12-foot marking interval currently specified under part 18 would have been deleted in order to facilitate the identification of shorter sections of cable.

One commenter recommended that the current 12-foot marking interval for trailing cables and mine power feeder cables be retained because these cables are used in lengths long enough to insure proper identification with a 12-foot marking interval. The commenter further noted a lack of personal experience with any problems indicating a need to mark these types of cables in 3-foot intervals. Under the proposal, all approved cables would have to be legibly and permanently marked on the jacket at 3-foot intervals. Further, the marking would have to include additional information pertaining to the size and number of conductors, type of cable, and voltage rating for those cables containing electric conductors, as well as the MSHA-assigned approval number. Although the final rule imposes additional cable making requirements, it allows for flexibility by not specifying the marking method. An electric cable construction approved under this subpart may be used in a number of different applications. In one application it may be used between electric components of a machine; in another as a trailing cable or mine power feeder cable. The cable length in each of these applications can often be 12 feet or less and varies according to the function it serves.

The revised marking regulation will facilitate identification of appropriate cables and splices. Mine operators are obligated to maintain permissible equipment in approved condition. Equipment manufacturers are obligated to assemble permissible equipment according to the design approved by MSHA. Additionally, underground equipment is required to use electric cables and conductors of proper size for the loads involved. Improper cable selection when installing or replacing cables on permissible equipment could cause potential fire and explosion hazards. Cable marking information pertaining to the size (gauge) and number of conductors, as well as cable type and voltage rating for cables containing electric conductors, in addition to the MSHA approval number designation, is considered necessary for a proper and complete identification of an electric cable or signaling cable. Furthermore, a complete identification of a damaged electric cable is required in order to select a splice kit that is proper for the repair. Based upon experience, MSHA believes that there are a number of cable manufacturers who are producing "MSHA accepted" cables that comply with the marking requirements as stated in this subpart and that compliance with these provisions will not impose an undue burden on the industry.

The marking requirements for the jacket in a splice kit remain unchanged from existing policy. The approval marking is required to be legible and permanent and appear at least once on the outside of the assembled splice. One commenter recommended that a splice kit stipulate the size of electric cable that it is designed to repair as this information would help prevent using the wrong kit to repair an electric cable. This information is currently available for the proper selection of splice kits to repair electric cables. Further, the Agency is unaware of any problems resulting from unavailability of this information. It may be supplied on the splice kit package, on the splice outer jacket, on charts, or contained in the detailed assembly instructions which are required to be provided with all splice kit products approved under the existing procedures or under the provisions in § 7.402 and § 7.403 of this final rule. Therefore, the final rule has not been modified to specify the inclusion of this information.

Section 7.410 Post-Approval Product Audit

This section is new and implements the post-approval product audit requirements as set forth in the general provisions of subpart A to this part 7. Subpart A sets forth that a product will be audited no more than once a year unless MSHA has cause to audit more frequently. Paragraph (a) specifies that upon request by MSHA, 12 feet of an approved electric cable or approved signaling cable design be provided at no cost for auditing purposes. Paragraph (b) specifies that 3 approved splice kits of an approved splice kit design, as well as 12 feet of MSHA-approved cable which the splice is designed to repair, be provided at MSHA's request at no cost.

MSHA received a number of comments concerning the post-approval audit provisions of this final rule. Two commenters stated their concern with the "except for cause" provision. One indicated that the term "cause" needed to be explained more fully. The other commenter noted that the Agency could perform more audits if the "except for cause" language were deleted from the final rule. Based on MSHA's experience, the Agency anticipates few instances in which more than one approved cable or spliced product will be required "for cause" from any one manufacturer in any one year. There are circumstances, however, under which an additional audit is appropriate to ascertain compliance with the technical requirements upon which an approval was based. Examples of such circumstances include verified complaints about the safety of approved cables or splices, evidence of changes that have not been approved, audit test results that warrant further testing to determine compliance, and evaluation of corrective action taken by an approval holder. Under these circumstances, an approval holder must provide, at no cost to MSHA, additional approved cables or splices so the Agency can ensure that the approval holder is meeting the obligation to manufacture the product as approved. As an on-going program, MSHA obtains approved cable and splice products from other sources as well to perform product audits. These audit activities supplement existing quality assurance efforts to ensure conformity with the technical requirements upon which product approval was based. This work complements the quality assurance provisions of this subpart by providing a mechanism for independent evaluation by MSHA of approved products on a random basis.

Another commenter indicated that MSHA's intent to conduct all periodic audits of approved products itself is too restrictive. This commenter stated that independent third party agencies, which regularly conduct such product audits as part of their labeling, listing, and follow-up services, should be permitted to perform this function as an alternative to MSHA audits. In the part 7 process, MSHA remains as the approval-issuing authority and as such should maintain control of the post-approval auditing.

As noted in earlier rulemaking for subpart A of this part 7, approved products audited by MSHA will be selected by the Agency as representative of those distributed for use in mines. When an approved product is requested by MSHA for audit from the approval holder, the Agency will arrange to examine and evaluate it at a mutually-

agreed-upon time and location and permit the approval holder to observe audit-related tests. This examination can take place at an MSHA facility, at the manufacturer's plant or distribution center, or at any place agreed upon by MSHA and the approval holder. The information necessary to determine compliance, such as that related to product design, may not be readily available to independent third-party test laboratories. This information is considered, by manufacturers, as proprietary and is not available for disclosure by the Agency. Therefore, while MSHA has no objection to other organizations independently testing cable and splice products against the flame-resistant requirement and reporting this information to the Agency, it must conduct all product audits in order to maintain a viable audit program.

Section 7.411 New Technology

Section 7.411 allows for approval of cables and splice kit designs that incorporate technology for which the specific requirements of this subpart are not applicable, if MSHA determines that the product is as safe as those which meet the requirements of this subpart. One commenter expressed an opinion that this section is unnecessary because part 18 provides MSHA with the authority to approve cable and splice products that incorporate new technology. Although this section is derived from existing § 18.20(b), MSHA believes that it is necessary to retain this provision in the final rule because, after one year from the effective date of this subpart K, part 18 will be modified and those sections pertaining to issuing cable acceptances under part 18 will be deleted. All new cable and splice kit applications will be required to be evaluated under the provisions of this subpart. The Agency recognizes that technology not now envisioned may at some time be applied to cable and splice products. Therefore, MSHA has retained the new technology provisions in this final rule in order to maintain a mechanism for evaluating these products and not limit the introduction of technological improvements or hinder new applications of existing technology. To implement this provision, MSHA will prescribe appropriate test procedures and performance requirements when such an approval is sought.

Once MSHA approves an electric cable, signaling cable, or splice kit under this section, the Agency will make the modified tests and requirements used by MSHA to evaluate a particular technology available to manufacturers and other interested persons. If, over a period of time, MSHA receives a number of applications for the same type of technology or newly adapted technology, MSHA will revise the electric cable, signaling cable, or splice kit approval regulations through the rulemaking process to recognize such developments.

Conforming Amendments

The changes to MSHA's requirements for acceptance of cable and splice kits as flame resistant also necessitate certain conforming modifications to the Agency's safety standards in 30 CFR parts 57 and 75. Currently MSHA's standards require mine operators to use cable which is accepted as flame resistant pursuant to 30 CFR 18.64 in underground coal and metal and nonmetal mines. (See §§ 57.4057, 57.22310, 57.22311, and 75.600–1.) In addition, permanent splices in cable used in underground coal mines must also be flame resistant (see § 75.604(c)).

As discussed in the proposed rule (55 FR 40124), to avoid conflict with amendatory language which had been proposed for the parts 57 and 75 electrical standards, MSHA did not propose amendatory language of these parts in the regulatory text of the proposed rule. However, the preamble to the proposal did state that MSHA intended to amend its safety standard language to state that cables or splices "be accepted or approved by MSHA as flame resistant." Therefore, revisions are being made wherever part 57 or part 75 requires cables or splices to be flame resistant or references the flame-resistance test in § 18.64. The modified wording will allow mine operators to use any cable or splice determined by MSHA to be flame resistant without regard to the specific approval part under which the approval or acceptance was issued. This is possible because cables and splices already tested and accepted by the Agency as flame resistant will remain unaffected by this rule for approval of cables and splice kits under the procedures of part 7.

Derivation Table

The following derivation table lists: (1) Each section number of the final rule (New Section) and (2) the section number of the standard from which the section is derived (Old Section).

DERIVATION TABLE

New Section	Old Section
7.401	18.1.
7.402	New.
7.403	18.6.
7.404	18.35(a)(3).
7.405	New.
7.406	18.64(a) and (b).
7.407(a)	18.64(a), (c) and (d).
7.407(b)	18.64(e).
7.408(a)	18.64(a), (c) and (d).
7.408(b)	18.64(e).
7.409	18.64(f).
7.410	New.
7.411	18.20(b).

Distribution Table

The following distribution table lists: (1) Each section number of the part 18 standard (Old Section) and (2) each section number of final subpart K of part 7 (New Section). New section numbers marked with an asterisk (*) refer to subpart A—the general provisions of part 7 applicable to all technical product subparts.

DISTRIBUTION TABLE

Old Section	New Section
18.1	7.1*, 7.401, 18.1.
18.2	7.2*, 18.2.
18.6	7.3*, 7.403, 18.6.
18.9(a)	7.4(c)*, 18.9(a).
18.10	7.5*, 18.10(a).
18.15	7.3(a)*, 18.15.
18.16	7.9*, 18.16.
18.20(b)	7.411, 18.20(b).
18.35(a)(3)	7.404.
18.64(a)	7.406, 7.407(a), 7.408(a).
18.64(b)	7.406.
18.64(c)	7.407(a) and 7.408(a).
18.64(d)	7.407(a) and 7.408(a).
18.64(e)	7.407(b) and 7.408(b).
18.64(f)	7.409.

IV. Executive Order 12291 and Regulatory Flexibility Act

In accordance with Executive Order 12291, MSHA has prepared an analysis to identify the potential costs and benefits associated with subpart K. This analysis has formed the basis for the Initial Regulatory Flexibility Analysis required by the Regulatory Flexibility Act. In this analysis, MSHA has determined that this rule neither results in major cost increases nor has an incremental effect of $100 million or more on the economy. Therefore, the rule is not within the criteria for a major rule, and a Regulatory Impact Analysis is not necessary.

The Regulatory Flexibility Act requires that in developing regulatory proposals agencies evaluate compliance alternatives that minimize any adverse impact on small businesses. Subpart K would clarify the standards which industry must meet for approval of electric cables, signaling cables, and cable splice kits. MSHA designed its product testing requirements to be as performance oriented as possible to

allow manufacturers to choose the most cost-effective option. Performance-oriented standards should benefit both large and small manufacturers.

The rule upgrades existing requirements in 30 CFR § 18.64 that address the acceptance of electric cables as flame-resistant. It establishes flame-resistant requirements for the approval of signaling cables and cable splice kit designs. MSHA currently accepts these products under the requirements in § 18.64, which have been modified for signaling cables and cable splice kits. The rule also includes current terminology, not in part 18, in the definitions section of part 7; eliminates unnecessary provisions, such as certain cable marking requirements; and, where possible, provides alternative methods of compliance.

This final rule does not significantly alter the existing technical requirement for electric cables, signaling cables, and cable splice kits. MSHA requires certain electric cables used in underground coal and gassy metal/nonmetal mines to be approved (accepted). MSHA has interpreted this to include signaling cables and splice kits, although existing requirements do not include approval criteria for these materials. The final rule sets out, with little modification, the approval criteria presently used by MSHA to approve these products. MSHA expects all currently accepted electric cables, signaling cables and splice kit materials to be able to meet the technical requirements. There is no additional cost associated with this requirement, since existing regulations require approval. Any necessary testing of products required by MSHA either is not substantially different from that currently undertaken or does not impose significant costs compared to the sales value of the product. The application procedures, testing procedures, quality assurance program, and annual audit do not impose significant costs.

The rule will increase private-sector involvement in the approval of mining products. For the first time, in lieu of testing only by MSHA, the applicant or a third party selected by the applicant will test electric cables, signaling cables, and splices in electric cables. The Agency anticipates that this new procedure will reduce duplicate testing of products in some cases and eliminate associated costs and potential delays in product approvals. In addition, MSHA expects that this procedure will enhance the safety of miners through the more rapid introduction of technological advances in mining products.

During the phase-in period for subpart K, which will be 1 year from the effective date of this final rule, MSHA will grant extensions of approval pursuant only to the part under which the original approval was granted. After the phase-in period, MSHA will discontinue issuing acceptances under the existing acceptance programs, and all applications for an approval or an extension of approval for electric cables, signaling cables, and cable splice kits will be subject to the provisions of part 7. If a manufacturer does not change a product that has a current acceptance, then it can continue to be manufactured and used.

The proposal will affect 135 foreign and domestic firms that currently have MSHA acceptances for electric cables, signaling cables, or cable splice kits. Of these firms, 68 manufacture electric cables, 6 manufacture signaling cables, 7 manufacture both signaling and electric cables, and 54 manufacture splice kits. About 33 percent of these firms have not had any contact with MSHA in the past 10 years.

MSHA estimates that the annual compliance cost increase due to the provisions of subpart K will be about $17,000, but there will be an offsetting cost reduction of about $6,400 from MSHA testing fees and shipping costs. The total annual incremental cost increase, therefore, will be about $10,600. Product audits, the most costly provision, will cost about $9,800.

V. Paperwork Reduction Act

This final rule contains information collection requirements subject to the Paperwork Reduction Act of 1980.

Section 7.403 requires applicants seeking approval of electric cables, signaling cables, and cable splice kits to submit an application for approval. MSHA estimates that there will be an average of 38 applications submitted per year, each requiring 1 hour to prepare, and an average of 3 applications submitted per year, each requiring 4 hours to prepare for a total of 50 burden hours.

Section 7.4(a) requires records of test results and procedures to be retained for at least 3 years. Standard testing protocols used by the manufacturing community include the keeping of records of product testing; therefore, MSHA estimates there will be no additional cost for applicants to maintain these records.

