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Title 3—

The President

Presidential Determination No. 93–35 of August 30, 1993

Eligibility of the Cooperative Republic of Guyana To Be Furnished Defense Articles and Services Under the Foreign Assistance Act and the Arms Export Control Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me by Section 503(a) of the Foreign Assistance Act of 1961, as amended, and Section 3(a)(1) of the Arms Export Control Act, I hereby find that the furnishing, sale, and/or lease of defense articles and services to the Cooperative Republic of Guyana will strengthen the security of the United States and promote world peace.

You are authorized to report this finding to the Congress and to publish it in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, August 30, 1993.

Justification for Presidential Determination of Eligibility of the Cooperative Republic of Guyana To Be Furnished Defense Articles and Services Under the Foreign Assistance Act of 1961 and the Arms Export Control Act

Section 503 of the Foreign Assistance Act of 1961 and Section 3(a)(1) of the Arms Export Control Act require, as a condition of eligibility to acquire defense articles and services from the United States, that the President find that the furnishing of such articles and services to the country concerned will "strengthen the security of the United States and promote world peace."

The Cooperative Republic of Guyana, with substantial U.S. help, implemented significant electoral reforms that enabled it in October 1992 to hold its first free and fair elections in over 25 years. The Guyana Defense Force (GDF) played a significant and non-partisan role in returning Guyana to the fold of democratic countries. It is in the interest of the U.S. to support the continued democratic evolution in Guyana and the professionalization of the military.

As pressure is placed on narcotics traffickers in neighboring countries, Guyana will likely become increasingly subject to drug smuggling. It also is in the national interest of the United States to support the counternarcotics efforts of Guyana and the ability of the Guyanese military to successfully interdict regional drug trafficking.

I have therefore concluded that providing defense articles and services to the Cooperative Republic of Guyana will further our long-term goals of strengthening democracy in South America, promoting regional stability and effectively meeting the threat posed by narcotics trafficking, and thereby will strengthen the security of the United States and promote world peace.

[FR Doc. 93–22689
Filed 9–13–93; 3:48 pm]
Billing code 4710–10–M

Presidential Documents

Presidential Determination No. 93–36 of August 30, 1993

Determination and Waiver of Romania's Ineligibility Under Section 129 of the Atomic Energy Act of 1954 To Receive Certain U.S. Nuclear Exports

Memorandum for the Secretary of State

Pursuant to section 129 of the Atomic Energy Act of 1954, as amended by the Nuclear Non-Proliferation Act of 1978 (P.L. 95–242), I hereby determine that Romania has materially violated the Romania-IAEA safeguards agreement and the U.S.-IAEA-Romania supply agreement. I hereby further determine that cessation of exports as provided for by section 129 of the Act would be seriously prejudicial to the achievement of United States nonproliferation objectives or otherwise jeopardize the common defense and security.

You are directed to report this Determination to the Congress and to provide copies of the Justification explaining the basis for this Determination. You are further directed to publish this Determination in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, August 30, 1993.

Justification for the President's Determination

On April 29, 1992, the Government of Romania informed the IAEA Director General, and on April 30, 1992, the United States, that an inventory conducted earlier that month at the former Institute for Nuclear Power Reactors (INPR) at Pitesti, Romania, had disclosed two (2) milligrams of plutonium stored outside the facility's safeguards material balance area, in effect kept hidden from IAEA safeguards inspectors in violation of the Romania-IAEA safeguards agreement. According to the Romanian Government report, further internal investigation determined that in 1985 INPR personnel carried out laboratory-scale reprocessing of nuclear material in a single fuel rod clandestinely irradiated in Romania's U.S.-supplied TRIGA research reactor, which resulted in the separation of the two milligrams of plutonium. The report noted that the reprocessing activity was not declared (as required by the Romania-IAEA safeguards agreement) to the IAEA. It further stated that the reprocessing activity was evidently no longer performed after 1985, although the two milligrams of plutonium continued to be stored outside the safeguarded area until it was discovered in April 1992.

The current Government of Romania described the case as "a residue of the practices of the former totalitarian Communist regime" and a breach of domestic Romanian law as well as of Romania's international obligations. It stressed its own policy of strict compliance with all its nuclear nonproliferation obligations, in the spirit of which it said it had moved imme-

diately to ensure full disclosure of the 1985 incident and had invited the IAEA to perform a special inspection. The IAEA in fact carried out such an inspection and confirmed the report of the present Government of Romania to the IAEA Board of Governors in June 1992.

Based on the current Romanian Government's own voluntary disclosures, it is clear that in 1985 and thereafter, subsequent to the effective date of the applicable U.S. statute, Romania materially violated an IAEA safeguards agreement within the meaning of section 129 of the Atomic Energy Act. (Inasmuch as the TRIGA reactor and the nuclear material used in the 1985 clandestine irradiation were supplied to Romania by the United States, Romania also violated it obligations to the United States under the trilateral U.S.-IAEA-Romania supply agreement, the agreement under which the TRIGA reactor and the nuclear material were transferred from the United States to Romania through the IAEA).

The President has therefore determined, pursuant to section 129 of the Atomic Energy Act of 1954, as amended by the Nuclear Non-Proliferation Act of 1978 (Public Law 95–242), that Romania has materially violated an IAEA safeguards agreement and the U.S.-IAEA-Romania supply agreement.

Cessation of U.S. nuclear exports to Romania, however, would be seriously prejudicial to United States nonproliferation objectives and otherwise jeopardize the common defense and security. The violation occurred not merely under a different government, but under a very different form of government. The current Romanian Government initiated the investigation of its own accord, moved promptly to inform both the IAEA and the United States of the results (embarrassing and potentially damaging though they were), requested an immediate verification by IAEA inspectors, and has taken concrete steps to prevent any recurrence. It has strongly reaffirmed its intent to abide completely by its NPT and other international obligations with respect to nuclear nonproliferation. The present Romanian Government has demonstrated its commitment to a responsible nuclear export policy by joining the NPT Exporters Committee (Zangger Committee) and the Nuclear Supplies Group.

It is clearly in the U.S. interest to encourage other governments to take the same forthright steps that Romania has taken when similar circumstances arise. To impose sanctions on the current Romanian Government for the misdeeds of an earlier and far less open regime would discourage others from moving to publicize and rectify nonproliferation abuses when they discover them, and would thus make it substantially more difficult to achieve U.S. nonproliferation goals.

In addition, U.S. peaceful nuclear cooperation with Romania contributes to our overall policy of responding positively and constructively to the process of democratization and economic reform in that country. It would be counterproductive to permit sanctions tied to the misdeeds of the earlier regime to undermine our efforts to support positive developments under the current Government. Moreover, continued Romanian ineligibility for U.S. nuclear exports would needlessly disadvantage U.S. suppliers seeking to export to Romania.

The President has therefore further determined that cessation of exports as provided for by section 129 of the Act would be seriously prejudicial to the achievement of United States nonproliferation objectives and otherwise jeopardize the common defense and security.

[FR Doc. 93–22690
Filed 9–13–93; 3:49 pm]
Billing code 4710–10–M

Presidential Documents

Presidential Determination No. 93–37 of September 2, 1993

Presidential Determination of the Proposed Agreement Between the United States of America and the Republic of Bulgaria for Cooperation in the Field of Peaceful Uses of Nuclear Energy

Memorandum for the Secretary of State [and] the Secretary of Energy

I have considered the proposed Agreement Between the Government of the United States of America and the Government of the Republic of Bulgaria for Cooperation in the Field of Peaceful Uses of Nuclear Energy, along with the views, recommendations, and statements of the interested agencies.

I have determined that the performance of the agreement will promote, and will not constitute an unreasonable risk to, the common defense and security. Pursuant to section 123 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2153(b)), I hereby approve the proposed agreement and authorize you to arrange for its execution.

The Secretary of State is authorized and directed to publish this determination in the **Federal Register.**

William J. Clinton

THE WHITE HOUSE,
Washington, September 2, 1993.

[FR Doc. 93–22691
Filed 9–13–93; 3:50 pm]
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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 831, 837, 841, 842, 844, and 846

RIN 3206–AD60

Reemployment of Annuitants

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This final rule amends the Civil Service Retirement System (CSRS) and Federal Employees Retirement System (FERS) regulations governing reemployed annuitants, and the effect of reemployment on future CSRS and FERS benefits. These final rules implement section 134 of Public Law 100–238 and consolidate all the rules governing reemployed annuitants into a single part of OPM regulations.

EFFECTIVE DATE: October 15, 1993.

FOR FURTHER INFORMATION CONTACT: Eugene R. Littleford, (202) 606–0299.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was published in the **Federal Register** on October 9, 1992 (57 FR 46512), to create part 837 and amend parts 831, 841, 842, 844, and 846 of title 5, Code of Federal Regulations; to implement the provisions of section 134 of Public Law 100–238, enacted January 8, 1988, which governs the reemployment of FERS annuitants and CSRS annuitants who elect FERS coverage; and to consolidate the existing rules governing reemployed annuitants. An additional information collection was also proposed.

Written comments were received from two Federal agencies, two employee organizations, and two employees.

One commenter suggested that a note be added to § 837.101 (Applicability) to the effect that part 837 does not incorporate the rules governing the reemployment of annuitants without reduction in pay or annuity as provided by part 553 of title 5, Code of Federal Regulations. Annuitants reemployed under part 553 are not considered to be reemployed for the purposes of part 837. (See the definition of "reemployed" in § 837.102.) Service performed during reemployment under provisions permitting reemployment without offset of annuity cannot be credited in the computation of a supplemental or redetermined annuity or survivor annuity. For the convenience of readers, we are adding a reference to part 553, as suggested.