Section 7.7(d) requires applicants to report to MSHA any knowledge of a product distributed with critical characteristics not in accordance with the approval specifications. MSHA estimates that manufacturers will submit 142 reports per year requiring 15 minutes per report for a total of 36 burden hours.

The rule requires applicants to maintain records on the distribution of each product bearing an approval marking as set forth in § 7.7(c). This provision does not specify the type of record, and MSHA believes applicants will use existing sales record systems to comply.

In accordance with § 3504(h) of the Paperwork Reduction Act of 1980, the collection of information requirements contained in § 7.403 of the final rule have been approved by OMB under control number 1219–0100.

List of Subjects in 30 CFR Parts 7, 18, 57, and 75

Mine safety and health, Underground mining.

Dated: December 14, 1992.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

Chapter I of title 30 of the Code of Federal Regulations is amended as follows:

PART 7—TESTING BY APPLICANT OR THIRD PARTY

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

Authority: 30 U.S.C. 957.

2. Section 7.44 is amended by revising the first sentence of paragraph (k) to read as follows:

§ 7.444 Technical requirements.

* * * * *

(k) Cables within a battery box shall be accepted by MSHA as flame resistant under part 18 of this chapter or approved under subpart K of this part.

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3. A new subpart K is added to part 7 to read as follows:

Subpart K—Electric Cables, Signaling Cables and Cable Splice Kits.

Sec.

7.401 Purpose and effective date.
7.402 Definitions.
7.403 Application requirements.
7.404 Technical requirements.
7.405 Critical characteristics.
7.406 Flame test apparatus.
7.407 Test for flame resistance of electric cables and cable splices.
7.408 Test for flame resistance of signaling cables.
7.409 Approval markings.
7.410 Post-approval product audit.
7.411 New technology.

§ 7.401 Purpose and effective date.

This subpart establishes the flame-resistant requirements for approval of

electric cables, signaling cables and cable splice kit designs. Applications for approval or extension of approval submitted after February 22, 1994 shall meet the requirements of this subpart.

§ 7.402 Definitions.

The following definitions apply in this subpart.

Component. Any material in a cable splice kit which becomes part of a splice.

Conductor. A bare or insulated wire or combination of wires not insulated from one another, suitable for carrying an electric current.

Electric Cable. An assembly of one or more insulated conductors of electric current under a common or integral jacket. A cable may also contain one or more uninsulated conductors.

Jacket. A nonmetallic abrasion-resistant outer covering of a cable or splice.

Power Conductor. An insulated conductor of a cable assembly through which the primary electric current or power is transmitted.

Signaling Cable. A fiber optic cable, or a cable containing electric conductors of a cross-sectional area less than #14 AWG used where the circuit cannot deliver currents which would increase conductor temperatures beyond that established for the current-carrying capacity of the conductors.

Splice. The mechanical joining of one or more severed conductors in a single length of a cable including the replacement of insulation and jacket.

Splice Kit. A group of materials and related instructions which clearly identify all components and detail procedures used in safely making a flame-resistant splice in an electric cable.

§ 7.403 Application requirements.

(a) *Electric cables and signaling cables.* A single application may address two or more sizes, types, and constructions if the products do not differ in composition of materials or basic design. Applications shall include the following information for each product:

(1) Product information:

(i) Cable type (for example, G or G–GC).

(ii) Construction (for example, round or flat).

(iii) Number and size (gauge) of each conductor.

(iv) Voltage rating for all cables containing electric conductors.

(v) For electric cables, current-carrying capacity of each conductor, with corresponding ambient temperature upon which the current rating (ampacity) is based, of each power conductor.

(2) Design standard. Specify any published consensus standard used and fully describe any deviations from it, or fully describe any nonstandard design used.

(3) Materials. Type and identifying numbers for each material comprising the finished assembly.

(b) *Splice kit.* A single application may address two or more sizes, types, and constructions if the products do not differ in composition of materials or basic design. Applications shall include the following information for each product:

(1) Product information:

(i) Trade name or designation (for example, style or code number).

(ii) Type or kit (for example, shielded or nonshielded).

(iii) Voltage rating.

(2) Design standard. Specify any published design standard used and fully describe any deviations from it, or provide complete final assembly dimensions for all components for each cable that the splice kit is designed to repair.

(3) Materials. Type of materials, supplier, supplier's stock number or designation for each component.

(4) Complete splice assembly instructions which clearly identify all components and detail procedures used in making the splice.

§ 7.404 Technical requirements.

(a) Electric cables and splices shall be flame resistant when tested in accordance with § 7.407.

(b) Signaling cables shall be flame resistant when tested in accordance with § 7.408.

§ 7.405 Critical characteristics.

(a) A sample from each production run, batch, or lot of manufactured electric cable, signaling cable, or splice made from a splice kit shall be flame tested, or

(b) A sample of the materials that contribute to the flame-resistant characteristic of the cable or splice and a sample of the cable or splice kit assembly shall be visually inspected or tested through other means for each production run, batch, or lot to ensure that the finished product meets the flame-resistance test.

§ 7.406 Flame test apparatus.

The principal parts of the apparatus used to test for flame resistance of electric cables, signaling cables and splices shall include:

(a) *Test chamber.* A rectangular enclosure measuring 17 inches deep by 14½ inches high by 39 inches wide and completely open at the top and front. The floor or base of the chamber shall be fabricated or lined with a noncombustible material that will not extinguish burning matter which may fall from the test specimen during testing. The chamber shall have permanent connections mounted to the back wall, sides, or floor of the chamber which extend to the sample end location. These are used to energize the electric cable and splice specimens. They are not used, but may stay in place, when testing signaling cables.

(b) *Specimen holder (support).* A specimen holder (support) consisting of three separate metal rods each measuring approximately 3/16 inch in diameter (nominal) to support the specimen. The horizontal portion of the rod which contacts the test specimen shall be approximately 12 inches in length.

(c) *Gas ignition source.* A standard natural gas type Tirrill burner, with a nominal inside diameter of 3/8 inch, to apply the flame to the test specimen. The fuel for the burner shall be natural gas composed of at least 96 percent combustible hydrocarbons, with at least 80 percent being methane.

(d) *Current source.* (For electric cables and splices only). A source of electric current (either alternating current or direct current) for heating the power conductors of the test specimen. The current source shall have a means to regulate current flow through the test specimen and have an open circuit voltage not exceeding the voltage rating of the test specimen.

(e) *Current measuring device.* (For electric cables and splices only). An instrument to monitor the effective value of heating current flow through the power conductors of the specimen within an accuracy of ±1 percent.

(f) *Temperature measuring device.* (For electric cables and splices only). An instrument to measure conductor temperature within an accuracy of ±2 percent without the necessity of removing material from the test specimen in order to measure the temperature.

§ 7.047 Test for flame resistance of electric cables and cable splices.

(a) *Test procedure.* (1) For electric cables, prepare 3 specimens of cable, each 3 feet in length, by removing 5 inches of jacket material and 2½ inches of conductor insulation from both ends of each test specimen. For splices, prepare a splice specimen in each of 3 sections of MSHA-approved flame-resistant cable. The cable shall be of the type that the splice kit is designed to

repair. The finished splice shall not exceed 18 inches or be less than 6 inches in length for test purposes. The spliced cables shall be 3 feet in length with the midpoint of the splice located 14 inches from one end. Both ends of each of the spliced cables shall be prepared by removing 5 inches of jacket material and 2½ inches of conductor insulation. The type, amperage, voltage rating, and construction of the cable shall be compatible with the splice kit design. Each splice shall be made in accordance with the instructions provided with the splice kit.

(2) Prior to testing, condition each test specimen for a minimum of 24 hours at a temperature of 70±10°F (21.1±5.5°C) and a relative humidity of 55±10 percent. These environmental conditions shall be maintained during testing.

(3) For electric cables, locate the sensing element of the temperature measuring device 26 inches from one end of each test specimen. For splices, locate the sensing element 12 inches from the midpoint of the splice and 10 inches from the end of the cable. The sensing element must be secured so that it remains in direct contact with the metallic portion of the power conductor for the duration of the flame-resistant test. If a thermocouple-type temperature measuring instrument is used, connect the sensing element through the cable jacket and power conductor insulation. Other means for monitoring conductor temperature may be used, provided the temperature measurement is made at the same location. If the jacket and conductor insulation must be disturbed to insert the temperature measuring device, each must be restored as closely as possible to its original location and maintained there for the duration of the testing.

(4) Center the test specimen norizontally in the test chamber on the three rods. The three rods shall be positioned perpendicular to the longitudinal axis of the test specimen and at the same height, which permits the tip of the inner cone from the flame of the gas burner, when adjusted in accordance with the test procedure, to touch the jacket of the test specimen. The specimen shall be maintained at this level for the duration of the flame test. The two outermost rods shall be placed so that 1 inch of cable jacket extends beyond each rod. For electric cables, the third rod shall be placed 14 inches from the end of the test specimen nearer the temperature monitoring location on the specimen. For splices, the third rod shall be placed between the splice and the temperature monitoring location at a distance 8 inches from the midpoint of the splice. The specimen shall be free from external air currents during testing.

(5) Adjust the gas burner to give an overall blue flame 5 inches high with a 3-inch inner cone. There shall be no persistence of yellow coloration.

(6) Connect all power conductors of the test specimen to the current source. The connections shall be secure and compatible with the size of the cable's power conductors in order to reduce contact resistance.

(7) Energize all power conductors of the test specimen with an effective heating current value of 5 times the power conductor ampacity rating (to the nearest whole ampere) at an ambient temperature of 104 °F (40 °C).

(8) Monitor the electric current through the power conductors of the test specimen with the current measuring device. Adjust the amount of heating current, as required, to maintain the proper effective heating current value within ±5 percent until the power conductors reach a temperature of 400 °F (204.4 °C).

(9) For electric cables, apply the tip of the inner cone from the flame of the gas burner directly beneath the test specimen for 60 seconds at a location 14 inches from one end of the cable and between the supports separated by a 16-inch distance. For splices, apply the tip of the inner cone from the flame of a gas burner for 60 seconds beneath the midpoint of the splice jacket.

(10) After subjecting the test specimen to external flame for the specified time, fully remove the flame of the gas from beneath the specimen without disturbing air currents within the test chamber. Simultaneously turn off the heating current.

(11) Record the amount of time the test specimen continues to burn after the flame from the gas burner has been removed. The duration of burning includes the burn time of any material that falls from the test specimen after the flame from the gas has been removed.

(12) Record the length of burned (charred) area of each test specimen measured longitudinally along the cable axis.

(13) Repeat the procedure for the remaining two specimens.

(b) *Acceptable performance.* Each of the three test specimens shall meet the following criteria:

(1) The duration of burning shall not exceed 240 seconds.

(2) The length of the burned (charred) area shall not exceed 6 inches.

§ 7.408 Test for flame resistance of signaling cables.

(a) *Test procedure.* (1) Prepare 3 samples of cable each 2 feet long.

(2) Prior to testing, condition each test specimen for a minimum of 24 hours at a temperature of 70±10 °F (21.1±5.5 °C) and relative humidity of 55±10 percent. These environmental conditions shall be maintained during testing.

(3) Center the test specimen horizontally in the test chamber on the three rods. The three rods shall be positioned perpendicular to the longitudinal axis of the test specimen and at the same height, which permits the tip of the inner cone from the flame of the gas burner, when adjusted in accordance with the test procedure, to touch the test specimen. The specimen shall be maintained at this height for the duration of the flame test. The two outermost rods shall be placed so that 1 inch of cable extends beyond each rod. The third rod shall be placed at the midpoint of the cable. The specimen shall be free from external air currents during testing.

(4) Adjust the gas burner to give an overall blue flame 5 inches high with a 3-inch inner cone. There shall be no persistence of yellow coloration.

(5) Apply the tip of the inner cone from the flame of the gas burner for 30 seconds directly beneath the specimen centered between either and support and the center support.

(6) After subjecting the test specimen to external flame for the specified time, fully remove the flame of the gas from beneath the specimen without disturbing air currents within the test chamber.

(7) Record the amount of time the test specimen continues to burn after the flame from the gas burner has been removed. The duration of burning includes the burn time of any material that falls from the test specimen after the flame from the gas has been removed.

(8) Record the length of burned (charred) area of each test specimen measured longitudinally along the cable axis.

(9) Repeat the procedure for the remaining two specimens.

(b) *Acceptable performance.* Each of the three test specimens shall meet the following criteria:

(1) The duration of burning shall not exceed 60 seconds.

(2) The length of the burned (charred) area shall not exceed 6 inches.

§ 7.409 Approval marking.

Approved electric cables, signaling cables, and splices shall be legibly and permanently marked with the MSHA-

assigned approval marking. For electric cables and signaling cables, the marking shall appear at intervals not exceeding 3 feet and shall include the MSHA-assigned approval number in addition to the number and size (gauge) of conductors and cable type. For cables containing electric conductors, the marking shall also include the voltage rating. For splices, the marking shall be placed on the jacket so that it will appear at least once on the assembled splice.

§ 7.410 Post-approval product audit.

Upon request by MSHA, but no more than once a year except for cause, the approval holder shall supply to MSHA for audit at no cost—

(a) 12 feet of an approved electric cable or approved signaling cable; or

(b) 3 splice kits of one approved splice kit design and 12 feet of MSHA-assigned cable that the splice kit is designed to repair.

§ 7.411 New technology.

MSHA may approve cable products or splice kits that incorporate technology for which the requirements of this subpart are not applicable if the Agency determines that they are as safe as those which meet the requirements of this subpart.

PART 18—ELECTRIC MOTOR-DRIVEN MINE EQUIPMENT AND ACCESSORIES

4. The authority citation for Part 18 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

§ 18.1 [Amended]

5. Section 18.1 is amended by removing the phrase "cables, hoses, and conveyor belts," and inserting "hoses and conveyor belts,".

§ 18.2 [Amended]

6. Section 18.2 is amended by removing the phrase "cable, hose, or conveyor belt," and inserting "hose or conveyor belt" in the definitions of "Acceptance", "Acceptance marking", and "Applicant".

§ 18.6 [Amended]

7. Section 18.6(a) is amended by removing the phrase "cables, hose, or conveyor belt," and inserting "hose or conveyor belt,".

8. Section 18.6(b) is removed and reserved.

9. Section 18.6(i) is amended by removing the phrase "cable, hose, or conveyor belt," and inserting "hose or conveyor belt,", and removing the words "Cable—a sample having a minimum length of 12 feet;".

§ 18.9 [Amended]

10. Section 18.9(a) is amended by removing the phrase "cable, hose, or conveyor belt," and inserting "hose or conveyor belt,".

11. Section 18.35(a)(3) is revised to read as follows:

§ 18.35 Portable (trailing) cables and cords.

(a) * * *

(3) Be accepted as flame resistant under this part or approved under subpart K of part 7 of this chapter.

* * * * *

§ 18.64 [Removed]

12. Section 18.64 is removed.

13. Section 18.94(a)(2) is revised to read as follows:

§ 18.94 Application for field approval; contents of application.

(a) * * *

(2) The trade name and the flame-resistance acceptance or approval number of any cable, cord, hose, or conveyor belt installed on the machine for which prior acceptance or approval by MSHA has been issued.

* * * * *

PART 57—SAFETY AND HEALTH STANDARDS—UNDERGROUND METAL AND NONMETAL MINES

14. The authority citation for part 57 continues to read as follows:

Authority: 30 U.S.C. 811, 957, and 961.

15. Section 57.4057 is revised to read as follows:

§ 57.4057 Underground trailing cables.

Underground trailing cables shall be accepted or approved by MSHA as flame resistant.

16. Section 57.22310 is revised to read as follows:

§ 57.22310 Electrical cables (I–C mines).

Electrical cables used to power submersible sump pumps shall be accepted or approved by MSHA as flame resistant, or be installed in continuous metal conduit or metal pipe. The ends of such conduit or pipe shall be sealed to prevent entry of explosive gas or dust.

17. Section 57.22311 is revised to read as follows:

§ 57.22311 Electrical cables (II–A mines).

Only jacketed electrical cables accepted or approved by MSHA as flame resistant shall be used to supply power to distribution boxes and electrical equipment operating in face and bench areas.

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

18. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811, 957, and 961.

19. Section 75.600–1 is revised to read as follows:

§ 75.600–1 Approved cables; flame resistance.

Cables shall be accepted or approved by MSHA as flame resistant.

20. In § 75.604, paragraph (d) is added to read as follows:

§ 75.604 Permanent splicing of trailing cables.

* * * * *

(d) Made using splice kits accepted or approved by MSHA as flame resistant.

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Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 990

Low-Income Public Housing; Project-Based Accounting; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 990

[Docket No. R–92–1595; FR 3088–F–03]

RIN: 2577–AB08

Low-Income Public Housing; Project-Based Accounting

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: The Department is amending 24 CFR chapter IX by adding a new subpart C in part 990 to require Public Housing Agencies (but not Indian Housing Authorities) to establish and maintain a system of accounting for income and expenses by project or by reference to some other appropriate cost center. This change is directed by section 502(c) of the National Affordable Housing Act of 1990, as amended by the Housing and Community Development Act of 1992. That Act requires that the Department promulgate project-based accounting regulations in accordance with section 553 of title 5, U.S.C., taking into account the requirements of public housing agencies of different sizes and characteristics, making the new accounting system effective for PHAs with 500 or more public housing units by January 1, 1993, and for projects with fewer than 500 units by January 1, 1994.

EFFECTIVE DATE: January 21, 1993. For public housing agencies operating 500 or more public housing rental units, the rule will apply to PHA fiscal years beginning on or after January 1, 1993. For Public Housing Agencies operating fewer than 500 public housing rental units, the rule will apply to PHA fiscal years beginning on or after January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. John T. Comerford, Director, Financial Management Division, Office of Management Operations, Public and Indian Housing, room 4212, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–1872. Hearing or speech impaired individuals may call the Office of Public and Indian Housing's TDD number, (202) 708–0850. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

The information collection requirements contained in this final rule have been approved by the Office of Management and Budget, under § 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) and assigned OMB control number 2577–0159.

II. Background

Currently, Public Housing Agencies (PHAs) maintain a consolidated accounting system for projects owned and operated by the PHAs as part of the Low Income Public Housing Program. Under such a system, the operating revenues and expenses for all projects are combined. A system of the kind described is necessary for a PHA in order for it to respond to Federal requirements for accounting and reporting under the PHA's Consolidated Annual Contributions Contract (ACC), under which all projects are combined for determination of eligibility for operating subsidy.

There are a number of advantages to the consolidated system, both from the Federal government's perspective in managing a housing assistance program and the PHA's point of view as a recipient of Federal assistance. From a property management perspective, however, consolidated budgeting and accounting can limit information available for management decision making, and accountability for project-level operations. Cost-effective management of rental properties requires that managers be aware of income and expenditures at specific properties or management entities, so that appropriate decisions can be made concerning allocation of resources. One means to achieve that awareness and to assist managers in allocating resources is through a system of project-based accounting (PBA).

In 1990, Congress enacted legislation imposing the use of a PBA system on PHAs. The Cranston-Gonzalez National Affordable Housing Act of 1990 (NAHA) amended section 6(c)(4) of the U.S. Housing Act of 1937 (1937 Act) as follows:

"(4) the public housing agency shall comply with such procedures and requirements as the Secretary may prescribe to assure that sound management practices will be followed in the operation of the project, including requirements pertaining to—

* * * * *

(E) except in the case of agencies not receiving operating assistance under section 9, the establishment and maintenance of a system of accounting for rental collections and costs (including administrative, utility, maintenance, repair and other operating costs) for each project or operating cost center (as determined by the Secretary) which collections and costs shall be made available to the general public and submitted to the appropriate local public official (as determined by the Secretary); except that the Secretary may permit agencies owning or operating less than 250 units to comply with the requirements of this subparagraph by accounting on an agency-wide basis."

The Department published a proposed rule to implement this provision in the **Federal Register** on April 3, 1992 (57 FR 11448). This final rule responds to the public comments received on that proposed rule, and to the subsequent statutory revision.

III. Final Rule

This final rule implements the provisions in NAHA by adding a new subpart C to part 990, requiring PHAs that receive operating subsidy under section 9 of the 1937 Act use PBA. Part 990 is controlling with respect to operating subsidy and Performance Funding System (PFS) and PBA is equally applicable to PFS housing authorities under subpart A and to non-PFS PHAs under subpart B of part 990.

An exception from the requirements to implement PBA is provided for PHAs that have fewer than 250 units. (The 250-unit threshold applies to PHA-owned rental units and excludes section 8 units and homeownership units.)

The new subpart C is not applicable to Indian Housing Authorities (IHAs) operating under 24 CFR part 905. Section 527 of NAHA specifically exempts IHAs from the PBA requirements in section 502 of that Act.

Only the terms "cost center" and "project" are defined. The definition of "cost center" includes the language from 24 CFR 964.7, where "project" is defined for resident management programs. "Project," as defined, is limited to a development project under a HUD-assigned project number. Language for "cost center" is included to clarify that PHAs are not bound to maintain separate accounting for every HUD-originated and HUD-numbered development project. However, where a cost center consists of units in two or more projects (as identified by their HUD-assigned project numbers), the PHA must identify the individual project numbers and the number of units, and characterize (i.e., high-rise family, mid-rise family, scattered-site, etc.) each numbered project included in the cost center.

Covered PHAs are to implement a PBA system in a manner capable of generating information to meet HUD consolidated reporting requirements.

The PBA system is to account for project-specific operating income and operating costs either by reference to projects or cost centers. At a minimum, rental income and excess utilities income are considered project-specific operating income, and utilities expense and direct maintenance expense (materials and labor) are considered project-specific operating expenses.

Indirect income and costs that are not project-specific and are not identifiable with, or readily assignable to, a specific project or cost center, such as PHA central office overhead expense, are expressly excluded from the PBA requirement.

The goal of creating a more effective tool for PHA management through PBA is best served, the Department believes, by permitting PHAs that decide to use a cost center system to identify the cost centers to be monitored, in accordance with the goals and priorities of the PHA and its parent government. In the event of a disagreement between HUD and the PHA over the appropriateness of the PHA's configuration of accountable cost centers, the burden of proof will be on HUD to demonstrate that the PHA's PBA program is inconsistent with statutory objectives, or is otherwise inadequate or inappropriate.

PHAs must maintain fiscal year-end income and expense reports, reflecting the required PBA information, by project or cost center. These reports are to be made available for review by the public and distributed, as promptly as possible after the close of the PHA's fiscal year, to the Chairman and each member of the housing commission.

PHAs are to document compliance with PBA requirements by filing with HUD a one-time certification of compliance. The PHA must certify, in a form acceptable to HUD, that it is aware of and in compliance with the specifications of this rule. The certification identifies each project or other cost center, the basis on which each project or other cost center was established and determined to be in compliance, and (when a cost center consists of units in two or more projects) the project numbers assigned by HUD to the included projects in the development documents. The certification is updated only when the PHA deletes units, or adds additional units or projects, to its inventory of units in management, or if the PHA elects to reconfigure its system of cost centers.

The regulation becomes effective with a PHA's first fiscal year beginning on or after (a) January 1, 1993, for PHAs with 500 or more units, and (b) January 1, 1994, for PHAs with 250 to 500 units, as prescribed by law. Any PHA that currently is operating fewer than 250 rental units must come into compliance with the requirements of the rule beginning in the first fiscal year after the date the PHA's inventory of rental units reaches 250.

IV. Response to Public Comments

Fifty-four comments were received during the comment period. Comments were received from 43 public housing agencies, one Indian housing authority, four public interest groups, and six public accountants. Many of the comments criticized the requirement of PBA as being unnecessary regulation, duplicative to the Public Housing Management Assessment Program (PHMAP), and not helpful for its intended purpose. Commenters also focused on the burdens imposed in changing to PBA, as well as the perceived increase in labor and costs. A large number of the comments received were directed at provisions in the PBA Guidebook that was published after the OKM Associates 1990 study of PBA systems, conducted at the request of the Department. The requirements in the Guidebook for implementation of PBA system are not, however, part of this rule. The comments reflect a number of misinterpretations about the requirements of the proposed PBA rule. Following is a full discussion of all of the comments.

National Affordable Housing Act of 1990

A number of commenters, while acknowledging that the PBA proposed rule was intended to implement a NAHA provision, characterized the requirement as "an ill-conceived idea" and referred to the concept on which the rule is based as inherently unsound and inappropriate as a means of monitoring the true costs and management of PHAs. One CPA saw only more complexities, with inconclusive benefits, and expressed the opinion that common sense was "being swapped for computer software packages." Some commenters argued that PBA is not necessary to comply with the requirements of NAHA, because PBA neither achieves the intended objective as a management tool nor the intent of the Senate Committee to avoid building "rigidities into public housing resource management." PHAs and interest groups recommended several alternatives and modifications, including: (1) Allowing the use of existing systems that PHAs have in place for making management decisions on resource allocation in lieu of PBA; (2) requiring that PHAs implement PBA only for direct costs and income; and (3) tracking direct maintenance costs incurred on work orders by project only, or imposing no requirement to break down costs by project when expenditures are already tracked by type; and (4) not requiring PHAs to submit separate HUD–52599, HUD–52598, and HUD–52722B forms by project.

The Department disagrees with commenters who contended that this rule fails in its objective. As reported in the study conducted by OKM Associates, PBA delivers maximum benefits for PHAs using multiple cost centers, expanded charts of accounts, links between capital and operating budgets, and operating standards monitored by internal audit and staff control.

After careful study of the statute and legislative history of NAHA, the Department determined that the only means by which the Congressional purpose could be met was to publish a proposed rule requiring PHAs to implement PBA. The statute refers to "a system of accounting * * * for each project or operating cost center" and the Senate Committee Report expressly states the requirement that "project-based accounting be implemented * * *"[.] Consequently, none of the alternatives to implementing PBA presented by the commenters would be sufficient to meet Congressional intent. The recommended modification that PHAs be required to implement PBA only for direct costs and income was considered to be consistent with the statute, and § 990.310 has been revised accordingly in the final rule.

The provisions in this PBA rule do not require PHAs to submit separate HUD–52599, HUD–52598, and HUD–52722B forms by project. No reports are required to be submitted to HUD, and the rule does not prescribe a reporting format for the annual reports to be submitted to the Commissioners. In addition, the rule does not mandate either a methodology for collecting project level cost data or a specific PBA structure. For example, maintenance expenditures accounted for by type need not also be accounted for by project if a breakdown of project level costs can be compiled for PBA report purposes from work orders.

This rule was drafted against the backdrop of the Senate's stated intention that PBA be implemented in a way that avoids building "rigidities into public housing resource management". This is evidenced by the flexible provisions of the rule, such as the broad definition of the term "cost center" and the authority granted to PHAs that elect

to use a cost-center PBA system to establish operating cost centers on any reasonable basis that reflects management structure.

Finally, the Department suggests that comments representing opinions on the efficacy of the statute are appropriately addressed to the Congress.

PBA as a Management Tool

Forty-nine commenters stated that PBA was of no benefit in generating information for making management decisions relating to the allocation of resources. These commenters noted that for private property managers, information on individual projects would be considered essential in making decisions about rent increases or available services. The commenters stated that housing authorities, however, have no control over the rent charged or the subsidy provided, and have little control over services offered and the age of the project. Further, family size and other project-unique characteristics determine the level of service and maintenance. Accordingly, the commenters concluded, the "bottom line profit or loss" on a project is not of the same importance in public housing, because it is not an indicator of good performance, nor is it the basis for project resource allocation because, for example, "repairs must be made". Some commenters went on to say that older projects or projects with negative rents may always show net deficits, and PHAs normally do not have the option of disposing of "troubled" projects.

The Department finds that these comments reflect a misunderstanding of the statute, regulation and Congressional intent. The implementation of PBA is not an attempt to identify or isolate developments which do not make a "profit". Rather, PBA is seen by Congress and HUD as a valuable management tool that is used universally in private real estate management operations and that can have similar usage in, and show improvements for, PHAs.

HUD is aware of the limitations that exist for public housing management that do not exist in the private market. Still, even without having ultimate control over income and operating subsidies, PHAs do have control over the allocation of these resources; the ability to target the resources productively in enhanced when either project-by-project or cost center-level expense information is available through PBA.