Another commenter suggested that the phrase "not for charges of misconduct or delinquency" be deleted as a modifier of the term "involuntary separation," where it appears in §§ 837.103(c) and 837.202(b). Section 837.103(c) details information that must be provided by the annuitant to the agency upon reemployment, while § 837.202(b) details the types of CSRS annuity that terminate on reemployment. The commenter's suggested deletion indicates a misunderstanding of the purpose of these regulations. While a discontinued service retirement must be based on an involuntary separation not for cause on charges of misconduct or delinquency, the annuity of a person who retired after meeting the age and length of service requirements for a voluntary retirement may also be based on an involuntary separation not for cause. By law, a retiree's treatment upon reemployment depends, among other things, on whether the retiree had been separated not for cause on charges of misconduct or delinquency, and this terminology is therefore needed in the regulations.

Another commenter suggested that § 837.301 specifically restate the rules of retirement coverage, rather than reference subpart B of part 831 and subpart A of part 842. It was also suggested that a reemployed annuitant's right to elect FERS under certain conditions also be described. While the suggested repetition of material might be appropriate in preparing operational guidance, it would unduly lengthen these regulations.

Another commenter suggested that § 837.403(b)(1) be amended by inserting a parenthetical explanatory phrase, to read as follows: "If * * * the former disability annuitant is entitled to either an immediate or deferred annuity based on the most recent separation (for example, 5 or more years as a reemployed annuitant), any right to an annuity based on a prior separation is permanently extinguished." We decided not to adopt that suggestion because we believed that it could be misleading. Under CSRS and FERS, a former disability annuitant who has been found recovered, or restored to earning capacity, does not need to work for an additional 5 years to extinguish retirement rights based on prior separation. Under CSRS, any separation from covered service (as an employee, not as a reemployed annuitant) that meets the 1-year-out-of-2 coverage requirement of 5 U.S.C. 8333(b) would extinguish prior retirement rights. Since FERS does not have a 1-year-out-of-2 requirement, any separation from covered employment after 5 years of creditable service, *in totem*, extinguishes prior retirement rights.

Another commenter suggested that the CSRS or FERS retirement deductions withheld during a period of reemployment that is not used in annuity computation, because there is no title to either a supplemental or redetermined annuity benefit, should be automatically refunded to the annuitant. For the following reasons, we do not believe that this would be the best approach. If the annuitant has commenced, or is contemplating, subsequent employment that may establish a future right to supplemental or redetermined annuity in which the existing period of service would be credited, refunding the deductions could adversely impact the annuitant's interests. If it were CSRS service, a deposit would be required before the service could be credited. If it were FERS service, payment of the refund would bar future credit, since there are no applicable deposit or redeposit provisions. Consequently, we have decided only to pay these amounts at the request of the annuitant. It was also suggested that interest be paid on such a refund. This suggestion cannot be adopted because interest may only be paid where there is a statutory authority for such payment. There is no statutory authority for payment of interest under these circumstances.

Another commenter suggested that § 837.502 changed the rule on reinstatement of a CSRS discontinued

service annuity after reemployment, in that it would bar reinstatement if the individual is entitled to either an immediate or deferred annuity on the basis of the subsequent separation from reemployment. The commenter suggested that this was a major change in policy, apparently in the belief that the previous regulation barred reinstatement only if the individual was entitled to an immediate annuity. However, there has been no change in policy. The prior regulation, § 831.804, allowed reinstatement of the discontinued service annuity if the individual does not meet eligibility requirements for title to annuity based on the separation from reemployment. This was erroneously interpreted by the commenter to mean that only an immediate entitlement would prevent reinstatement of the prior annuity. To clarify, we have expressly stated in the regulations that the rule is applicable in cases of either an immediate or deferred annuity entitlement that is based on the separation from reemployment.

We received an oral comment suggesting that unused sick leave be referenced in § 837.503(b)(1), which describes the computation of a supplemental annuity. We agree and have amended § 837.503(b)(1)(i) to that effect.

Finally, a commenter suggested that § 837.503(c)(2), which excludes from a supplemental annuity computation credit for service as a reemployed annuitant when annuity was paid but not offset from salary, include a cross-reference to part 553 of title 5, Code of Federal Regulations. This section was intended to refer not just to employment under part 553, but also to other provisions of law that governed such employment in the past, as well as possible future enactments. We therefore determined that the suggested reference would be confusing, in that it might be interpreted as limiting in nature.

List of Subjects in 5 CFR Parts 831, 837, 841, 842, 844, and 846

Administrative practice and procedure, Air traffic controllers, Alimony, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

Patricia W. Lattimore,

Acting Deputy Director.

Accordingly, the Office of Personnel Management amends 5 CFR parts 831, 837, 841, 842, 844, and 846, as follows:

PART 831—RETIREMENT

1. The authority citation for part 831 continues to read in part as follows:

Authority: 5 U.S.C. 8347; * * *.

§ 831.502 [Amended]

2. Paragraph (f) of § 831.502 is removed, paragraph (g) is redesignated (f), and paragraph (f)(5), as redesignated, is removed.

§§ 831.801–831.805 Subpart H—[Removed and Reserved]

3. Subpart H of part 831, consisting of §§ 831.801–831.805, is removed and reserved.

4. Part 837 is added to read as follows:

PART 837—REEMPLOYMENT OF ANNUITANTS

Subpart A—General Provisions

Sec.
837.101 Applicability.
837.102 Definitions.
837.103 Notice.

Subpart B—Annuitant and Employee Status

837.201 Annuitant status.
837.202 Annuities that terminate on reemployment.
837.203 Annuities that are suspended during reemployment.

Subpart C—Coverage and Contributions

837.301 Coverage.
837.302 Agency contributions.
837.303 Annuity offset.
837.304 Agency liability for payments.
837.305 Lump-sum credit not reduced.
837.306 Refund of lump-sum credit.

Subpart D—Reemployment of Disability Annuitants

837.401 Generally.
837.402 Special notice.
837.403 Termination of annuity after reemployment.
837.404 Reinstatement of annuity during a period of employment not subject to CSRS or FERS.

Subpart E—Retirement Benefits on Separation

837.501 Refund of retirement deductions.
837.502 Reinstatement of annuity.
837.503 Supplemental annuity.
837.504 Redetermined annuity.

Subpart F—Death Benefits

837.601 Generally.
837.602 Lump-sum payment of retirement deductions.
837.603 Increased survivor benefits.

Subpart G—CSRS Offset

837.701 Offset from supplemental annuity.
837.702 Offset from supplemental survivor annuity.

Subpart H—Alternative Entitlements and Canceled Retirements

837.801 Unperfected entitlement to CSRS benefits based on a prior separation.

Sec.
837.802 Benefits under another retirement system for Federal employees based on the most recent separation.
837.803 Cancellation of retirement by judicial or administrative authority.
837.804 Finality of elections under this subpart.

Authority: 5 U.S.C. 8337, 8344, 8347, 8455, 8456, 8461, and 8468; and section 302 of Pub. L. 99–335, June 6, 1986, as amended.

Subpart A—General Provisions

§ 837.101 Applicability.

(a) This part prescribes rules governing—

(1) Reemployment of an annuitant by the Federal Government;

(2) Reemployment of an annuitant by the government of the District of Columbia when the annuitant had been employed subject to CSRS by the District of Columbia prior to October 1, 1987, or was appointed to a position in the government of the District of Columbia on October 1, 1987, pursuant to the Saint Elizabeths Hospital and District of Columbia Mental Health Services Act; and

(3) The payment of retirement and death benefits based on reemployment covered by this part.

(b) This part is not applicable to reemployment, in the Executive Branch, under 5 U.S.C. 8344(i) or 8468(f) (see part 553 of this chapter), relating to reemployment of retirees to meet exceptional employment needs, or to employment under 5 U.S.C. 8344 (j) or (k) or 5 U.S.C. 8468 (g) or (h) in the Judicial or Legislative Branches.

§ 837.102 Definitions.

Actual service means the period of time during which an annuitant is reemployed, excluding periods of separation and non-pay status.

Annuitant means a former employee or Member who is receiving, or meets the legal requirements and has filed claim for, annuity under either CSRS or FERS based on his or her service.

Another retirement system or "other retirement system" means a program created by Federal or District of Columbia statute or regulation and administered by an agency of the Federal Government or District of Columbia that provides retirement and/or death benefits to Federal or District of Columbia employees whose employment would otherwise be subject to the provisions of CSRS or FERS, or that credits service in the computation of benefits that would otherwise be credited in the computation of a CSRS or FERS benefit, or that provides a death benefit when a death benefit is payable from CSRS or FERS.

CSRS means the Civil Service Retirement System, as described in subchapter III of chapter 83 of title 5, United States Code.

CSRS annuitant means an annuitant retired under CSRS.

CSRS–Offset service means service by a reemployed CSRS annuitant that is subject to the OASDI tax by operation of section 101 of Public Law 98–21. It does not include any service performed before January 1, 1984.

CSRS-Offset wages means basic pay, as defined under 5 U.S.C. 8331(3), of an employee or Member performing CSRS-Offset service, but not to exceed the contribution and benefit base for the calendar year involved.

Continuous service means reemployment without a period of separation from service, or conversion to intermittent status, of more than 3 days.

Contribution and benefit base means the contribution and benefit base in effect with respect to the period involved, as determined under section 230 of the Social Security Act.

FEC means Federal Employees Compensation, that is, benefits paid on the basis of a work-related disease or injury under the provisions of chapter 81 of title 5, United States Code, but does not include a scheduled award under the provisions of 5 U.S.C. 8107, or medical services under 5 U.S.C. 8103.

FERS means the Federal Employees Retirement System, as described in chapter 84 of title 5, United States Code.