In addition, although there are statutory and regulatory limitations on a PHA's ability to dispose of "troubled" developments, the Department points out that these limitations do not impose absolute prohibitions. Further, PHAs with 250 or more units have a source of funds under the Comprehensive Grant Program (CGP) for modernizing projects, which source is not available to operators of private developments.

Effectiveness of the Existing Consolidated System

A number of commenters responded to the background material in the proposed rule that described certain advantages of the consolidated system of reporting. They stated that the PBA rule overlooks these advantages as well as the fact that PHAs already have in place methods for making management decisions relating to the allocation of resources, which methods reflect the years of effort, study, and time spent developing and refining the most effective system for a particular agency. Several PHAs noted that they have effective cost information systems, based on cost category, which provide needed information for compiling HUD data for Comprehensive Improvement Assistance Program and CGP requests. They explained that these systems are designed to track cost trends, alert the PHA to potential problem areas and assist in preparing consolidated budgets. An accounting firm, representing sixty housing authorities, stated that it did "not understand the benefits that would be gained by project based accounting other than increased paper work and the ability to hide expenses." This commenter saw PBA as "another accounting nightmare that will only cost PHAs time and money and offer no benefit."

Congress and HUD recognize that many well-managed PHAs have systems in place that are adequate to provide the requisite management information. It is the Department's belief that many of the PHA commenters who objected to this rulemaking on the basis of the adequacy of their existing systems would be the PHAs that have the least difficulty in making the additional adjustment to comply with the final regulation.

Nonetheless, in recognition of the current systems, the requirements imposed by the rule, as explained above, are very flexible and do not attempt to impose a mandatory framework for PBA, beyond that which is statutorily specified.

Ability of PBA to Affect or Improve Management

A frequent comment was that management problems will not be solved by a change in the accounting system or by requiring additional cost information and more reports because "sound management" is a matter of using information, not generating it. A typical viewpoint of the commenters was that "Federal regulations are attempting to overburden all of us because of a few who are not doing their jobs" and that HUD "can not mandate or write enough regulations to assure that all authorities are soundly managed * * * only qualified, dedicated Directors and staff can assure this."

The Department agrees that it is not regulations alone that will assure sound management. This regulation provides that Directors and staff implement PBA in a manner that best suits their needs and that can be effected at the least cost in the most efficient manner. Although PBA may not provide the solution to PHA management problems, Congress and the Department believe that the use of PBA provides another tool to assist the less well managed PHAs and direct their attention to data which heretofore has not been available to them.

Paperwork Burden and Cost Effectiveness

Numerous objections were raised by commenters in response to the estimated reporting and recordkeeping burden of one and one-quarter hours per PHA. An accounting firm and a PHA characterized the estimate as outrageous and ridiculous. These commenters argued that PBA would cause a tremendous increase in staff hours, require computer hardware and software redesign, increase staff training time, require additional staff to handle accounting and reporting, increase accounting and auditing fees, and necessitate the hiring of consultants. Both PHAs and public interest group commenters expressed concern that a PBA system might result in the abandonment of currently effective, and more valuable, data systems because PHAs would not be able to afford to absorb the increased cost of the PBA system.

The Department has not changed the number of estimated burden hours because the original estimate was based on a number of considerations, including that many PHAs, particularly the larger ones, have existing systems in place that provide for the accumulation and allocation of resources by management areas; that little, if any, modification of existing systems would be required in order to further identify consolidated income and expense categories by project or cost center; and, that the only continuing additional workload incurred by PHAs would be in the preparation of the required fiscal

year end information reports for the Board by project or cost center.

The Department recognizes that the extent to which current accounting systems may have to be augmented to provide subsidiary PBA income and expense information to the consolidated accounts will vary from PHA to PHA. Nevertheless, the Department believes that, on the average, the ongoing time required will be limited to preparing the annual project and cost center reports for distribution to the Board.

Many of the Commenters who raised objections to the estimate of burden hours saw the scope of the impact that PBA will have on an existing PHA accounting system as greater than it will be. Several of the perceived consequences of PBA included the erroneous assumption that PBA imposes a mandatory framework of accounting or reporting that would require extensive revision of existing accounting systems; that separate operating budgets and HUD reporting forms would have to be prepared and submitted by project; that separate general ledgers would have to be maintained by project; that PBA means the assignment of specific staff to individual projects which would either require hiring additional staff or result in idle time for existing staff; and that operating subsidy and operating reserves would have to be calculated and maintained by project.

A careful reading of the final rule clearly indicates that these are not requirements of PBA. As stated above, the regulation does not impose a mandatory framework of accounting or reporting. Nor does the regulation impose any of the other requirements mentioned by the commenters, like the need to calculate and maintain project-level operating subsidies and operating reserves, prepare and submit HUD reporting forms, or assign specific staff to individual projects. Both the proposed and the final PBA rule require PHAs to implement a PBA system either on a project-by-project or cost center level, as determined in the sole discretion of the PHA, and to produce a fiscal year-end income and expense financial statement that must be distributed to the Board and made available to the public. No additional general ledgers are required, nor is any additional HUD reporting required under the terms of this rule.

The commenters also noted that the OKM Associates study undertaken at the request of the Department did not provide cost effectiveness data, and they stated that any cost benefits derived from PBA would be more than offset by the additional administrative cost burdens. The Department points out that this rule is promulgated pursuant to statutory provision, therefore, a cost benefit demonstration is not required.

These commenters seemed to interpret the rule as mandating a specific HUD-approved PBA structure, which might require the abandonment of currently effective monitoring management information systems. On the contrary, the rule incorporates the flexibility permitted in the statute to allow PBA to be implemented in a manner best suited to the management of each PHA. The PBA system can be an adjunct to the existing accounting system or a replacement thereof. Neither scenario is mandated. As such, the perceived costs to be incurred for reprogramming and for redesigning systems already in place and the increased staff time to generate reports do not take into consideration the adaptable nature of the regulatory requirements.

PFS Add-on

Several commenters either assumed PBA to be or inquired whether PBA was a federally mandated change that would qualify as a PFS add-on so that the start up and additional ongoing costs of a PBA system would be covered by HUD.

HUD regulations at 24 CFR 990.108(c) describe the eligibility of add-ons for costs attributable to a change in Federal law or regulation. The Department believes that the cost of implementing PBA as required by this regulation will not cause a significant increase in PHA expenditures of a continuing nature. All PHAs affected by this regulation will be covered by the CGP and any requisite hardware and software costs can be incorporated in CGP planning. The Department also believes that given the flexibility of this rule and the varying degrees of PBA currently in existence in the PHAs, it may in fact be difficult to isolate and monitor additional costs directly attributable to the PBA provisions in the Federal law.

Unit Threshold Applicability

The proposed rule would have permitted PHAs that do not receive operating subsidy or that operate fewer than 250 units to maintain accounts on an agency-wide basis. Many of the commenters objected to the 250 unit threshold for requiring implementation of the new project-based accounting, with a number asking that the threshold be raised. The most frequently requested threshold was 500 units, although one PHA requested a 600 unit threshold and another, 3,000 units. Some commenters based their objection to the threshold on the fact that small PHAs already have all of the paperwork they can handle, and others objected on the grounds that HUD adds requirements without providing help for the additional workload or recognition of the hardships imposed. One commenter said that this regulatory requirement may be the "straw that breaks the camel's back with small authorities." A few of the PHAs requesting a threshold unit increase commented that annual audits, inspections, and current HUD requirements provide sufficient information to manage their projects and that PBA adds nothing.

In this final rule the Department has not modified the 250 unit threshold for applying the PBA, because the statute only authorizes HUD to permit agency-wide accounting for PHAs with fewer than that number of units (section 502(c)(1) of NAHA). Specifically, it provides that, "* * * the Secretary may permit agencies owning or operating less than 250 units to comply with the requirements of this subparagraph by accounting on an agency-wide basis." From this language, we infer that all PHAs receiving operating subsidy are subject to the accounting requirements of section 6(c)(4)(E) of the 1937 Act, but that the Secretary has the option of permitting smaller PHAs to maintain accounts on a PHA-wide basis. The Secretary has no such option with respect to PHAs operating 250 units or more; they must account by project or cost center.

The rule applies the 250-unit threshold to rental units. This was done specifically to exclude homeownership units from PBA, and the exclusion of section 8 units is premised on statutory language of "* * * agencies owning or operating less than 250 units."

Any change to the unit threshold, such as those suggested by the commenters, is not within the Department's authority. Those commenters seeking to raise this threshold should direct their requests to Congress. In the Housing and Community Development Act of 1992, Congress did distinguish between PHAs with fewer than 500 units, but rather than exempt them from PBA, it delayed its effective date with respect to them.

Effective Date

Almost a dozen commenters stated that the January 1, 1993 effective date was unreasonable because it did not provide sufficient time for PHAs to change their accounting and computer systems, or to test the PBA process.

PHAs are bound by the January 1, 1993 effective date because that date is prescribed in the law with respect to the PHAs with 500 or more units, and the Department does not have the authority

to provide otherwise. It should be noted that, as the rule is written, this effective date is met by PHAs filing a certificate with HUD at the start of the first fiscal year that begins on or after January 1, 1993 certifying that they are in compliance with the specifications of the rule and identifying the configuration of project or cost centers to be used in implementing PBA. In order to be "in compliance with the specifications" of the rule, the PHA must "develop and maintain" a PBA system, but this requirement does not preclude a PHA from developing a PBA system in an orderly, methodical way that allows for phase-in and testing of the process.

With respect to PHAs operating between 250 and 500 units, the effective date is prescribed by the Housing and Community Development Act of 1992 to be January 1, 1994, so these PHAs have more time to prepare for implementation.

Relationship of PBA and PHMAP

Numerous commenters said that PBA duplicated the intent of PHMAP in the identification of poorly managed PHAs. Many of these commenters recommended that PHAs who score well on PHMAP not be required to implement PBA since they will have demonstrated management capability, thereby satisfying the intent of NAHA. Alternatively, some respondents recommended that PBA be required only for PHAs designated as "troubled."

The Department does not agree that either the statute or the implementing regulations of PBA and PHMAP are duplicative. PHMAP is an evaluation mechanism that will help PHAs to identify and develop strategies to improve operational shortcomings and help HUD to better focus its limited resources on those PHAs which are in need of more assistance and guidance. PBA, on the other hand, is deemed to be a management tool, not an evaluation of management. It is to be used by PHAs to help eliminate the deficiencies which may have been identified through PHMAP. The Department's view is that PHMAP and PBA will work in conjunction with each other and are complementary, not duplicative. As such, PHMAP and PBA can benefit all PHAs, not just those that are "troubled".

PBA and the OKM Study

Several respondents assumed that the PBA rule is being promulgated as a result of the OKM Associates study. Particular concern was raised that OKM had a distinct advantage, which appears to be a conflict of interest, because OKM conducted the study and is also in the business of contracting with PHAs to provide technical services for conversion to PBA.

The OKM study was an independent study contracted by the Department and completed prior to passage of the NAHA legislation. The provision in the Federal law requiring PHA use of PBA were formulated separately from the OKM study. The PBA rule being promulgated by the Department implements the Federal statutory requirements, not the specifics of the OKM study or the PBA Guidebook published after the conclusion of that study. Reference to and use of the Guidebook is in the sole discretion of the PHA, and the information and requirements contained therein in no way form any part of this final rule.

Income and Expense Distribution

Commenters objected strongly to the provisions in § 990.310 that required indirect income and indirect expenses not project-specific to be allocated among projects or cost centers. They also objected to the PBA Guidebook method of allocation on the basis of bedroom size and to the allocation of operating reserves and operating subsidy among projects. Even commenters who did not object to the concept of PBA stated that allocation of indirect income and expenses would distort the actual operating results for a project and produce unreliable and misleading information.

The commenters pointed out that managers at the project level have no control over indirect costs and, further, that indirect income and costs lose their identity when allocated and are meaningful only when examined as a whole rather than in fragments. These commenters recommended that only project-specific income and expense be tracked at project or cost center level.

The Department agrees with the commenters that allocating the indirect income and indirect expense to project or cost centers is not necessary in order to comply with the requirements of NAHA. Therefore, § 990.310 has been revised in the final rule to provide that only project-specific operating income and operating expenses must be accounted for at a project or cost center level. Indirect income and costs not project-specific are now expressly excluded from the requirements of accounting at a project or cost center level. In addition, § 990.310 has been further revised to state what, at a minimum, is to be considered project-specific operating income and expense.

As a point of explanation, the rule does not mandate a specific allocation method, nor does it require either the allocation of operating reserves or operating subsidy at project level or that a separate set of accounts be maintained for each project or cost center. It is acceptable for project-specific income and expense information to be maintained by subdividing operating income and operating expense subsidiary accounts, in order to segregate the information applicable to projects or cost centers; and it is acceptable to collect project-specific maintenance information from a work order system.

Because the PBA Guidebook is not a part of this final rule, the Guidebook method of allocation on the basis of bedroom size is inapplicable to the PBA requirements in this final rule. However, where appropriate, PHAs are encouraged to use the method of allocation for indirect costs set forth in the Guidebook.

Records and Reports

Commenters questioned the validity of providing financial statements for individual projects to Commissioners and to the general public. They argued that the statements would be subject to misinterpretation and misuse, users might assume that a "less profitable" project was less well-managed or that a "profitable" project should get more services. In addition, the commenters felt that spreading data over more reports and focusing on project-related data will not aid Commissioners in making informed decisions, but "will dilute Commissioner involvement in more important agency-wide problems."

The records and reports language of this rule in § 990.315, closely tracks the language in the statute. The rule imposes no requirements beyond the statutory provisions with respect to reports being made available to the public. Making reports available under the terms of the rule simply means providing access to the reports in a reasonable manner when such a request is made by a member of the public.

The provision on the Commissioner's review of year-end statements and audits follows from the language of the conference report accompanying NAHA, as reported from the conference committee, which states:

> The conferees want to encourage local Commissioners to review the results [of these accounting requirements]. The Conferees are aware that in some instances of troubled agencies, there was a breakdown in communication between the agency itself and the Board of Commissioners which is required to oversee the operations of the agency and that in at least one instance commissioners too were unable to obtain copies of HUD's annual audit of the agency.

The Committee recognizes that an integral part of agency oversight is the analysis of the operations of the agency by HUD through its annual audit. Therefore, the Committee directs the Secretary to ensure that a copy of an agencies' [sic] annual audit be made available to the Chairman of the Board of Commissioners of each agency.

Although this discussion of audits is reported in the context of section 502 of NAHA relating to performance indicators, annual performance evaluations, and project-based accounting, the Department has been advised that the references to audit requirements relate to annual audits required under the Single Audit Act. HUD regulations at 24 CFR 44.10(f) require that auditors submit their reports to the governmental entity being audited. Current handbook instructions explicitly require that such audits be circulated to the Chairman and to members of the PHA Board of Commissioners (see HUD Handbook 7476.1 REV 1, paragraph 14), and the Department has recently taken steps to assure compliance with that requirement. In keeping therewith, the language in this final rule explains that year-end statements developed out of PBA procedures should be made available to the Commissioners at the close of the fiscal period. If the reports are properly documented, Board members should then be more aware of how the limited resources of the PHA are managed to address the varying needs of the individual projects and cost centers. This information should, in turn, assist in the decision making process for the agency as a whole.

Other Matters

Environmental Review

At the time of publication of the proposed rule, a finding of no significant impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The proposed rule is adopted by this final rule without significant change. Accordingly, the initial finding of no significant impact remains applicable and is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. on weekdays in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Impact on the Economy

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 issued by the President on February 17, 1981, and therefore no regulatory impact analysis is necessary. It will not have an annual effect on the economy of $100 million or more. Furthermore, it will not cause a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, nor have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. This rule will result in more precise monitoring of projects in the larger PHAs, but of the approximately 3200 PHAs nationwide, about 2400, or 75% of all PHAs, operate fewer than the threshold 250 units. Therefore, most PHAs will be unaffected by this rule.

Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule would not have Federalism implications and, thus, are not subject to review under the Order. The rule will require closer monitoring, by PHAs, of their housing programs, and explicitly provides for reporting to "* * *the appropriate local public official", but contains no requirement for explicit action by such local official, and will not interfere with state or local governmental functions.

Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order.

Regulatory Agenda

This rule was listed as item 1515 under the Office of Public and Indian Housing in HUD's semiannual agenda of regulations published on November 3, 1992 (57 FR 51392, 51439), pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Program number for this rule is 14.850.

List of Subjects in 24 CFR Part 990

Grant programs; housing and community development; Low and moderate income housing; Public housing.

Accordingly, 24 CFR part 990 is amended as follows:

PART 990—LOW-INCOME PUBLIC HOUSING

1. The authority citation for part 990 is revised to read as follows:

Authority: 42 U.S.C. 1437g; 42 U.S.C. 4 3535(d).

2. A new subpart C is added, to read as follows:

Subpart C—Project-Based Accounting

Sec.

990.301 Applicability.
990.305 Definitions.
990.310 Project-Based Accounting.
990.315 Records and Reports.
990.320 Certifications.
990.325 Compliance Dates.

Subpart C—Project-Based Accounting

§ 990.301 Applicability.

(a) The provisions of this subpart C are applicable to all PHAs that receive operating subsidies pursuant to section 9 of the U.S. Housing Act of 1937 (the Act), both PFS-eligible PHAs and PHAs outside the 48 adjacent states for which operating subsidy eligibility is not calculated in accordance with the PFS.

(b) PHAs that own and operate 250 or more dwelling rental units under title I of the Act, exclusive of section 8 units, are required to develop and maintain project-based accounting systems consistent with § 990.310. Where a portion of a PHA's rental inventory is separately managed (by a resident management corporation, for example), the 250-unit threshold shall apply to the total number of PHA-owned dwelling rental units, including those separately managed.

(c) PHAs that do not receive operating subsidies or that have fewer than 250 rental units may, but are not required to, develop and use project-based accounting systems consistent with the specifications of this subpart.

§ 990.305 Definitions.

Cost Center. A set of units, activities, programs, or staff that are grouped by a PHA for purposes of management, financial monitoring, and analysis. Cost centers can be delineated by administrative departments or divisions within a PHA, by office locations, by individual projects or clusters or communities of projects that consist of one or more contiguous buildings, an

area of contiguous row houses, or scattered-site buildings.

Project. A building or set of buildings identifiable as a development project under a HUD-assigned project number.

§ 990.310 Project-Based Accounting.

(a) PHAs identified in § 990.301(b) shall develop and maintain a system of accounting for operating income and operating costs for each project or operating cost center in a manner capable of generating information to meet HUD consolidated reporting requirements.

(b) Operating income and cost information to be accounted for at a project or cost center level shall include at least rental income and the administrative costs, utilities costs, maintenance costs, repair costs, and such other income and costs identified by the PHA as project-specific for management purposes. The minimum income and expense distribution requirements for project-based accounting information include:

(1) Project-specific operating income credited to a specific project or cost center which shall include, at a minimum, rental income and excess utilities income; and

(2) Project-specific operating expense to be charged to a specific project or cost center level which shall include, at a minimum, utilities expense and direct maintenance (material and labor) expense, in addition to any other operating expenses in the 4000 series of accounts which are identified by the PHA as project-specific for management purposes (for example, tenant services or protective services personnel assigned to a specific project).

(c) Indirect operating income and indirect operating expenses that are not project-specific are not required to be accounted for at, or allocated to, a project or cost center level. Indirect income and expense that is not required to be allocated to the project or cost center level includes non-project-specific income and expense, including PHA central office overhead expense, which is not identifiable with, or readily assignable to, a specific project or cost center.

(d) PHAs may establish operating cost centers on any reasonable basis that reflects the PHA management structure and that meets the financial information needs at the lowest level of line authority within that management structure. A PHA's determination of appropriate cost centers and method of income and cost distribution shall be controlling unless HUD determines there is good cause for requiring some other frame of reference for aggregating financial information.

§ 990.315 Records and Reports.

(a) Each PHA shall maintain fiscal year-end income and expense statements, which reflect the PBA information required by § 990.310, for each project or other cost center and shall make these available for review upon request by interested members of the public.

(b) Each PHA shall distribute such year-end financial statements to the Chairman and to each member of the Housing Authority Board of Commissioners, and to such other State and local public officials as the Secretary may specify. Project-based income and expense statements shall be made available to Board chairmen as soon as is practicable after the close of the fiscal period.

§ 990.320 Certifications.

(a) The PHA shall certify, by the effective date specified in § 990.325, in a form acceptable to HUD, that the PHA is aware of and is taking steps to implement project-based accounting and will produce the fiscal year-end reports required under § 990.315. The certification shall identify each project or other cost center, the basis upon which each project or other cost center has been established and determined to be in compliance with the definitions of § 990.305, above, and where a cost center consists of units in two or more projects (as identified by HUD-assigned development project number) the PHA shall identify the individual development project numbers, the number of units, and a characterization (i.e., high-rise family, mid-rise family, scattered-site, etc.) of each numbered project included in the cost center.

(b) A certification made in accordance with this section shall be updated if the PHA deletes units, adds additional units or projects (as identified by HUD-assigned development project numbers) to its inventory, or otherwise elects to reconfigure its system of cost centers.

(Approved by the Office of Management and Budget under control number 2577–0159.)

§ 990.325 Compliance Dates.

(a) The provisions of this subpart shall apply for PHA fiscal years beginning on or after January 1, 1993, for PHAs operating 500 or more public housing rentals units.

(b) The provisions of this subpart shall apply for PHA fiscal years beginning on or after January 1, 1994, for PHAs operating fewer than 500 public housing rental units. In the case of PHAs whose housing programs expand to the point at which their inventory of rental units exceeds the threshold stated in § 990.301(b), the provisions of § 990.310 shall apply at the beginning of the PHA's first fiscal year after the date on which its inventory of rental units reaches that threshold.

Dated: December 11, 1992.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 92–30978 Filed 12–22–92; 8:45 am]

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federal register

Wednesday
December 23, 1992

Part V

Federal Emergency Management Agency

Changes to the Hotel and Motel Fire Safety Act National Master List; Notice

FEDERAL EMERGENCY MANAGEMENT AGENCY

Changes to the Hotel and Motel Fire Safety Act National Master List

AGENCY: United States Fire Administration, FEMA.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA or Agency) gives notice of additions and corrections/changes to, and deletions from, the national master list of places of public accommodations which meet the fire prevention and control guidelines under the Hotel and Motel Fire Safety Act.

EFFECTIVE DATE: January 22, 1993.

ADDRESSES: Comments on the master list or any changes to the master list are invited and may be addressed to the Rules Docket Clerk, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472, (fax) (202) 646–4536.

FOR FURTHER INFORMATION CONTACT: Larry Maruskin, Office of Fire Prevention and Arson Control, United States Fire Administration, Federal Emergency Management Agency, National Emergency Training Center, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1141

SUPPLEMENTARY INFORMATION: Acting under the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. 2201 note, the United States Fire Administration has worked with each State to compile a national master list of all of the places of public accommodation affecting commerce located in each State that meet the requirements of the guidelines under the Act. FEMA published the national master list in the **Federal Register** on Tuesday, November 24, 1992, 57 FR 55314.

Periodically the Agency will update the national master list to incorporate additions and corrections/changes to the list, and deletions from the list. This notice is the first update.

Each update contains or will contain three categories: "Additions;" "Corrections/changes;" and "Deletions." For the purposes of the updates, the three categories mean and include the following:

"Additions" are either names of properties submitted by a State but inadvertently omitted from the initial master list or names of properties submitted by a State after publication of the initial master list;

"Corrections/changes" are corrections to property names, addresses or telephone numbers previously published or changes to previously published information directed by the State, such as changes of address or telephone numbers, or spelling corrections; and

"Deletions" are entries previously submitted by a State and published in the national master list or an update to the national master list, but subsequently removed from the list at the direction of the State.

Copies of the national master list and its updates may be obtained by writing to the Government Printing Office, Superintendent of Documents, Washington, DC 20402–9325. When requesting copies refer to stock number 069–001–00049–1.

The update to the national master list follows.

Dated: December 16, 1992.

Wallace E. Stickney,

Director.

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST DECEMBER 10, 1992 UPDATE

[Additions]

Alabama:				
Econo Lodge	241 Daleville Avenue	Dalesville	AL 36322	2055986304
Arkansas:				
Melbourne Motel Inc.	Hwy. 9 North	Melbourne	AR 72556	5013684355
Best Western Inn	210 N Blake Street	Pine Bluff	AR 71601	5015347222
Hampton Inn West Memphis	2003 Service Road	West Memphis	AR 72301	5017321102
Fayetteville Hilton	70 N. East Avenue	Fayetteville	AR 72701	5014425555
Arizona:				
Hilton Pavilion	1011 West Holmes Avenue	Mesa	AZ 85210	6028335555
Phoenix Airport Hilton	2345 South 47th Street	Phoenix	AZ 85034	6028941600
Tempe Motel	947 E Apache Blvd.	Tempe	AZ 85281	6028940909
Americinn Motel	850 E Wickenburg Way	Wickenburg	AZ 85358	6026845461
California:				
Anaheim Plaza Hotel	1700 S Harbor Blvd	Anaheim	CA 92802	7147725900
Beverly Hilton Hotel	9876 Wilshire Blvd	Beverly Hills	CA 90210	3102851392
Los Angeles Airport Marriott Hotel	5855 W Century Blvd	Los Angeles	CA 90045	3106415700
Courtyard by Marriott—Buena Park	7621 Beach Blvd	Buena Park	CA 90620	7146706600
District of Columbia:				
Dupont Plaza Hotel	1500 New Hampshire Avenue, NW	Washington	DC 20036	2024836000
Georgia:				
Days Inn I–75	1200 West 4th Street	Adel	GA 31620	9128964574
Econo Lodge I–75	1102 West 4th Street	Adel	GA 31620	9128964523
Hojo Inn I–75	1103 West 4th Street	Adel	GA 31620	9128962244
Days Hotel Lenox	3377 Peachtree Road	Atlanta	GA 30326	4042641111
Embassy Suites Hotel Perimeter	1030 Crown Point Parkway	Atlanta	GA 30338	4043945454
Residence Inn By Marriott	2960 Piedmont Road	Atlanta	GA 30305	4042390677
Sheraton Inn Atlanta Airport	3601 North Desert Drive	Atlanta	GA 30344	4047625141
The Suite Hotel Underground Atlanta	54 Peachtree Street	Atlanta	GA 30303	4042235555
Howard Johnson	I–95 And Hwy 341	Brunswick	GA 31520	9122644720
The American Inn Of Buford	4267 Hwy 20	Buford	GA 30518	4049320111
The Days Inn Of Canton	291 Bailground Road	Canton	GA 30114	4044790301
The Days Inn Of Cleveland	PO Box 339 Hwy 129	Cleveland	GA 30528	7068654079
Comfort Suites—Atlanta Airport	4820 Massachusetts Blvd	College Park	GA 30337	4049960000
Ramada Inn Of Cordele	2016 16th Avenue, East	Cordele	GA 31015	9122735000
Hojo Inn	1010 Mountain Drive	Dahlonega	GA 30533	7068644343
The Days Inn Of Dahlonega	1065 Chestatee Street	Dahlonega	GA 30533	7068642338
The Days Inn Of Helen	South Main Street	Helen	GA 30545	7068784079
Homewood Suites—Atlanta Peachtree	450 Technology Parkway	Narcross	GA 30092	4044484663
Peachtree Executive Conference Center	2443 Hwy 54 West	Peachtree City	GA 30269	4044872000
Days Inn Abercorn	11750 Abercorn Street	Savannah	GA 31419	9129277720
Days Inn Airport	2500 Dean Forest Road	Savannah	GA 31408	9129665000

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST DECEMBER 10, 1992 UPDATE—Continued

[Additions]