FERS annuitant means an annuitant who retired under FERS, or a reemployed CSRS annuitant whose election of FERS coverage under part 846 of this chapter is effective on or after January 8, 1988.

Full-time equivalent to part-time service means the amount of actual service that would result if the total hours worked on a part-time basis had been performed on a full-time basis, and the remaining portion of the period of reemployment was in a non-pay status.

Full-time service means actual service in which the reemployed annuitant is scheduled to work the number of hours and days required by the administrative workweek for his or her grade or class (normally 40 hours).

Fund means the Civil Service Retirement and Disability Fund as described at 5 U.S.C. 8348.

Intermittent service means any actual service performed on a less than full-time basis with no prescheduled regular tour of duty.

Lump-sum credit has the same meaning as the term is defined at section 8401(19) or section 8331(8) of title 5, United States Code, as may be applicable under the circumstances.

OASDI tax means, with respect to Federal wages, the Old Age, Survivors, and Disability Insurance tax imposed under section 3101(a) of the Internal Revenue Code of 1986.

Part-time service means actual service performed on a less than full-time basis under a pre-scheduled regular tour of duty.

Pay means the basic pay of the position to which the reemployed annuitant is appointed, prior to reduction for retirement contributions and annuity offset, and excludes any other benefits or compensation the reemployed annuitant receives, such as benefits authorized under the provisions of chapter 81 of title 5, United States Code.

Reemployed means reemployed in an appointive or elective position with the Federal Government, or reemployed in an appointive or elective position with the District of Columbia (when the annuitant was first employed subject to CSRS by the District of Columbia before October 1, 1987, or was appointed to a position in the government of the District of Columbia on October 1, 1987, pursuant to the Saint Elizabeths Hospital and District of Columbia Mental Health Services Act), whether the position is subject to CSRS, FERS, or another retirement system, but does not include appointment as a Governor of the Board of Governors of the United States Postal Service, or reemployment under provisions of law that exclude offset of pay by annuity, that is, sections 8344 (i), (j), or (k), or 8468 (f), (g), or (h) of title 5, United States Code.

Retired Member means a former Member of Congress, as defined by 5 U.S.C. 2106, who has met the requirements for Member retirement as specified at sections 8336(g), 8337(a), 8338(b), 8412, 8413, and 8451(b) of title 5, United States Code, and who has filed claim therefor.

Suspension, in regard to payment of annuity, means that payment of annuity stops but annuitant status continues.

Termination in regard to payment of annuity, means that both payment of annuity and annuitant status cease.

§ 837.103 Notice

(a) *To OPM.* On or before the date a reemployed annuitant is appointed, the appointing agency must notify OPM in writing of the appointment, and provide OPM with the following information—

(1) The annuitant's name, date of birth, social security number (if applicable), and retirement claim number;

(2) A description of the kind of appointment;

(3) Whether the amount of annuity allocable to the period of reemployment is, or will be, withheld from the reemployed annuitant's pay, in accordance with § 837.303 of this part; and

(4) When the appointment is an interim appointment under § 772.102 of this chapter, an explicit statement that the appointment is required by the Whistleblower Protection Act of 1989.

(b) *To annuitant.* The agency should advise the annuitant in writing, generally, of the effect reemployment has on annuitant status and/or the continued receipt of annuity, the possible, future retirement benefits that may be payable to an annuitant on the basis of reemployment, and, for CSRS annuitants, whether the annuitant may elect to have retirement deductions withheld from his or her basic pay.

(c) *Obligation of annuitant to provide information.* Before appointment, and as a condition of reemployment, the annuitant must provide the employing agency with the following information—

(1) Whether the annuitant is then in receipt of annuity;

(2) The gross monthly amount of annuity the annuitant is then receiving;

(3) Whether the annuitant is a disability annuitant, and if so, whether OPM has found the annuitant recovered from his or her disability, or restored to earning capacity; and.

(4) If the annuitant is a CSRS annuitant, whether the annuitant's retirement was based on an involuntary separation, not for charges of misconduct or delinquency.

Subpart B—Annuitant and Employee Status

§ 837.201 Annuitant status.

Unless his or her annuity is terminated under the provisions of §§ 837.202 or 837.403 of this part, an annuitant continues to be an annuitant throughout the period of reemployment, whether or not he or she continues to receive annuity payments during the period of reemployment.

§ 837.202 Annuities that terminate on reemployment.

(a) *FERS annuitants.* (1) The annuity of a FERS annuitant who is a disability annuitant whom OPM has found recovered or restored to earning capacity prior to reemployment terminates on reemployment.

(2) The annuity of a FERS annuitant who is a former military reserve technician awarded a disability retirement annuity under 5 U.S.C. 8456, in addition to being subject to paragraph

(a)(1) of this section, shall terminate on the date the annuitant declines an offer of employment with a department or agency, where the employment is in the same commuting area and of the same grade as, or a level equivalent to, the position from which the annuitant retired.

(b) *CSRS annuitants.* (1) The annuity of a CSRS annuitant terminates on reemployment if—

(i) The annuitant is a disability annuitant whom OPM has found recovered or restored to earning capacity prior to reemployment, or whose disability annuity was awarded under the provisions of 5 U.S.C. 8337(h) because the annuitant was a National Guard Technician who was medically disqualified for continued membership in the National Guard;

(ii) The annuitant is not a retired Member and the annuity is based on an involuntary separation (other than a separation that was mandated by statute based on the annuitant's age and length of service, or a separation for cause on charges of misconduct or delinquency) where the reemployment would, if the individual were not an annuitant, be covered by CSRS;

(iii) The annuitant is not a retired Member and is appointed by the President to a position that would, if the individual were not an annuitant, be covered by CSRS; or

(iv) The annuitant is not a retired Member and is elected as a Member.

(2) A disability annuity awarded a former National Guard Technician under the provisions of 5 U.S.C. 8337(h) shall terminate on the date the annuitant declines an offer of employment with a department or agency, where the employment is in the same commuting area and of the same grade as, or a level equivalent to, the position from which the annuitant retired.

§ 837.203 Annuities that are suspended during reemployment.

(a) *All annuitants.* Payment of annuity is suspended when—

(1) The annuitant is appointed as a justice or judge of the United States, as defined by section 451 of title 28, United States Code; or

(2) The annuitant receives an interim appointment under § 772.102 of this chapter.

(b) *CSRS annuitants only.* Payment of annuity is suspended when the annuitant is a retired Member and becomes employed in an elective position, or is appointed to a position that is not intermittent or without pay.

Subpart C—Coverage and Contributions

§ 837.301 Coverage.

(a) *When annuity terminates on, or is suspended during, reemployment.* Retirement coverage under either CSRS or FERS is governed by subpart B of part 831 or subpart A of part 842 of this chapter, as is appropriate.

(b) *When annuity continues.* (1) Unless a reemployed FERS annuitant's employment is on an intermittent basis, as an employee subject to another retirement system, or as President, deductions for the Fund shall be made under 5 U.S.C. 8422(a).

(2) A CSRS annuitant is not subject to deductions, unless he or she is serving in an other-than-intermittent status (except as President), is not covered by another retirement system, and elects to have retirement deductions made from his or her pay. Generally, deductions are made no later than the beginning of the first pay period immediately following the date the reemployed annuitant files the election with the employing agency. When the annuitant elects to have deductions made, he or she may not change the election during continuous service with that agency.

(3) The amount of basic pay prior to offset of annuity under § 837.303 of this part is used in computing the amount of deductions. The rate of retirement deductions is that which attaches to the position under the provisions of sections 8334(a), 8334(k), or 8422(a) of title 5, United States Code, as is applicable.

§ 837.302 Agency contributions.

(a) *FERS annuitants.* An agency that reemploys a FERS annuitant subject to retirement deductions under § 837.301(b)(1) of this part shall make contributions, as specified in 5 U.S.C. 8423, to the Fund, based on the reemployed annuitant's pay prior to offset of annuity under the provisions of § 837.303 of this part.

(b) *CSRS annuitants.* An agency that reemploys a CSRS annuitant is required to make an agency contribution when—

(1) The annuity is suspended or terminated under the provisions of subpart B of this part; and

(2) The appointment is subject to CSRS deductions under the provisions of subpart B of part 831 of this chapter.

§ 837.303 Annuity offset.

(a) *Applicability.* When the right to receive annuity continues during reemployment (even though actual receipt of annuity may have been waived under 5 U.S.C. 8345(d) or 8465(a)), the pay of the reemployed annuitant shall be offset by the amount of annuity allocable to the period of reemployment, except that—

(1) No amount shall be offset from pay in accordance with this section for a period for which the annuitant has elected to receive FEC benefits in lieu of annuity; and

(2) No amount shall be offset from a lump-sum payment of annual leave, made on or after termination of the reemployment period.

(b) *Payment.* The employing agency shall pay to the Fund the full amount required to be offset from a reemployed annuitant's salary under this section in accordance with instructions issued by OPM. Payment in full to the Fund is not contingent on actual offset from the reemployed annuitant's salary.

(c) *Computation.* To compute the amount of the annuity offset for any particular pay period, divide the amount of annuity for the calendar days included in the pay period by the number of hours that would constitute a full-time tour of duty for that pay period, then multiply the result by the number of hours actually paid for the pay period, not to exceed the number of hours that constitutes a full-time tour of duty.

§ 837.304 Agency liability for payments.

(a) The agency will remit funds properly withheld from the pay of a reemployed annuitant in accordance with this subpart to OPM in the manner prescribed for the transmission of withholdings and contributions as soon as possible, but not later than provided by standards established by OPM in the Federal Personnel Manual.