Howard Johnson	I–95 And Hwy 204	Savannah	GA 31419	9129253680
Days Inn St. Simons Island	1701 Frederick Road	St. Simons Island	GA 31522	9126340660
Hojo Inn By Howard Johnson's	3860 Flatshoals Road	Union City	GA 30291	4049690110
Hojo Inn I–75	I–75 Exit 6 North Valdosta Rd	Valdosta	GA 31602	9122444460
Indiana:				
Days Inn South	450 Bixler Road	Indianapolis	IN 46227	3177880811
Kentucky:				
Days Inn	12700 Hwy 180	Ashland	KY 41101	6069283600
Days Inn Motel South	5575 Athens Boonesboro	Lexington	KY 40505	6062633100
Holiday Inn Downtown	120 W Broadway	Louisville	KY 40202	5025822241
Otter Creek Park Lodge	Rt 1	Vine Grove	KY 40175	5029423641
Louisiana:				
Sportsman Lodge	700 N Macarthur Drive	Alexandria	LA 71301	3184456541
Arcadia Motel	Hwy 80 East	Arcadia	LA 71001	3182638444
Nob Hill Inn	PO Box 275 Exit 69 & I–20	Arcadia	LA 71101	3182632013
Airport Hilton	901 Airline Hwy	Kenner	LA 70062	5044695000
Garden Vue Square Hotel	2438 Veterans Blvd	Kenner	LA 70062	5044692800
Hilton Hotel	Towers 2 Poydras Street	New Orleans	LA 70111	5045610500
Westin Canal Place Hotel, The	100 Rue Iberville	New Orleans	LA 70130	5045567006
Best Western	I–20 At Hwy 167 South	Ruston	LA 71270	3182510000
Holiday Capri	204 N Cedar Street	Tallulah	LA 71282	3185741154
Massachusetts:				
Holiday Inn Dedham	55 Ariadne Road	Dedham	MA 02026	6153291000
Michigan:				
Hyatt Regency Dearborn	Fairlane Town Center	Dearborn	MI 48126	3135931234
Dearborn Travelodge	23730 Michigan Avenue	Detroit	MI 48124	3135657250
Warren Hospitality Holding Corp—Days Hotel	30000 Van Dyke	Warren	MI 48093	3135737600
Missouri:				
Mountain Oak Lodge	PO Box 1106	Branson	MO 65616	4173382141
Best Western Deerfield Inn	3343 E Battlefield	Springfield	MO 65804	
Mississippi:				
La Font Inn	2703 Denny Avenue	Pascagoula	MS 39568	6017627111
Holiday Inn	923 North Gloster	Tupelo	MS 38801	6018428811
New Hampshire:				
Mount Washington Hotel		Bretton Woods	NH	
Tourist Village Motel	130 Main Street	Gorham	NH 03581	6034663312
Cranmore Mountain Lodge	PO Box 1194	North Conway	NH 03860	6033562044
Kozy 7 Motel	175 Londonderry Turnpike	Hooksett	NH 03106	6036698744
New York:				
North Star Motel	PO Box 605, Rt 12	Alexandria Bay	NY 13607	3154829332
Blue Dolphin Motel	Main Road	East Marion	NY 11939	5164770907
Embassy Suites—Syracuse	6646 Old Collamer Road	East Syracuse	NY 13057	3154463200
Holiday Inn	College Drive And Court Street	East Syracuse	NY 13057	3154372761
Ramada Inn	540 Saw Mill River Road	Elmsford	NY 10523	9145923300
Edge Of The Lake Motel	56 Saranac Avenue	Lake Placid	NY 12946	5185239430
Residence Inn By Marriott	1 Residence Inn Drive	Latham	NY 12110	5167830600
Danfords Inn, Marina & Executive Conf. Center.	25 East Broadway	Port Jefferson	NY 11777	5169285200
Inn Your Budget	104 Breen Avenue	Watertown	NY 13601	3157866666
Oregon:				
Best Western Ramada Inn	2630 SW 17th Place	Redmond	OR 97756	5035488080
Pennsylvania:				
Radisson Hotel Philadelphia Airport	500 Stevens Drive	Lester	PA 19113	2155215900
Mountain Laurel Resort East	PO Box 126, I–80 And Pa Turnpike	White Haven	PA 18661	7174438411
Tennessee:				
Winners Circle Motel	3430 Fort Campbell Blvd	Clarksville	TN 37042	6154314906
Virginia:				
Days Inn—Rosslyn	2201 Arlington Blvd	Arlington	VA 22201	
Bernard's Landing	Rt 3 Box 462, Resort And Conference Center	Moneta	VA 24121	7037218870
Super 8 Motel	8620 Midlothian Turnpike	Richmond	VA 23235	
Super 8 Motel	2045 Rosser Avenue	Waynesboro	VA 22980	
Quality Inn At Kingsmill	480 McLaws Circle	Williamsburg	VA 23185	
Scottish Inn	951 Annapolis Way	Woodbridge	VA	
Washington:				
Stage Coach Inn	107 W 1st Street	Cle Elum	WA 98922	5096744735
Harborside Inn	3300 Benedict Street	Port Townsend	WA 98368	2063857909
Spokane—Shilo Inn	E 923 Third Avenue	Spokane	WA 992022215	5036416565
Corrections/Changes:				
Louisiana:				
Ramada Inn—Houma	1400 W Tunnel Blvd	Houma	LA 70360	5048794871
Maine:				
Coastline Inn	80 John Roberts Road	South Portland	ME 04106	2077723838
Hampton Inn	171 Philbrook Avenue	South Portland	ME 04106	2077734400
Portland Marriott	200 Sables Oaks Drive	South Portland	ME 04106	2078718000
Sheraton Tara Hotel	363 Main Mall Road	South Portland	ME 04106	2077756161
North Carolina:				
Holiday Inn Raleigh Durham Airport	PO Box 138161—40 Exit 282 At Page Road	Research Triangle	NC 277093816	9199416000
New Hampshire:				
Glynn House Inn	PO Box 719, 43 Highland Street	Ashland	NH 03217	6039683775
East Branch Resort Ltd	Rt 16–A	Bartlett	NH 03838	6033599060
Old Field House	PO Box 1	Bartlett	NH 03838	6033565478
Swiss Chalet Motel	Rt 16–A	Bartlett	NH 03838	6033562232

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST DECEMBER 10, 1992 UPDATE—Continued

[Additions]

The Forest A Country Inn	Rt 16–A	Bartlett	NH 03838	6033569772
Villager Motel	Rt 302	Bartlett	NH 03838	6033742742
Bedford Motor Inn	410 South River Road	Bedford	NH 03102	6036276800
Bedford Village Inn	2 Old Bedford Road	Bedford	NH 03102	6034722001
Hillbrook Motel	360 Rt 101	Bedford	NH 03102	6034723788
Sheraton Wayfarer Inn	121 South River Road	Bedford	NH 03102	6036223766
Daniel Webster Motor Lodge	188 King Street	Boscawen	NH 03301	6037962136
Kettle & Crane Inn	215 King Street	Boscawen	NH 03301	6037962261
Hampton Inn	515 South Street	Bow	NH 03304	6032245322
Bretton Arms Inn	Rt 302	Bretton Woods	NH 03575	6032781000
Bretton Woods Motor Inn	Rt 302	Bretton Woods	NH 03575	6032781000
Maple Hedge Bed & Breakfast	S Main Street	Charlestown	NH 03603	6038265237
del—E—Motel	24 Sullivan Street	Claremont	NH 03743	6035429657
Colebrook Country Club & Motel	PO Box 2, Rr 1	Colebrook	NH 03576	6032375566
Brick Tower Motor Inn	414 S Main Street	Concord	NH 03301	6032249565
Comfort Inn	71 Hall Street	Concord	NH 03301	6032264100
Conway Valley Inn	Rt 16	Conway	NH 03818	6034473858
Labnon's Motor Lodge	Wilder Street	Conway	NH 03818	6034476216
Merrill Farm Resort	Rt 16	Conway	NH 03818	6034473866
White Deer Motel	Rt 16	Conway	NH 03818	6034475366
Robert Frost Motor Inn	185 Rockingham Road	Derry	NH 03038	6034325567
Dover Days Inn Bldg. 1	481 Central Avenue	Dover	NH 03820	6037420400
Dover Days Inn Bldg. 2	481 Central Avenue	Dover	NH 03820	6037420400
Friendship Inn	181 Silver Street	Dover	NH 03820	6037424100
Silver Street Inn	103 Silver Street	Dover	NH 03820	6037433000
The Inn At Crystal Lake	Bx 12 Rt 153	Eaton Center	NH 03832	6034472120
Exetar Inn	90 Front Street	Exeter	NH 03833	6037725901
Ella River Motel	Rt 11	Farmington	NH 03835	
Red Coach Inn	Wallace Hill Road	Franconia	NH 03580	6038237422
Dairy King Motel	394 North Main Street	Franklin	NH 03235	6039343311
Franklin Motel	North Main Street	Franklin	NH 03235	6039344744
B Mae's Resort Inn	17 Harris Shore Road	Gilford	NH 03246	6032937526
Gunstock Country Inn	580 Cherry Valley Road	Gilford	NH 03246	6032934307
Misty Harbor Resort Hotel	Rt 11B, 115 Weirs Road	Gilford	NH 03246	6032934500
One Gilford Place	144 Lake Street	Gilford	NH 03246	6035270566
Covered Bridge House	Rt 302	Glen	NH 03838	6033839109
Linderhof Motor Inn	Rt 16	Glen	NH 03838	6033834334
Nordic Village Resort	Rt 16	Glen	NH 03838	6033839101
Storybrook Motel	Rt 16 & 302	Glen	NH 03838	6033836800
Town & Country Motel	Rt 2 Shelburne	Gorham	NH 03581	6034663315
Budget Host Stone Gable Inn	859 Lafayette Road	Hampton	NH 03842	6039266883
Hampton Motor Inn	815 Lafayette Road	Hampton	NH 03842	6039266771
Hampton Village Resort	660 Lafayette Road	Hampton	NH 03842	6039266775
Oceanside Hotel	365 Ocean Blvd	Hampton	NH 03842	6039263542
Sea Spiral Suites	449 Ocean Blvd	Hampton	NH 03842	6039262222
Sea Squire Motor Lodge	1088 Ocean Blvd	Hampton	NH 03842	6039262571
Hampton House Hotel	PO Box 578, 333 Ocean Blvd	Hampton Beach	NH 03842	6039261033
Kentville Hotel	315 Ocean Blvd	Hampton Beach	NH 03842	6039263950
John Hancock Inn	Main Street	Hancock	NH 03449	6035253318
Hanover Inn	PO Box 151	Hanover	NH 03755	6036434300
Maple Tree Bed & Breakfast	Cass Mill Road	Hill	NH 03243	6037446566
Dolly Dimple Motel	1396 Hooksett Road	Hooksett	NH 03106	6036220720
Firebird Motel	10 Bell Avenue	Hooksett	NH 03106	6036226263
Park Place Motel	1375 Hooksett Road	Hooksett	NH 03106	6036684430
Sunset Motel	1334 Hooksett Road	Hooksett	NH 03106	
Days Inn	90 Derry Street	Hudson	NH 03051	6038801700
Hudson Motor Inn	220 Derry Street	Hudson	NH 03051	6038892169
Intervale Motel	PO Box 9	Intervale	NH 03845	6033569776
Dana Place Inn	PO Box L, Rt 16 Pinkam Notch	Jackson	NH 03846	6033836822
Eagle Mt Resort	Carter Notch Road	Jackson	NH 03846	6033839111
Nordic Village Resort	Rt 16	Jackson	NH 03846	6033839156
Lantern Motor Inn	PO Box 97, Rt 2	Jefferson	NH 03583	6035867151
Days Inn	175 Key Road	Keene	NH 03431	6033527616
Ramada Inn Of Keene	401 Winchester Street	Keene	NH 03431	6033573038
Rocky Brook Motel	Rt 101, Box 159	Keene	NH 03431	6033524236
Super 8 Motel	3 Ashbrook Road	Keene	NH 03431	6033529780
Winding Brook Lodge	PO Box 372, 631 Park Avenue	Keene	NH 03431	6033523111
Christine's Island Motel	630 Weirs Blvd	Laconia	NH 03246	6033664378
Margate Resort Inn	76 Lake Street	Laconia	NH 03246	6035245210
Days Inn	Rt. 120	Lebanon	NH 03766	6034485070
Sheraton Inn	Airport Hill	Lebanon	NH 03766	6032985906
Indian Head Resort	Rt 3	Lincoln	NH 03251	6037458000
Mountain Club On Loon	PO Box 41, Rr 1	Lincoln	NH 03251	6037458111
Maple Leaf Motel	297 West Main Street	Littleton	NH 03561	6034445105
The Inn At The Highlander	1 Highlander Way	Londonderry	NH 03053	6036256426
Dowds Country Inn	On The Common	Lyme	NH 03768	6037954712
Holiday Inn—Center Of NH	700 Elm Street	Manchester	NH 03103	6036251000
The Inn At Mill Falls	Rt 3	Meredith	NH 03253	6032797006
Best Western Merrimack Inn	Exit 11 Everett Turnpike	Merrimack	NH 03054	6034246161
Fairfield Inn	4 Amherst Road	Merrimack	NH 03054	6034247500
Merrimack Inn	4 Executive Park	Merrimack	NH 03054	6034246181
Residence Inn	246 D. W. Highway	Merrimack	NH 03054	6034248100

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST DECEMBER 10, 1992 UPDATE—Continued

[Additions]