(b) When the employing agency fails to withhold from the pay of the reemployed annuitant some or all of the amounts required to be withheld from that pay by this subpart, the employee has received an overpayment of pay. The employing agency must collect the overpayment of pay (unless it is waived under 5 U.S.C. 5584 or some other applicable statute) and remit the proper funds to OPM in the manner prescribed for the transmission of withholdings and contributions as soon as possible, but not later than provided by standards established by OPM in the Federal Personnel Manual.

(c) If the employing agency waives the annuitant's repayment of the salary overpayment, it must submit—on behalf of the reemployed annuitant—an amount equal to the correct deduction from pay (or the balance due in the case of a partial deduction) to OPM in the manner prescribed for the transmission of withholdings and contributions as soon as possible, but not later than

provided by standards established by OPM in the Federal Personnel Manual.

§ 837.305 Lump-sum credit not reduced.

When annuity continues during the period of reemployment, and the reemployment is subject to annuity offset under the provisions of § 837.303 of this subpart, or any similar provision of law or regulation, the amount of an annuitant's lump-sum credit to the Fund shall not be reduced by the amount of annuity allocable to the period of reemployment.

§ 837.306 Refund of lump-sum credit.

An annuitant serving as a justice or judge of the United States, as defined by section 451 of title 28, United States Code, may apply for and receive payment of the annuitant's lumpsum credit, less the amount of annuity or other benefits previously paid on that account. Receipt of a refund under this section will irrevocably terminate the right to annuity, and the annuitant status, of the recipient, based on any prior separations from employment covered by CSRS or FERS.

Subpart D—Reemployment of Disability Annuitants

§ 837.401 Generally.

A disability annuitant may be reemployed in any position for which he or she is qualified.

§ 837.402 Special notice.

(a) *To annuitant.* In addition to the advice described in paragraph 837.103(b) of this part, the agency should generally also advise a disability annuitant, in writing, prior to reemployment, that—

(1) Reemployment on a permanent basis in a position equivalent in grade and pay to the position from which the annuitant retired may constitute the basis for an OPM finding of recovery from disability;

(2) Reemployment subject to medical and physical qualification standards equivalent to those of the position from which the annuitant retired may constitute the basis for an OPM finding of recovery from disability;

(3) The pay of the position in which the annuitant is reemployed, prior to the offset of annuity, or the pay of an interim appointment under § 772.102 of this chapter, as may be applicable, will be included as earnings in determining whether the disability annuity will be terminated due to restoration to earning capacity;

(4) Receipt of, or continued entitlement to receive, full or partial FEC benefits during reemployment, when those benefits are based on the same injury or medical condition that is the basis for OPM's award of disability retirement, is conclusive evidence (unless there is contravening medical evidence) that the annuitant has not recovered from the disability; and

(5) A disability annuitant age 60 or over cannot be found by OPM to be restored to earning capacity, and can only be found recovered at the annuitant's request.

(b) *To OPM.* On reemployment of a disability annuitant, the employing agency shall, in addition to the notice required by § 837.103(a) of this part, notify OPM in writing of—

(1) The physical and medical requirements of the position (providing a copy of the employee's position description);

(2) The position's grade level and/or rate of pay;

(3) Whether the employment is full-time, part-time, or intermittent;

(4) Whether, to the best of the agency's knowledge, the reemployed annuitant is receiving, or entitled to receive, FEC benefits; and

(5) Whether any medical evidence was used in making the employment decision, and if so, provide OPM with a copy of the medical information.

§ 837.403 Termination of annuity during reemployment.

(a) *Agency action.*—When a reemployed disability annuitant is found recovered from disability or restored to earning capacity by OPM, OPM shall terminate the annuity as of the date of the finding, and the employing agency shall cease reducing pay by the amount of annuity allocable to the period of reemployment effective that same date. If the appointment is subject to retirement deductions, retirement deductions will begin or continue, as the case may be.

(b) *Subsequent benefits.*—(1) *CSRS.* If, on separation from a period of reemployment during which the disability annuity was terminated because of recovery or restoration to earning capacity, the former disability annuitant is entitled to either an immediate or deferred annuity based on the most recent separation, any right to an annuity based on a prior separation is permanently extinguished. If no such right to immediate or deferred annuity accrues based on this most recent separation, however, any right to immediate or deferred annuity will be determined on the basis of the next prior separation.

(2) *FERS.* If a disability annuity is terminated during a period of reemployment because of recovery or restoration to earning capacity, any right to an annuity based on a prior separation is permanently extinguished, except as otherwise provided by § 844.405(b)(2) of this chapter.

§ 837.404 Reinstatement of annuity during a period of employment not subject to CSRS or FERS.

When OPM reinstates the disability annuity of an individual employed in a position not subject to CSRS or FERS, the employing agency shall withhold retirement deductions and offset pay subject to the provisions of subpart C of this part, as of the date of OPM's administrative determination of reinstatement. OPM shall offset from any retroactive payment of annuity for a period that is also a period of employment an amount equal to the amount of annuity, or the pay for the period of employment, whichever is the lesser.

Subpart E—Retirement Benefits on Separation

§ 837.501 Refund of retirement deductions.

A reemployed annuitant who separates from reemployment without title to either a supplemental annuity or a redetermined annuity under this subpart is entitled to have any retirement deductions withheld from pay during the period of reemployment refunded without interest.

§ 837.502 Reinstatement of annuity.

(a) *When appropriate.* (1) When an annuity was terminated because of reemployment under the provisions of § 837.202 of this part, or any similar provision of statute or regulation in effect prior to the promulgation of this part, the annuity that was terminated will be reinstated effective the date immediately following the date the reemployed annuitant separated from reemployment, if—

(i) The reemployed annuitant's right to annuity has not been terminated under any other provision of regulation or statute; and

(ii) The reemployed annuitant is not entitled to either an immediate or deferred CSRS or FERS annuity based on the separation from reemployment.

(2) When an annuity was suspended because of reemployment under the provisions of § 837.203 of this part, the annuity that was suspended will be reinstated effective the date immediately following the date the reemployed annuitant separated from reemployment.

(b) *Amount of reinstated annuity.* The amount of an annuity reinstated under the provisions of paragraph (a)(2) of this section will be the amount of the

annuity at the effective date of termination, adjusted by such adjustments as would have occurred had the annuity remained payable during the period of reemployment.

§ 837.503 Supplemental annuity.

(a) *Title requirements.* A reemployed annuitant is entitled, on separation, or conversion to intermittent service, to a supplemental annuity if—

(1) The annuitant performed—

(i) At least 1 year of actual, continuous, full-time service;

(ii) Actual, continuous part-time service equivalent to 1 year of actual full-time service; or

(iii) A combination of part-time and full-time actual, continuous service that is equivalent to 1 year of actual full-time service; and

(2) (i) The annuity is not terminated or suspended on reemployment; and

(ii) The pay during reemployment was subject to offset by the amount of annuity allocable to the period of reemployment; *or*

(iii) The reemployed annuitant separates from an interim appointment made under the provisions of § 772.102 of this chapter.

(b) *Computation of supplemental annuity*—(1) *CSRS.* (i) That portion of a supplemental annuity that is based on the total years and full months of creditable reemployment service performed while covered under CSRS, is computed under the provisions of 5 U.S.C. 8339(a), (b), (d), (e), (h), (i), (n) and (q). Unused sick leave to the reemployed annuitant's credit immediately prior to separation from reemployed annuitant service will be credited under the rules prescribed in § 831.302 of this chapter, and 5 U.S.C. 8339(m), not to exceed the amount of unused sick leave available immediately before the effective date of an election of FERS coverage, and not including any unused sick leave included in the computation of an annuity or supplemental annuity the annuitant is receiving at the time of separation from the most recent period of reemployment.

(ii) A supplemental annuity computed in whole or in part under the provisions of this paragraph, using CSRS-Offset service, is subject to reduction under subpart G of this part.

(2) *FERS.* That portion of a supplemental annuity that is based on the total years and full months of creditable reemployment service performed on and after the effective date of FERS coverage is computed under the provisions of 5 U.S.C. 8415 (a) through (f).

(3) *Average pay.* The average pay used in the computation of a supplemental annuity is the average basic pay for the entire period of actual continuous reemployment service, excluding intermittent service.

(4) *Survivor reduction.* If the reemployed annuitant's annuity, at the time he or she applies for supplemental annuity, is reduced to provide a survivor benefit for a spouse, (or, for FERS annuitants only, a former spouse), the supplemental annuity will be reduced by 10 percent, and the survivor annuities increased, if the annuitant was retired under CSRS, by 55 percent of the supplemental annuity, and if the annuitant was retired under FERS, by 50 percent of the supplemental annuity, unless the reemployed annuitant notifies OPM at the time of application that he or she does not wish to have such reductions and increases effected.

(c) *Creditable service.* (1) All actual reemployment service performed after the date of retirement on a full-time or part-time basis may be credited in the computation of a supplemental annuity provided—

(i) When the reemployment service was performed on or after October 1, 1982, retirement deductions were withheld or, for CSRS annuitants, a deposit has been paid under the provisions of 5 U.S.C. 8334;

(ii) The reemployment service was not performed subject to another retirement system, except when the deductions under the other retirement system have been refunded and a deposit paid to OPM, where the law so permits, or benefits under the other retirement system have been waived in favor of CSRS or FERS benefits; and

(iii) The reemployment service has not been used in the computation of another supplemental or redetermined annuity.

(2) A period of reemployment service during which annuitant status continues and annuity is paid, and which is excluded from the normal annuity offset from pay by special statutory provision, cannot be credited in the computation of a supplemental annuity or any subsequent annuity entitlement.

(d) *Commencing date.* (1) Except as provided in clause (2) of this subparagraph, the supplemental annuity commences on the earlier of the first day of the month following—

(i) The day the annuitant is separated from reemployment; or

(ii) The day the annuitant is converted to an intermittent status.