Caton House Motel	Rail Road Square	Nashua	NH 03062	6038869273
Clarion	2 Somerset Parkway	Nashua	NH 03062	6038835031
Comfort Inn	10 St. Laurent Street	Nashua	NH 03062	6038837700
Holiday Inn		Nashua	NH	
Howard Johnson Motor Lodge	170 Main Dunstable Road	Nashua	NH 03062	6038890173
Lillians Motel	188 Concord Street	Nashua	NH 03062	6038823451
Marriott Hotel	2200 Southwood Road	Nashua	NH 03062	6038809100
Motel 6	2 Progress Avenue	Nashua	NH 03062	6038894151
Red Roof Inn	77 Spitbrook Road	Nashua	NH 03062	6038881893
Tavern Hotel		Nashua	NH 03062	
The Main House	355 Main Street	Nashua	NH 03062	6038839748
Old Mill House Bed And Breakfast	Rt 9 Box 224, Munsonville	Nelson	NH 03457	6038473224
New London Inn	PO Box 8	New London	NH 03257	6035262791
The Inn At Newington	20 Nimble Hill Road	Newington	NH 03801	6034310777
1785 Inn—Charles Mallar	PO Box 1785	North Conway	NH 03860	6033569025
Best Western— Fox Ridge	20 North Main Street	North Conway	NH 03860	6033563151
Briarcliff Motel Bernie Seeko	Rt 16	North Conway	NH 03860	6033565584
Clarendon Motel	PO Box 895	North Conway	NH 03860	6033563551
Colonial Motel Walter Karmozyn	PO Box 463	North Conway	NH 03860	6033565178
Cranmore Inn	PO Box 1349	North Conway	NH 03860	6033565502
Eastern Slope Inn	PO Box 359	North Conway	NH 03860	6033566321
Forest Glen Inn	PO Box 438	North Conway	NH 03860	6033566311
Green Granite Motel	Main Street	North Conway	NH 03860	6033566901
Hales White Mountain Hotel	West Side Road	North Conway	NH 03860	6033567100
Junges Motel	PO Box 164, Rfd #1	North Conway	NH 03860	6033562886
Maple Leaf Motel	PO Box 917	North Conway	NH 03860	6033565388
Mt. Washington Valley Mtr. Lodge	PO Box 1647	North Conway	NH 03860	6033565486
North Conway Mountain Inn	Rt 16	North Conway	NH 03860	6033562803
Olde Eastman Village	Box 882	North Conway	NH 03860	6033566707
Presidential Motel	RFD 2 Box 65	North Conway	NH 03860	6033569744
Red Jacket	20 North Main Street	North Conway	NH 03860	6033565411
School House Motel	Box 368	North Conway	NH 03860	6033566829
Scottish Lion	PO Box 1527	North Conway	NH 03860	6033566381
Sheraton White Mountain Inn	PO Box 3189	North Conway	NH 03860	6033569300
Sylvan Pines Motel	South Main Street	North Conway	NH 03860	6033562878
Victorian Harvest Inn	Box 1763	North Conway	NH 03860	6033563548
White Trellis	Box 441	North Conway	NH 03860	6033562492
Yankee Clipper Motel	PO Box 479	North Conway	NH 03860	6033565736
Pine Haven Motel	183 Lafayette Road	North Hampton	NH 03862	6039648187
Slumber Manor Motel	53 Lafayette Road	North Hampton	NH 03862	6039645707
Three Rivers House	RR 1 Box 72	North Woodstock	NH 03262	6037452711
Lake Shore Farm Inc.	Jenness Pond Road	Northwood	NH 03261	6039425521
Northwood Motel	Rt 4	Northwood	NH 03261	6039425476
Crab Apple Inn	Rt 25	Plymouth	NH 03264	6035364476
Days Inn—White Mountain	PO Box 355, Rt 3	Plymouth	NH 03264	6035363520
Deep River Motor Inn	Highland Street	Plymouth	NH 03264	6035362155
Knoll Motel	TE 3	Plymouth	NH 03264	6035361245
Pilgrim Motel	Rt 3	Plymouth	NH 03264	6035361319
Suisse Chalet	Rt 3	Plymouth	NH 03264	6035362330
Achorage Motor Inn	417 Woodbury Avenue	Portsmouth	NH 03801	6034318111
Comfort Inn At Yokens	1390 Lafayette Road	Portsmouth	NH 03801	6034333338
Econo Lodge	383 Woodbury Avenue	Portsmouth	NH 03801	6034312500
Howard Johnson's	520 Interstate Hwy	Portsmouth	NH 03801	6034367600
Meadowbrook Inn	549 Rt 1 Bypass	Portsmouth	NH 03801	6034362000
Sheraton Hotel	250 Market Street	Portsmouth	NH 03801	6034312300
Sise Inn	40 Court Street	Portsmouth	NH 03801	6034331200
The Port Motor Inn	505 Interstate Highway South	Portsmouth	NH 03801	6034364378
Wren's Nest Motel	3548 Lafayette Road	Portsmouth	NH 03801	6034362481
Achorage Inn	PO Box 7325, Rt 125	Rochester	NH 03867	6033323350
Cress Motel	119 Milton Road	Rochester	NH 03867	6033245462
Friendship Inn	10 Farmington Road	Rochester	NH 03867	6033321902
Hi—Vu Motor Inn	157 Rochester Hill Road	Rochester	NH 03867	6033321230
Riviera Motel	Rt 125	Rochester	NH 03867	6033323491
Crown Colony	1381 Ocean Blvd	Rye	NH 03870	6034368923
Pebble Beach Motel	741 Ocean Blvd	Rye	NH 03870	
Rye Harbor Motel	2000 Ocean Blvd	Rye	NH 03870	6039649054
Star Island Conference Center	Star Island	Rye	NH 03870	6039647252
Best Western Parkview	Rt 28, 109 S Broadway	Salem	NH 03079	6038985632
Suisse Chalet Hotel	8 Keewaydin Drive	Salem	NH 03079	6038934722
Hampshire Motor Inn	22 Spur Road	Seabrook	NH 03874	6034745700
King Cottages	131 Lafayette	Seabrook	NH 03874	6034742262
Mt. Chocorua View House	Rt 16	Tamworth	NH 03897	6033238350
Riverhead Inn	Rt 16	Tamworth	NH 03897	6033237440
Stafford's In The Field	Philbrook Neighborhood Road	Tamworth	NH 03897	6033237766
White Lake Inn	Rt 16	Tamworth	NH 03897	6033238688
Black Bear Lodge	Village Road	Waterville Valley	NH 03215	6032364501
Golden Eagle Lodge	PO Box 495, Snowsborough Road	Waterville Valley	NH 03215	6032364551
Snowy Owl Inn	Village Road	Waterville Valley	NH 03215	6032368383
Valley Inn & Tavern	Tecumseh Road	Waterville Valley	NH 03215	6032368336
Wentworth Inn & Gallery	Ellsworth Hill Road	Wentworth	NH 03282	6037649923
Chesterfield Inn	Rt 9	West Chesterfield	NH 03466	6032563211
Economy Inn	7 Airport Road	West Lebanon	NH 03784	6032988888

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST DECEMBER 10, 1992 UPDATE—Continued

[Additions]

Sunset Motel	Rt 10	West Lebanon	NH 03784	6032988721
Mirror Lake Motel	PO Box 17, Rr 2	Whitefield	NH 03598	6038372544
Wolfeboro Inn	Box 1270, 44 North Main Street	Wolfeboro	NH 03894	6035693016
The Ledges	Rt 3, Po Box B	Woodstock	NH 03262	6037458433
Virginia:				
Pinehurst Motel	Us 60–220 E	Covington	VA 24426	
Innkeeper	2901 Chandlers Mt. Road	Lynchburg	VA 24501	
Deletions:				
Nevada:				
Airport Inn	5100 Paradise Road	Las Vegas	NV 89119	7027982777
Michigan:				
Ann Arbor South Knights Inn	3764 S State Street	Ann Arbor	MI 48108	
Quality Inn & Convention Center	1000 Orleans Blvd	ColdWater	MI 49036	
Super 8 Motel	600 Orleans Blvd	Coldwater	MI 49036	
The Ritz—Carlton Hotel	300 Town Center Drive	Dearborn	MI 48126	
The Rock At Woodmoor	PO Box 52, Hr 52	Drummand Island	MI 49726	
Days Inn	1500 S Beacon Blvd	Grand Haven	MI 49417	
Holiday Inn Crowne Plaza	5700 28th Street SE	Grand Rapids	MI 49546	
Budgetel Inn #741	2035 Service Drive	Jackson	MI 49201	
University Inn	1211 S Westnedge Avenue	Kalamazoo	MI 49008	
Days Inn—Lansing South	6501 S Pennsylvania	Lansing	MI 48911	
Redwood Motor Inn, Inc	County Road 612	Lewiston	MI 49756	
Best Western Park Plaza Hotel	2967 Henry Street	Muskegon	MI 49441	
Hendriks Island Lake Resort	5999 N Oak	Rose City	MI 48654	
Best Western Colonial Inns	4281 I–75 Business Spur	Sault Ste. Marie	MI 49783	
Suburban "53" Motel	12269 Dix—Toledo Road	Southgate	MI 48195	
Ambassador Motel, Inc	11811 Telegraph	Taylor	MI 48180	
Holiday Inn—Taylor	20777 Eureka Road	Taylor	MI 48180	
McGowan Rest And Motel	PO Box 315, 315 M–123	Trout Lake	MI 49793	

[FR Doc. 92–31111 Filed 12–22–92; 8:45 am]

BILLING CODE 6718–01–M

federal register

Wednesday
December 23, 1992

Part VI

Environmental Protection Agency

1992 Master Testing List; Notice of Availability

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–42052L FRL 4178–1]

RIN: 2070–AC30

1992 Master Testing List; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This Notice announces the availability of the 1992 Master Testing List (MTL), an important component of the Existing Chemicals Program in the Office of Pollution Prevention and Toxics in EPA's Office of Prevention, Pesticides and Toxic Substances. EPA's Existing Chemicals Program is responsible for assessing and managing human health and environmental risks that may be posed by existing chemicals. EPA has been using the MTL since 1990 to set the Agency's chemical testing agenda under the Toxic Substances Control Act (TSCA).

FOR FURTHER INFORMATION CONTACT: To request copies of the 1992 MTL contact: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

ADDRESSES: Written comments regarding the MTL should be sent in triplicate, to: TSCA Public Docket (TS–793), Attn: TSCA Section 4 Master Testing List, Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Electronic Availability: This document, along with the 1992 MTL itself, is available as an electronic file on the *Federal Bulletin Board* at 9:00 a.m. on the date of publication in the **Federal Register**. By modem dial (202) 512–1387 or call (202) 512–1530 for disks or paper copies. This file is also available in Postscript, Wordperfect and ASCII. The 1992 MTL is available in Wordperfect and ASCII.

1992 Master Testing List

Under section 4 of the Toxic Substances Control Act (TSCA), EPA has the authority to require chemical manufacturers and processors to test chemicals. Specifically, EPA has the authority to require testing after finding that (1) a chemical substance may present an unreasonable risk of injury to human health or the environment, or the chemical is produced in substantial quantities which could result in significant or substantial human or environmental exposure, and (2) available data to evaluate the chemical substance are inadequate, and (3) testing is needed to develop the necessary data. EPA's Chemical Testing Program also continues to work with industry to develop needed test data by way of consent orders and voluntary testing agreements. This notice announces the availability of the 1992 MTL.

The major purposes of EPA's MTL are to:

1. Identify the chemical testing needs of the Federal Government (including EPA) and international programs of interest to the United States.
2. Focus limited EPA resources on the highest priority chemical testing needs.
3. Identify and publicize EPA's testing priorities for industrial chemicals.
4. Obtain broad public comment on EPA's Chemical Testing Program and its priorities.
5. Encourage initiatives by industry to provide EPA with the priority data needs identified on the MTL.

Since 1990, EPA has (1) added 222 specific chemicals and 9 categories to the MTL, (2) deleted 45 chemicals from the MTL, (3) proposed testing for 113 chemicals via proposed rulemaking under TSCA section 4; (4) required testing for 6 chemicals and 1 category via final TSCA section 4 test rules, negotiated consent orders or voluntary testing agreements, and (5) made risk assessment and/or management decisions on 41 chemicals based on final TSCA section 4 test results received. In addition, 159 chemical substances that are listed on the MTL are now being tested under the Screening Information Data Set (SIDS) program, an international voluntary testing program developed under the auspices of the Organization for Economic Cooperation and Development (OECD). Members of the U.S. chemical industry have agreed to test 39 of these chemical substances while other OECD member countries are testing the remainder. This cooperative voluntary effort addresses the testing needs for international high production volume chemicals. The MTL now contains over 320 specific chemicals and 9 categories and presents the EPA Chemical Testing Program's 1992–1994 priorities.

EPA invites written comments from persons interested in development of the MTL. In particular, EPA is interested in comments on the approach it takes to identify priority testing needs. EPA is also interested in comments on the categories of chemicals described in the MTL. Comments in this regard may affect how the categories are ranked and may influence how EPA proceeds to obtain needed toxicity and/or exposure data on chemicals within those categories. EPA is also interested in identifying other categories of chemicals that may deserve further evaluation.

Dated: December 16, 1992.

Joseph S. Carra,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 92–31149 Filed 12–22–92; 8:45 am]

BILLING CODE 6560–50–F

federal register

Wednesday
December 23, 1992

Part VII

Department of the Interior

Bureau of Land Management

43 CFR Part 8360
Visitor Services: Rules of Conduct; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8360

[WO–702–4830–15–24 1A; Circular No. 2645]

RIN 1004–AB91

Visitor Services: Rules of Conduct

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM) is issuing a mandatory safety belt regulation that applies to occupants of the front seats of motor vehicles operated on Federal lands managed by the BLM (public lands) that are within States that do not have in effect a mandatory safety belt law, or that have enacted such a law but the law does not apply to public lands or may not be enforced by BLM. Under existing BLM regulations, the use of safety belts is required only on public lands in States that have a mandatory safety belt law in effect. Requiring use of safety belts will reduce risk of injury or death in vehicle accidents on public lands, and contribute to the reduction of societal costs caused by such incidents.

EFFECTIVE DATE: January 22, 1993.

ADDRESSES: Suggestions or inquiries should be sent to: Director (702), Bureau of Land Management, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Norman Duquette, Acting Chief, Safety Staff, Bureau of Land Management, (202) 653–8851.

SUPPLEMENTARY INFORMATION: The BLM is establishing a mandatory safety belt regulation applying to occupants of motor vehicles operated on public lands under its administration. The BLM currently administers over 270 million acres of public lands and its general regulations pertaining to vehicles and traffic safety are codified at 43 CFR subpart 8365. These regulations apply to all lands administered by the BLM. Under this rule, BLM will require the operator and all front seat passengers of a motor vehicle in motion to be restrained by a properly fastened safety belt. The burden of compliance is on the operator of the vehicle. Children, as defined by applicable State law, would be required to be restrained in accordance with State law. A person convicted of violating this or any other BLM regulation promulgated under the authority of the Federal Land Policy and Management Act (43 U.S.C. 1701 *et seq.*) (FLPMA) will be subject to a maximum penalty as defined by law.