(2) The supplemental annuity of a FERS annuitant, and the supplemental annuity of a CSRS reemployed annuitant who has not elected FERS coverage and who was—

(i) Involuntarily separated from the reemployment service (except by removal for cause on charges of misconduct or delinquency);

(ii) Involuntarily converted to an intermittent status, or;

(iii) Separated from reemployment service, or converted to intermittent status, after serving 3 days or less in the month of such separation or conversion—shall commence on the earlier of the day after separation from reemployment service, the effective date of conversion to intermittent status, or the day after the date pay ceases.

§ 837.504 Redetermined annuity.

(a) *Title requirements.* (1) A reemployed annuitant is entitled, on separation, or conversion to intermittent service, to a redetermined annuity if—

(i) The annuitant performed—

(A) At least 5 years of actual, continuous, full-time service;

(B) Actual, continuous part-time service equivalent to 5 years of actual full-time service, or;

(C) A combination of part-time and full-time actual, continuous service that is equivalent to 5 years of actual full-time service.

(ii) (A) The annuity was not terminated or suspended during reemployment; and

(B) The pay during reemployment was subject to offset by the amount of annuity allocable to the period of reemployment; *or*

(C) The reemployed annuitant separated from an interim appointment made under the provisions of § 772.102 of this chapter.

(iii) Retirement deductions are withheld, or a deposit is paid, for the entire period of continuous reemployment service immediately preceding the most recent separation from reemployment service; and

(iv) The reemployed annuitant elects the redetermined annuity in lieu of his or her prior annuity and the supplemental annuity that would be payable under § 837.503 of this subpart.

(2) An employee whose annuity was terminated under the provisions of § 837.202(b)(1)(iii) of this part, and who has not elected FERS coverage, is entitled to a redetermined annuity on separation.

(b) *Computation.* (1) A redetermined annuity is computed using all the reemployed annuitant's creditable service, under the provisions of law in effect governing the payment of CSRS and/or FERS annuities, as may be applicable, at the time of separation from reemployment service, or conversion to intermittent status.

(2) The amount of the redetermined annuity of an individual whose previous annuity was terminated under the provisions of § 837.202(b)(1)(iii) of this part will at least equal the amount of the terminated annuity plus any increases under section 8340 of title 5, United States Code, occurring after the termination of the previous annuity and before the commencement of the redetermined annuity, adjusted by any annuity increase or reduction resulting from additional or different elections made by the reemployed annuitant.

(c) *Commencing date.* The commencing date of the redetermined annuity is the same as the law and/or regulations would provide in the case of a retiring employee.

Subpart F—Death Benefits

§ 837.601 Generally.

Except as otherwise provided by this subpart, when an annuitant who is reemployed under circumstances that provide for continuation of annuitant status during reemployment dies, death benefits are payable under CSRS or FERS as if the individual died as an annuitant, and not as employee.

§ 837.602 Lump-sum payment of retirement deductions.

If an annuitant reemployed subject to the provisions of this part dies while so reemployed, and the annuitant would not have been entitled to a supplemental annuity, had the separation been for reasons other than death, or if there is no supplemental spousal survivor annuity payable (including a survivor annuity payable to a former spouse, if the annuitant retired under FERS) the amount of retirement deductions withheld during the period of reemployment will be paid in a lump sum to the person entitled under the provisions of 5 U.S.C. 8342(c) or 8424(d), as appropriate.

§ 837.603 Increased Survivor benefits.

(a) *Supplemental survivor annuity.* (1) If an annuitant reemployed subject to the provisions of this part dies while so reemployed, and the annuitant would have been entitled to a supplemental annuity, had the separation been for reasons other than death, and there is a spousal survivor annuity payable (including a survivor annuity payable to a former spouse, if the annuitant retired under FERS) the amount of the spousal survivor annuity will, if any necessary deposit for service credit is made, be increased by 55 percent of the supplemental annuity, if the reemployed annuitant was retired under CSRS, or 50 percent of the supplemental annuity, if the reemployed annuitant was retired under FERS.

(2) Supplemental survivor annuity benefits payable under this paragraph, computed in whole or in part under the provisions of § 837.503(b)(1)(i) of this part, using CSRS-Offset service, are subject to reduction under subpart G of this part.

(b) *Redetermined survivor annuity.* If an annuitant reemployed subject to the provisions of this part dies while so reemployed, and the annuitant would have been entitled to elect a redetermined annuity, had the separation been for reasons other than death, and if there is a spousal survivor annuity payable (including a survivor annuity payable to a former spouse, if the annuitant retired under FERS), a person entitled to a spousal survivor annuity may elect to have his or her survivor annuity computed as if the annuitant had elected a redetermined annuity, provided any necessary deposit for service credit is made.

Subpart G—CSRS Offset

§ 837.701 Offset from supplemental annuity.

(a) OPM will reduce the supplemental annuity of an individual who has performed CSRS-Offset service, if the individual is entitled, or on proper application would be entitled, to old-age benefits under title II of the Social Security Act.

(b) The reduction required under paragraph (a) of this section is effective on the first day of the month during which the reemployed annuitant—

(1) Is entitled to a supplemental annuity under this part; and

(2) Is entitled, or on proper application would be entitled, to old-age benefits under title II of the Social Security Act.

(c) Subject to paragraphs (d) and (e) of this section, the amount of the reduction required under paragraph (a) of this section is the lesser of—

(1) The difference between—

(i) The social security old-age benefit for the month referred to in paragraph (b) of this section; and

(ii) The old-age benefit that would be payable to the individual for the month referred to in paragraph (b) of this section, excluding all CSRS-Offset wages as a reemployed annuitant, and assuming the annuitant was fully insured (as defined by section 214(a) of the Social Security Act); or

(2) The product of—

(i) The old-age benefit to which the individual is entitled or would, on proper application, be entitled; and

(ii) A fraction—

(A) The numerator of which is the annuitant's total CSRS-Offset service as a reemployed annuitant, rounded to the nearest whole number of years not exceeding 40 years; and

(B) The denominator of which is 40.

(d) Cost-of-living adjustments under 5 U.S.C. 8340 occurring after the effective date of the reduction required under paragraph (a) of this section will be based on only the supplemental annuity remaining after reduction under this subpart.

(e) The amounts for paragraphs (c)(1)(i), (c)(1)(ii), and (c)(2)(i) of this section are computed without regard to subsections (b) through (1) of section 203 of the Social Security Act (relating to reductions in social security benefits), and without applying the provisions of the second sentence of section 215(a)(7)(B)(i) or section 215(d)(5)(ii) of the Social Security Act (relating to part of the computation of the social security windfall elimination provisions).

(f) OPM will accept the determination of the Social Security Administration, submitted in a form prescribed by OPM, concerning entitlement to social security benefits and the beginning and ending dates thereof.

§ 837.702 Offset from supplemental survivor annuity.

(a) OPM will reduce a supplemental survivor annuity (an annuity under 5 U.S.C. 8341) based on the service of an individual who performed CSRS-Offset service, if the survivor annuitant is entitled, or on proper application would be entitled, to survivor benefits under section 202(d), (e), or (f) (relating to children's, widows', and widowers' benefits, respectively) of the Social Security Act.

(b) The reduction required under paragraph (a) of this section begins (or is reinstated) on the first day of the month during which the survivor annuitant—

(1) Is entitled to a disability or survivor annuity under CSRS; and

(2) Is entitled, or on proper application would be entitled, to survivor benefits under the Social Security Act provisions mentioned in paragraphs (a) and (c) of this section, respectively.

(c) The reduction under paragraphs (a) of this section will be computed and adjusted in a manner consistent with the provisions of § 837.701 (c) through (e) of this part.

(d) A reduction under paragraph (a) of this section stops on the date entitlement to the disability or survivor benefits under title II of the Social Security Act terminates. In the case of a survivor annuitant who has not made

proper application for the social security benefit, the reduction under paragraph (a) of this section stops on the date entitlement to such survivor benefits would otherwise terminate. If a social security benefit is reduced under any provision of the Social Security Act, even if reduced to zero, entitlement to that benefit is not considered to have terminated.

(e) OPM will accept the determination or certification of the Social Security Administration, submitted in a form prescribed by OPM, concerning entitlement to social security survivor benefits and the beginning and ending dates thereof.

Subpart H—Alternative Entitlements and Canceled Retirements

§ 837.801 Unperfected entitlement to CSRS benefits based on a prior separation.

(a) An employee who meets the age and service requirements for title to a non-disability annuity under CSRS on the basis of a prior separation, but did not apply for that annuity before a subsequent separation from service to which a different annuity entitlement attaches, may elect, on application, to receive either—

(1) The annuity based on the later separation; or

(2) The annuity based on the prior separation, with payment of annuity suspended during the period(s) of employment subsequent to the commencing date of annuity, and such benefits as would be payable had the subsequent period(s) of employment been performed under the provisions of this part.

(b) When an individual who has applied for a deferred annuity under CSRS is reemployed under CSRS before the commencing date of that annuity, the application is deemed to have not been made.

§ 837.802 Benefits under another retirement system for Federal employees based on the most recent separation.

(a) *Generally.* An annuitant who has performed reemployment service after the commencing date of annuity under the provisions of another retirement system, and who is entitled to an annuity benefit from the other retirement system during a period in which he or she is also entitled to an annuity benefit under CSRS or FERS, may receive both benefits simultaneously, or for the same period, except that the annuitant may not receive both benefits simultaneously, or for the same period, if—

(1) The provisions of law or regulation governing the other retirement system do not permit the annuitant to receive both benefits simultaneously, or for the same period of time; or

(2) Entitlement to the annuity from the other retirement system is based on service credited in the computation of the CSRS or FERS annuity, or service credited in the computation of the annuity from the other retirement system was used in the computation of the CSRS or FERS annuity.