The proposed rule was published in the **Federal Register** on May 30, 1991 (56 FR 24363), and the public comment period expired on July 29, 1991. During the comment period, the BLM received 11 comments. Of these responses, 7 were from organizations or associations dealing with highway safety or insurance issues, 2 were from business entities and 2 were from individuals.

The arguments raised during the public comment period by those opposed to the rule were that the rule was an example of overregulation, that it was an erosion of civil liberties, and that it was unenforceable.

The issue most often addressed in the comments was whether the regulation should be enforced through "secondary enforcement" procedures (i.e., vehicles would not be stopped solely to check on violations of this regulation but would be checked if stopped for other purposes). The BLM intends to implement this regulation primarily through signs, text in brochures, and incidental public contact, not through "checkpoints or 'primary' enforcement measures that are not initiated as the result of another violation." One comment stated: "Existing resource constraints in terms of personnel available to enforce this regulation [should not] determine enforcement authority." On the other hand, another comment questioned whether the rule would require additional personnel and funding. Secondary enforcement (citing violators only if they are stopped for some other reason) will not require additional manpower or funding, which is an important consideration in times of budgetary constraint. The secondary enforcement provided for in the rule does, nevertheless, provide the BLM with a valuable tool for promoting safety on public lands. Although we recognize the benefits of primary enforcement as considerable, it is simply not practical for BLM to employ it at this time.

Other points of clarification were requested. The BLM intends that the regulation, as written, shall apply to all members of the public on the public lands. Interior Department personnel and volunteers are covered by other laws and regulations. The BLM also intends that the regulation, as written, shall apply to all motor vehicles ordinarily used for transportation or recreation that are originally equipped with safety belts. This includes trucks, cars, buses, and other on-road vehicles, and off-road vehicles that are originally equipped with safety belts. It is the objective of the BLM, through this regulation, to reduce the number of vehicular injuries and fatalities.

Other comments questioned whether the regulation would apply on public lands whether or not the surrounding State had a safety belt law in effect. There seems to be a misconception that the rule would not apply to BLM lands in States that do not have such a law. The Summary, as printed in the **Federal Register** on May 30, 1991, noted that: "Under current BLM regulations * * * use of safety belts by visitors is required only on public lands in States that have a mandatory safety belt law in effect." The intention of this rule is to promulgate a safety belt use requirement for all BLM administered lands, regardless of whether or not the surrounding State has one. One writer who appeared to understand this goal stated: "We are also pleased BLM proposes to enforce the applicable mandatory use law for BLM land in those States that have such laws and to require safety belt use even when BLM lands are exempted by State law." Thus, rather than overstepping the province of the States, the rule will enable BLM officers to implement a safety belt use requirement on its lands in States that previously exempted BLM lands from its authority. As for a related question about enforcement, FLPMA authorizes the BLM to cooperate with State, local, and other jurisdictions in the enforcement of applicable laws on public lands. This authority is not affected by this rule.

Several comments urged that the safety belt requirement in the rule apply to off-road vehicles (ORVs), while others questioned whether certain types of vehicles, such as pick-up trucks, are intended to be covered. The **Federal Register** on May 30, 1991, stated: "The rule would apply only to those vehicles ordinarily used for transportation on public roads as opposed to farm, construction or off-road vehicles that occasionally appear on public roads." Although it is true that many injuries and fatalities are due to accidents involving off-road vehicles, not all vehicles are required by the Department of Transportation to be equipped with safety belts, and some of such vehicles would be less safe with seatbelts. Department of Transportation regulations require certain types of motor vehicles to be equipped with safety belts and/or other restraint systems while other types of vehicles (motorcycles, for example) are not required to be so equipped. It would not be reasonable for one Federal agency to require individuals to add equipment to vehicles that are not, in accordance with regulations of another Federal agency,

manufactured with such equipment. All trucks originally equipped with safety belts, including pick-ups, would be covered by this rule, while dune-buggies and tractors would not if they were not so equipped originally. With this in mind, the question arises how to define an ORV for inclusion in this regulation. One comment suggested that the rule apply to "off-road vehicles with four wheels and automotive-type construction." This approach would be too broad. Many ORVs have less than four wheels, while snowmobiles and some types of construction vehicles have no conventional wheels at all. Many older automotive-type vehicles, such as antique cars, old jeeps and pick-ups that are still in use, were not originally equipped with safety belts. Accordingly, the definition for "vehicle" in the final rule has been amended to include all vehicles originally equipped with safety belts, which may include some ORVs.

Several comments were received asking for a clarification of the term "visitor." BLM intended that the term "visitor," as used in the preamble to the proposed rule, cover everyone on public lands with the exception of BLM volunteers and employees, who are already covered under other mandatory safety belt regulations. However, the term "visitor" is not used in the regulatory text, so there is no need to define the term in the regulation.

Other comments opposed the rule, arguing that the BLM is overstepping its authority, that safety belt regulation should be left to the States, that the BLM would not be able to enforce the regulation, and that it would be too expensive to enforce. As stated earlier, FLPMA gives the BLM authority to promulgate regulations dealing with conduct on the public lands that they administer. General regulations of the BLM pertaining to vehicles and traffic safety are codified in title 43 of the Code of Federal Regulations 43 CFR part 8365. The policy of secondary enforcement avoids the problem of lack of enforcement personnel, because vehicles will have already been stopped for other purposes under part 8365. For the same reason, additional costs will be negligible.

One comment asked 2 specific questions: Whether the standard penalty provisions of FLPMA would be invoked against violators of this provision, and whether the rule would apply to vehicles originally equipped with safety belts that no longer are so equipped. A person convicted of this regulation will be subject to the same penalty as applies to a violation of any other part of FLPMA. If a safety belt required by Department of Transportation regulations is removed, it would be a violation of this rule.

The principal authors of this final rule are Walter Johnson, Chief, Division of Law Enforcement, and Norman Duquette, Acting Chief, Safety Staff, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management.

The BLM has determined that this rule will not have a significant effect on the quality of the human environment, health and safety because it is not expected to: (a) Increase public use to the extent of compromising the nature and character of the area or cause physical damage to it; (b) introduce incompatible uses which might compromise the nature and characteristics of the area or cause physical damage to it; (c) conflict with adjacent ownerships or land uses or cause a nuisance to adjacent owners or occupants.

Based on this determination, this rule is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulation in the Departmental Manual at 510 DM 6 (49 FR 21436). It is therefore determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule. A major rule is any regulation that is likely to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant 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. Further, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that it will not have a significant economic impact on a substantial number of small entities. The basis for these determinations is that beyond the costs of signing and other forms of public outreach, the final rule will impose no costs on any public or private entity. It merely requires existing safety equipment to be used.

For the same reason, the Department certifies that this proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. Additionally, as required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Dated: November 25, 1992.

Daniel Talbot,

Deputy Assistant Secretary of the Interior.

List of Subjects in 43 CFR Part 8360

Penalties, Public lands, Reporting and recordkeeping requirements, Traffic safety, Vehicles, Wilderness.

In consideration of the foregoing, and under the authorities stated below, part 8360, group 8000, subchapter H, chapter II, subtitle B of title 43 of the Code of Federal Regulations is amended as follows:

PART 8360—VISITOR SERVICES [AMENDED]

1. The authority citation for part 8360 continues to read as follows:

Authority: 43 U.S.C. 1701 *et seq.*, 43 U.S.C. 315a, 16 U.S.C. 1281c, 16 U.S.C. 670 *et seq.*, 16 U.S.C. 460l–6a, 16 U.S.C. 1241 *et seq.*

2. Section 8360.0–5 is amended by adding paragraph (e) to read as follows:

§ 8360.0–5 Definitions.

* * * * *

(e) *Vehicle* means any motorized transportation conveyance designed and licensed for use on roadways, such as an automobile, bus, or truck, and any motorized conveyance originally equipped with safety belts.

Subpart 8365—Rules of Conduct [Amended]

3. Section 8365.1–3 is amended by redesignating the existing section as paragraph (a), and adding paragraph (b) to read as follows:

§ 8365.1–3 Vehicles.

(a) * * *

(b)(1) The operator of a motor vehicle is prohibited from operating a motor vehicle in motion, unless the operator and each front seat passenger is restrained by a properly fastened safety belt that conforms to applicable United States Department of Transportation standards, except that children, as defined by State law, shall be restrained as provided by State law.

(2) Paragraph (b) applies on public lands, or portions thereof, that are located within a State in which there is no State law in effect that requires the mandatory use of a safety belt by the vehicle operator and any front seat passenger. It also applies on public lands, or portions thereof, located within a State in which the mandatory safety belt law of the State does not apply to the public lands or in which any provision of State law renders the mandatory safety belt law of the State unenforceable by the authorized officer as to acts or omissions occurring on the public lands.

(3) This section does not apply to an operator or a passenger of a motor vehicle occupying a seat that was not originally equipped by the manufacturer with a safety belt, nor does it apply to an operator or passenger with a medical condition that prevents restraint by a safety belt or other occupant restraining device.

(4) An authorized officer may not stop a motor vehicle for the sole purpose of determining whether a violation of paragraph (b)(1) of this section is being committed.

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federal register

Wednesday
December 23, 1992

Part VIII

The President

Proclamation 6516—Year of American Craft: A Celebration of the Creative Work of the Hand, 1993

Federal Register
Vol. 57, No. 247
Wednesday, December 23, 1992

Presidential Documents

Title 3—

The President

Proclamation 6516 of December 21, 1992

Year of American Craft: A Celebration of the Creative Work of the Hand, 1993

By the President of the United States of America

A Proclamation

While the United States leads the world in the development and use of sophisticated technology and materials, Americans continue to share a special appreciation of works made by hand. Our ancestors were skilled artisans and craftsmen, as well as accomplished hunters, farmers, and fishermen, and today we still marvel at their skill in carpentry, weaving, stonecutting, smithery, and so forth. Over the years, Americans have maintained a magnificent tradition of craftsmanship and folk art, in keeping with the spirit of our forebears, and it is fitting that we celebrate this rich portion of our national heritage.

Using their hands as the tools of their imaginations, American artisans have designed and developed a tangible record of our national experience. By plying trades that have been passed on through the centuries, from generation to generation, quilters, carvers, and other craftspeople of our day are helping to preserve America's history. These tradespeople and artists have produced objects of practical application, as well as lasting beauty, and many of our art galleries and museums display outstanding samples of their work.

We are rightly proud of American craft and folk art because, in many ways, these works of the hand embody traditional American values: pride in quality and service, diligence in pursuit of a goal, attention to detail, and respect for learning and achievement. By celebrating traditional American craft and by saluting the men and women who have mastered fine trades, we reaffirm the importance of those timeless values.

Crafts are inspired by the best in American tradition, yet they also reflect the informed creativity and vision of the present. Having learned from the past, today's artisans and craftspeople are adding their own unique touches to American culture. As we celebrate traditional craft and folk art in the United States, we also recognize each of the masters and apprentices who, through their works of the hand, continue to preserve and shape this living legacy of beauty.

The Congress, by Senate Joint Resolution 218, has designated 1993 as a "Year of American Craft: A Celebration of the Creative Work of the Hand" and has authorized and requested the President to issue a proclamation in observance of this year.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim 1993 as a Year of American Craft: A Celebration of the Creative Work of the Hand. I invite all Americans to observe this year with appropriate programs and activities in celebrating the traditional arts in the United States.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of December, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.

George Bush

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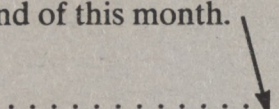
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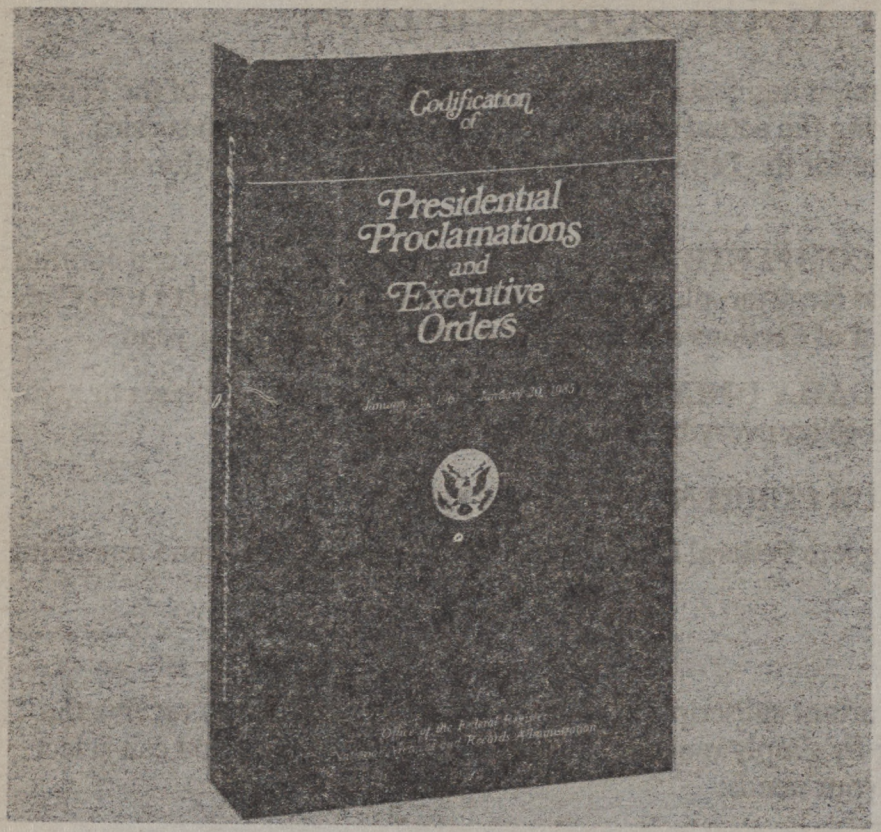
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