(b) *Election of alternative benefits.* (1) Where simultaneous receipt of, or entitlement to, both annuities is barred under the provisions of paragraph (a)(1) of this section, the annuitant must elect to receive either the annuity under the other retirement system, or the CSRS annuity.

(2) Where the annuitant, under the provisions of paragraph (b)(1) of this section, elects to receive annuity from the other retirement system in lieu of the CSRS or FERS annuity, the CSRS or FERS annuity terminates as of the commencing date of the other annuity, and any overpayment of CSRS annuity will be offset from the other annuity and paid to OPM.

(c) *Recomputation.* Where simultaneous receipt of annuities from more than one retirement system is barred by paragraph (a)(2), but not by paragraph (a)(1), of this section, the CSRS or FERS annuity may be recomputed to exclude credit for service credited in determining entitlement to, or the amount of, the annuity from the other retirement system, effective as of the commencing date of the annuity from the other retirement system for Federal employees, and the recomputed CSRS or FERS annuity may be paid simultaneous with, or for the same period as, the annuity from the other retirement system for Federal employees.

(d) *Forfeiture.* Where an annuitant's coverage as an employee under another retirement system, whether by election or by operation of law or regulation, results in forfeiture of annuity rights under CSRS or FERS, the CSRS or FERS annuity will terminate as of the effective date of coverage.

(e) *Survivors.* The rules detailed in this section in regard to dual entitlement to annuity benefits under CSRS or FERS and another retirement system also apply to dual entitlement to survivor benefits under CSRS or FERS and another retirement system, unless the particular circumstance is otherwise governed by specific provision of statute or regulation.

(f) *Agency responsibilities.* The agency responsible for administering another retirement system must—

(1) Promptly notify OPM of an election of coverage under that retirement system by a reemployed CSRS or FERS annuitant, or the coverage of a reemployed CSRS annuitant under that retirement system by election or operation of law or regulation, when such coverage affects the annuitant's entitlement to CSRS annuity;

(2) Promptly notify OPM when a reemployed annuitant separates with entitlement to an annuity under the other retirement system that cannot, under the provisions of paragraph (a) of this section, be paid simultaneous with, or during the same period as, the CSRS annuity; and

(3) Reimburse OPM for overpayments of annuity resulting from a failure to comply with paragraphs (b) (1) and (2) of this section.

§ 837.803 Cancellation of retirement by judicial or administrative authority.

(a) *Cancellation of retirement action.* A separation from employment on which an application for retirement is based may only be canceled by the former employing agency in response to a direct and final order of a judicial or administrative body charged with the responsibility of reviewing the legality of the separation, and authorized to make such order, or by agreement between the annuitant and the former employing agency in resolution of a grievance, complaint, dispute, appeal o other action, involving an allegedly erroneous separation, before such authority.

(b) *Agency notification to OPM.* Upon receiving a final order requiring cancellation of the annuitant's separation or after the annuitant and the agency agree to cancel the separation, the employing agency must notify OPM and request the amount of the erroneous payment to be recovered under § 550.805(e) of this chapter from any back pay adjustment to which the employee may be entitled.

(c) *Collection of erroneously paid retirement benefits.* (1) If OPM determines that an overpayment of annuity or lump-sum credit has occurred and the employee is entitled to receive back pay because of the canceled separation, the overpaid retirement benefits must be deducted to the extent they can be recovered from the back pay adjustment as required by § 550,805(e) of this chapter.

(2) Amounts recovered from back pay will not be subject to waiver consideration under the provisions of 5 U.S.C. 8346(b) or 8470(b). If there is no back pay or the back pay is insufficient to recover the entire payment, the employee may request that OPM waive the uncollected portion of the

overpayment. If waiver is not granted, the employee must repay the erroneous payment.

§ 837.804 Finality of elections under this subpart.

Except as otherwise provided by this subpart, an election of coverage under, or annuity from, another retirement system, in lieu of CSRS or FERS coverage or annuity, or the election between simultaneous entitlements under CSRS or FERS, is final and conclusive for the period of simultaneous entitlement to coverage or annuity.

PART 841—FEDERAL EMPLOYEES RETIREMENT SYSTEM—GENERAL ADMINISTRATION

Subpart E—Employee Deductions and Government Contributions

5. The authority citation for part 841 continues to read in part as follows:

Authority: 5 U.S.C. 8461; * * *

§ 841.506 [Amended]

6. In § 841.506, paragraphs (b), (d), and (e) are removed, and paragraph (c) is redesignated (b).

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

Subpart A—Coverage

7. The authority citation for part 842 continues to read in part as follows:

Authority: 5 U.S.C. 8461(g); * * *

§ 842.104 [Amended]

8. In § 842.104, paragraph (a) is removed, and paragraphs (b) through (g) are redesignated (a) through (f).

PART 844—FEDERAL EMPLOYEES RETIREMENT SYSTEM—DISABILITY RETIREMENT

9. The authority citation for part 844 continues to read as follows:

Authority: 5 U.S.C. 8461.

Subpart D—Termination and Reinstatement of Disability Annuity

§ 844.403 [Removed]; §§ 844.404 and 844.405 [Redesignated as §§ 844.403 and 844.404; Newly redesignated 844.404 amended]

10. Section 844.403 is removed, and §§ 844.404 and 844.405 are redesignated as §§ 844.403 and 844.404; in newly redesignated § 844.404, paragraph (e) is removed and paragraph (f) is redesignated (e).

PART 846—FEDERAL EMPLOYEES RETIREMENT SYSTEM—ELECTING COVERAGE

11. The authority citation for part 846 continues to read in part:

Authority: 5 U.S.C. 8461(g); * * *

Subpart C—Effect of an Election to Become Subject to FERS

§ 846.305 [Removed]; § 846.306 [Redesignated as § 846.305]

12. Section 846.305 is removed, and § 846.306 is redesignated as § 846.305.

[FR Doc. 93–22377 Filed 9–14–93; 8:45 am]
BILLING CODE 8325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 781

RIN 0560–AD06

Amendment to the Regulations for the Agricultural Foreign Investment Disclosure Act of 1978 Regarding Land Used for Forestry Production

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to amend, for clarification, the definition of agricultural land as it pertains to the reporting requirements for the disclosure of foreign investment in land used for forestry production under the authority of the Agricultural Foreign Investment Disclosure Act of 1978 (AFIDA). This action will clarify the definition of agricultural land as it relates to land used for forestry production and reduce confusion regarding the reporting of foreign investment in agricultural land.

EFFECTIVE DATE: October 15, 1993.

FOR FURTHER INFORMATION CONTACT: William A. Brown, Emergency Operations and Livestock Programs Division, Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), room 4095 South Building, P.O. Box 2415, Washington, DC 20013–2415, telephone 202–720–6833.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Departmental Regulation 1512–1

This final rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been designated as "nonmajor." It has been determined that this rule will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, state or local governments, or geographical regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778, Civil Justice Reform. The provisions of the final rule do not preempt state laws, are not retroactive, and do not involve administrative appeals.

Executive Order 12372

The program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354). Pursuant to that review, Bruce R. Weber, Acting Administrator, ASCS, has certified that this final rule does not have a significant economic impact on a substantial number of small entities because the rule merely requires reports to be filed by foreign persons owning U.S. agricultural land. The final rule will only impact a small percent of foreign investors owning land used for forestry production, allowing clearer and less burdensome reporting regulations to be followed in the reporting process. Therefore, no Regulatory Flexibility Analysis was prepared.

Paperwork Reduction Act of 1980

This final rule contains no information collection or recordkeeping requirements that require clearance by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an

Environmental Impact Statement is needed.

Background

On January 12, 1993, the Department issued a proposed rule (58 FR 3871) requesting comments with respect to amending the definition of agricultural land as it pertains to forestry production in regulations issued pursuant to the AFIDA.

There were no comments received pertaining to the proposed rule. Nevertheless, upon further review, the definition of forestry production set forth in the Proposed Rule has been revised to further clarify the Department's intent and to remove ambiguities concerning the size of the tract, percentage of land forested, size of trees, and other factors not pertinent to forestry production as they apply to the definition of agricultural land under the AFIDA.

It is intended that this final rule will provide the public with a better understanding of the term agricultural land as it pertains to land used for forestry production.

List of Subjects in 7 CFR Part 781

Administrative practice and procedure, Agriculture, Foreign investment in the United States, Penalties, Reporting and recordkeeping requirements.

Accordingly, 7 CFR part 781 is amended as follows:

PART 781—DISCLOSURE OF FOREIGN INVESTMENT IN AGRICULTURAL LAND

1. The authority citation for 7 CFR part 781 continues to read as follows:

Authority: 7 U.S.C. 3501 et seq.

2. Section 781.2(b) is revised to read as follows:

§ 781.2 Definitions.

* * * * *

(b) *Agricultural land.* Agricultural land means land in the United States used for forestry production and land in the United States currently used for, or, if currently idle, land last used within the past five years, for farming, ranching, or timber production, except land not exceeding ten acres in the aggregate, if the annual gross receipts from the sale of the farm, ranch, or timber products produced thereon do not exceed $1,000. Farming, ranching, or timber production includes, but is not limited to, activities set forth in the Standard Industrial Classification Manual (1987), Division A, exclusive of industry numbers 0711–0783, 0851, and 0912–0919 which cover animal trapping, game management, hunting carried on as a business enterprise, trapping carried on as a business enterprise, and wildlife management. Land used for forestry production means, land exceeding 10 acres in which 10 percent is stocked by trees of any size, including land that formerly had such tree cover and that will be naturally or artificially regenerated.

* * * * *

Signed at Washington, DC on September 9, 1993.

Dallas R. Smith,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 93–22544 Filed 9–14–93; 8:45 am]

BILLING CODE 3410–05–P

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV93–989–31FR]

Raisins Produced From Grapes Grown in California; Addition of Several Caribbean Area Countries as Countries Eligible for Exports of Reserve Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule adds several Caribbean countries as countries eligible for exports of reserve California raisins. This action was unanimously recommended by the Raisin Administrative Committee (Committee), the agency responsible for local administration of the Federal marketing order regulating raisins produced in California. By providing handlers with additional markets for their reserve raisins, this action is expected to reduce the burden of oversupply currently confronting the industry.

DATES: The interim final rule is effective on September 15, 1993. Comments which are received by October 15, 1993, will be considered prior to any finalization of this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456, or faxed to (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Richard Van Diest, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901; or Valerie Emmer, Richard Lower, or Mark Slupek, Marketing Specialists, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2829, (202) 720–2020, or (202) 720–2830 respectively.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This interim final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation No. 1512–1 and the criteria contained in Executive Order 12291, and has been determined to be a "non-major" rule.

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

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has

considered the economic impact of this action on small entities.

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

There are approximately 25 handlers of California raisins who are subject to regulation under the raisin marketing order, and approximately 5,000 producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $3,500,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. A minority of handlers and a majority of producers of California raisins may be classified as small entities.

The marketing order provides for the establishment of "free" and "reserve" percentages by variety of raisin for each crop year. "Free" raisins are those which may be shipped freely to any market. Raisins in excess of free tonnage are reserve raisins which must be held by handlers for the account of the Committee. Most reserve raisins withheld under the order have been marketed as food in domestic and eligible export outlets. In crop years with inadequate raisin production, reserve raisins are available to supplement new crop supplies.

Pursuant to § 989.221, reserve raisins are currently sold to handlers for export to the Dominican Republic, islands on the continental shelf of South America, and to all other markets in the world except the following: Canada, Mexico, all islands adjacent to Canada and Mexico, and Caribbean islands north of the 12th parallel (with the exception of the Dominican Republic).

This action is based upon a recommendation and information submitted by the Committee and upon other available information. The Committee met on June 17, 1993, and unanimously recommended that the countries eligible for exports of reserve California raisins be expanded to include every market except Cuba, Puerto Rico, the U.S. Virgin Islands, Canada, Mexico, and all islands adjacent to Canada and Mexico. The Committee indicated that Puerto Rico and the U.S. Virgin Islands should continue to be ineligible because chain stores in the United States have stores in some of these markets and supply their stores in these territories with free percentage raisins purchased in the United States. The other countries would continue to be ineligible because of the potential for transhipment of free percentage tonnage to higher priced markets.

Increasing the number of countries eligible for exports of reserve raisins will give handlers more market outlets for their reserve raisins. Since this provision utilizes reserve raisins, it is expected to reduce the oversupply that is currently confronting the industry.

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

After consideration of all relevant information presented, including the Committee's recommendations and other information, it is found that this regulation, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that upon good cause it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action relaxes requirements on handlers; (2) this action was unanimously recommended at a public meeting; (3) it is desirable to have this action in place as soon as possible because the 1993–94 crop year began on August 1, 1993; (4) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 is revised to read as follows:

Authority: 7 U.S.C. 601–674.

Subpart—Supplementary Regulations

2. Section 989.221 is revised to read as follows:

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

§ 989.221 Sale and export of reserve raisins by handlers.

(a) *Eligible countries.* Pursuant to § 989.67(c), the Committee may sell reserve raisins to handlers for export to all markets in the world except those listed in paragraph (b) of this section.

(b) *Non-eligible countries.* The Committee may not sell reserve raisins to handlers for export to Cuba, Puerto Rico, the U.S. Virgin Islands, Canada, Mexico, and all islands adjacent to Canada and Mexico.

Dated: September 7, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–22479 Filed 9–14–93; 8:45 am]

BILLING CODE 3410–02–P

Farmers Home Administration

7 CFR Parts 1910, 1924, 1941, 1943, 1945, 1955, and 1980

RIN 0575–AB41

Revisions to the Direct and Guaranteed Operating (OL) and Farm Ownership (FO) Loan and Related Instructions to Implement Sections 4, 5, 7, 8, 9, and 19 of the Agricultural Credit Improvement Act of 1992 Relative to the Special OL Assistance and Downpayment FO Loan Programs for Beginning Farmers and Ranchers, and Graduation of Borrowers With Operating Loans or Guarantees to Private Credit

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Farmers Home Administration (FmHA) amends its direct and guaranteed farm ownership (FO) and operating (OL) loan making regulations to implement amendments made to the Consolidated Farm and Rural Development Act (CONACT) by the Agricultural Credit Improvement Act of 1992 (Act). These amendments concern interest rates for loans sold on the secondary market and guaranteed loan fees, a downpayment FO loan program, a special assistance OL loan program for beginning farmers or ranchers, definition of "beginning farmer or rancher," limitations on the number of years that new and existing farm borrowers may receive direct and guaranteed OL loan assistance, and plans to encourage borrower graduation to private credit. The intended effect is to encourage and assist a larger number

of qualified beginning farmers and ranchers to become established in farming or ranching.

DATES: Interim rule effective September 30, 1993. Written comments must be submitted on or before October 15, 1993.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Regulations Analysis and Control Branch, Farmers Home Administration, USDA, room 6348, South Agriculture Building, 14th Street and Independence Avenue SW., Washington, DC 20250–0700. All written comments made pursuant to this notice will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: David R. Smith, Senior Loan Officer, Farmer Programs Loan Making Division, Farmers Home Administration, USDA, South Agriculture Building, room 5430, 14th and Independence Avenue SW., Washington, DC 20250–0700, Telephone (202) 720–1645.

SUPPLEMENTARY INFORMATION:

Classification

This action was reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be nonmajor because it will not result in an annual effect on the economy of $100 million or more.

Intergovernmental Consultation

1. For the reasons set forth in the final rule related to Notice 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Farm Ownership Loans, Farm Operating Loans, and Emergency Loans are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loan Program is subject to the provisions of Executive Order 12372 and FmHA Instruction 1940–J.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.416—Soil and Water Loans

Environmental Impact Statement

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

Civil Justice Reform

This document has been reviewed in accordance with Executive Order (E.O.) 12778. It is the determination of FmHA that this action does not unduly burden the Federal Court System in that it meets all applicable standards provided in section 2 of the E.O.

Paperwork Reduction Act

The information collection requirements contained in these regulations have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control numbers 0575–0134, 0575–0061, 0575–0141, 0575–0085, 0575–0083, 0575–0090, 0575–0024, and 0575–0079 in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). The interim final rule does not revise or impose any new information collection or recordkeeping requirement from those approved by OMB.

Discussion of Background

Farm loans made to FmHA applicants are governed mainly by the CONACT (7 U.S.C. 1921 et seq.). FmHA has historically assisted new and established farmers and ranchers through its regular direct and guaranteed FO and OL loan programs. Operating type credit is provided with a 1–7 year repayment term, while farm ownership loans may be repaid over a 40-year term. The interest rate charged on direct loans is either FmHA's regular rate or reduced rates (limited resource rates). Limited resource rates are available only to those low income applicants facing special obstacles and hardships and would otherwise be unable to develop a feasible plan of operation. Farmers who require less supervision and/or are in a more favorable financial position can obtain farm ownership or operating loans from commercial credit institutions backed by FmHA guarantees. The interest rate on guaranteed loans is negotiated between the lender and the borrower and is typically the lender's average interest rate for similar loans.

Thus far, FmHA has had no limit on the number of years that a farmer could receive FmHA direct or guaranteed loan assistance. The limiting conditions have primarily been statutory eligibility requirements, the lack of available credit elsewhere, maximum individual loan entitlement limits for each program, borrower repayment ability, and adequate collateral to secure the loan.

During the mid 1980s, Congressional concern regarding the large National debt, and increasing FmHA loan losses within the farmer programs loan portfolio, precipitated a Congressionally mandated shift from direct to guaranteed lending. This shift in the source priority of loan funds was also prompted by less initial FmHA risk exposure and a more favorable loan cost ratio with guarantee funds. The Administration was also concerned with the long term loan commitment evidenced by the direct FO loan program. Future budget recommendations reflected a continuing decrease in direct FO funding. This has resulted in inadequate direct FO loan funding to continue with existing farmer programs borrowers needs and assist new applicants to become established in farming or ranching operations.

There has also been growing concern regarding the pending retirement of large numbers of farmers and ranchers, with fears there may be insufficient numbers of new farmers and ranchers to take their place. The House Committee Report 102–783 on the Act indicates the need to assist beginning farmers and ranchers get started in agriculture. Page 18 of that report stated that according to the most recent Census of Agriculture, taken in 1987, there was an increase of 20.7 percent in the number of farmers in the 65 and over age group between 1978 and 1987. During the same period, the number of farmers less than 25 years of age decreased by 46.2 percent, and the number of farmers between 25 and 34 years of age declined by 15 percent. The only age group to show an increase was the group of farmers 65 years of age and older. These statistics indicate that America's farm population is aging and that younger people are not replacing retiring farmers in adequate numbers to ensure a diverse family farm system of agriculture. This concern resulted in passage of section 7 (Downpayment FO Loan Program) and section 8 (Special OL Loan Assistance) of the Act relating to beginning farmer and rancher loan assistance. The intent of the statute and these implementing regulations is to refocus a larger portion of FmHA resources on establishing the next generation of agricultural producers,

and to reemphasize FmHA's role as a temporary source of credit by limiting the number of years that a borrower may obtain direct and guaranteed OL loan assistance.

Discussion of Interim Rule

It is the policy of this Department, that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption of 5 U.S.C. 553 with respect to such rules. FmHA is making this action effective immediately as an interim rule upon publication in the **Federal Register** without prior public comment, however, as required by section 23 of the Act signed October 28, 1992. Even so, this rule provides for a 30-day comment period. Any comments received will be addressed in the final rule.

This rule addresses section 4 (Interest Rates for Loans Sold into the Secondary Market; Guaranteed Loan Fees), section 5 (Federal-State Beginning Farmer Partnership), section 7 (Downpayment Loan Program), section 8 (Special Assistance to Certain Qualified Beginning Farmers and Ranchers), section 9 (Graduation of Borrowers with Operating Loans or Guarantees to Private Commercial Credit), and section 19 (Definition of Qualified Beginning Farmer or Rancher) of the Act. The Agency is implementing these statutory provisions as discussed below. The Agency will address other sections of the Act with additional regulation packages.

Section 4—Interest Rates for Loans Sold into the Secondary Market; Guaranteed Loan Fees (CONACT Section 309(h) (7 U.S.C. 1929(h))

CONACT section 309(h) allows the guaranteed portion of any loan sold into the secondary market to provide borrowers a lower rate of interest than the rate provided for the non-guaranteed portion of the loan retained by the originating lender. However, since guaranteed lines of credit cannot be sold in the secondary market, CONACT section 309(h) does not apply to lines of credit. The Agency has amended 7 CFR part 1980, subpart B, § 1980.175 (e), to reflect that the guaranteed portion of the loan may carry an interest rate lower than the non-guaranteed portion, without reference to the secondary market. This is a slightly more liberal interpretation than the legislation requires. However, interest rates are normally established at loan origination and the lender is not always certain at that time whether the guaranteed portion will be sold. In accordance with the statute, the interest rate on the non-guaranteed portion is limited to a rate no more than that charged the lender's average farm customer. There is no reason not to permit the lender more flexibility in reducing the rate to the borrower. Other sections of 7 CFR part 1980, subpart B governing Soil and Water and Farm Ownership loan making refer to § 1980.175 regarding interest rate requirements. Therefore, modifying § 1980.175 in effect also changes section 1980.180, Farm Ownership Loans, and § 1980.185, Soil and Water Loans, bringing them into compliance with the Act.

Section 309(h) of the CONACT also prohibits FmHA from charging fees to lenders for guarantees made under the Downpayment Farm Ownership Loan Program established by the Act, and limits origination and servicing fees charged by lenders to 1 percent of the loan amount. These requirements are implemented with amendments to 7 CFR part 1980, Subpart A, § 1980.21, governing guarantee fees charged by the Agency, and section 1980.22, which limits lender fees charged to borrowers.

Section 5—Federal-State Beginning Farmer Partnership (CONACT Section 309(i)) (7 U.S.C. 1929)

CONACT Section 309(i) requires FmHA to coordinate assistance with any State Beginning Farmer Program to provide financing to qualified beginning farmers or ranchers. The State Beginning Farmer Program has been defined in 7 CFR part 1943, subpart A and 7 CFR part 1980, subpart B. It is referenced in the Downpayment Farm Ownership Loan Program section of 7 CFR part 1943, subpart A, and under general provisions in 7 CFR part 1980, subpart B. The Act defines "State Beginning Farmer program" as any program that is carried out by or under contract with the State and designed to assist persons enter agriculture and establish viable farming or ranching operations. The Act allows FmHA to guarantee financing provided by the State program to a qualified beginning farmer or rancher to establish or maintain a viable farming or ranching operation. House Committee Report 102–783 on the Act states that FmHA can provide a guarantee of operating financing provided by the State. Therefore, FmHA has included the maintenance as well as the establishment of "viable farming or ranching operations" in the definition of "State Beginning Farmer program." Under the new program, FmHA may provide an eligible farmer with a downpayment loan under FmHA's newly created Downpayment FO Loan Program, and/or an FO or OL guarantee of the financing provided by the State program. The Act states that FmHA will not charge any guarantee fee on any loan made by a State Beginning Farmer Program and guaranteed by FmHA. In addition, Office of Management and Budget Circular A–129, dated January 27, 1993, prohibits FmHA from providing guaranteed assistance when funds have been derived from tax-exempt bonds. These conditions have been adopted in the implementing regulations.

Specific instructions relative to the Federal-State Beginning Farmer Program will not be published in the **Federal Register** as all States will have received actual notice regarding the program.

Section 7—Downpayment Farm Ownership (FO) Loan Program (CONACT sections 310E and 310F) (7 U.S.C 1935 and 1936)

The Agency amends subpart A of part 1943 by adding a new section to establish a Downpayment FO Loan Program for Beginning Farmers and Ranchers. Applicants must meet the present general FO loan eligibility requirements and the definition of a beginning farmer or rancher, which is addressed in section 19 of the Act. (Implementation of section 19 is discussed below.) According to CONACT section 310E, the applicant must provide a downpayment equal to 10 percent of the purchase price of the farm or ranch being purchased. The purchase price or the appraised value of the farm or ranch, whichever is lower, cannot exceed $250,000. FmHA will provide a direct FO loan for up to 30 percent of the purchase price, or appraised value, whichever is lower, to qualified applicants for a period not to exceed 10 years at a 4 percent interest rate. The applicant must obtain other financing on the remaining 60 percent balance with or without an FmHA loan guarantee. The other financing must be repaid over a period not less than 30 years with no balloon payment scheduled during the 10 years of the FmHA loan.

CONACT section 310E also requires the Agency, to the maximum extent practicable, to facilitate the transfers of farms and ranches from retiring farmers and ranchers to persons eligible for insured real estate loans, and to make efforts to widely publicize the availability of Downpayment FO loans to FO applicants, potentially eligible applicants, and retiring farmers and ranchers. Provisions for implementing these administrative requirements are included in § 1943.14 of subpart A of part 1943 of this chapter.

CONACT section 310F further provides that an applicant that has received special beginning farmer OL loan assistance under CONACT section 318 cannot receive a downpayment FO loan, or a regular direct or guaranteed FO loan, until the applicant has farmed at least 5 years. An applicant can receive such loan assistance after 5 years if the applicant has conducted the operation in accordance with the plan required under CONACT section 318, and meets eligibility requirements for the requested loan assistance.

Pursuant to CONACT section 346(b)(3), in Fiscal Year (FY) 1994, 55 percent of all direct FO funds will be targeted to this program. In FY 1995, 65 percent of all direct FO funds will be targeted, and for FYs 1996 and beyond at least 65 percent of all direct FO funds will be targeted to this program.

The Agency amends subpart B of part 1980 by adding a reference under loan purposes to providing a loan guarantee in conjunction with the Downpayment FO Loan Program.

Section 8—Special Operating (OL) Loan Assistance for Beginning Farmers and Ranchers (CONACT Section 318) (7 U.S.C. 1948)

The Agency amends subpart A of part 1941 and subpart B of part 1980 by adding a new section to implement the Special OL Assistance Program for Beginning Farmers and Ranchers. The objective is to move the borrower through varying degrees of direct and guaranteed OL loan assistance with ultimate graduation to private credit. In accordance with the statute, FmHA will provide up to a 10-year commitment to provide a combination of direct and guaranteed OL loan assistance.

Section 318 of the CONACT states that the applicant must provide a plan of the farming operation for each of the first 5 years for which special OL assistance is requested. The plan must also project the financial status of the operation after assistance has been provided for not more than 10 years, as is necessary for the operation to become financially viable without further FmHA assistance. The Agency has defined "financially viable operation" in subpart A of part 1941 and subpart B of part 1980.

The plan must indicate how the operation is to be conducted; types and quantities of commodities to be produced; the production methods to be employed by the operator; conservation measures to be utilized; the equipment needed in the farming operation and whether the applicant owns, leases, has available, or plans to purchase each item of equipment; expected income and expenses of the operation; expected credit needs; and the site where the farming operation is, or will be located. While the law does not require the plan to include any livestock needed in the farming operation, the Agency has added livestock and whether the applicant owns, leases, has available, or plans to purchase such livestock. Livestock is as essential to a livestock operation as equipment is to a cash crop operation. The 5-year plan and financial projection required by statute cannot be developed on a livestock operation without this data.

One requirement for approval of an application for special OL assistance under section 318 of the CONACT is that the operation would generate income sufficient to cover the expenses of the operation, debt service, and adequate living expenses of the applicant to the extent that other income would not cover the living expenses. Under this provision and its legislative history, nonfarm income specifically is limited to cover living expenses. Under FmHA's regular OL program, nonfarm income may cover operating expenses and/or debt service in addition to living expenses.

Upon receipt of a first year plan from the applicant, including any planned purchases and changes to the operation, the Agency will, at the applicant's option, develop the 5-year plan and financial projection by using an automated system. This will be accomplished based upon the Economic Research Service's long-range farm budget projections, which are part of the automated system. The Agency believes the average applicant will not have the necessary resources to develop the projected 5-year plan and financial projection. Developing such a plan could be very time consuming and burdensome to the applicant. Therefore, FmHA will assist the applicant with this requirement at the applicant's option. However, in those cases where the applicant is in a position to develop a plan for each of the first 5 years and a financial status projection showing financial viability within 10 years, the Agency will accept such documents. The Agency has amended subpart A of part 1941 to implement this change.

In those cases where the loan applicant qualifies for guaranteed special OL loan assistance, the lender and/or loan applicant normally will develop the 5-year plan and financial projection. Lenders will have the knowledge and expertise to develop these documents. The lender and loan applicant, however, also have the option of developing and submitting a first year plan to the Agency and requesting the FmHA official to develop a 5-year plan and financial projection by using the above-described automated system. The Agency has amended subpart B of part 1980 to implement this change.

The plan will be submitted with the loan application to the FmHA County Committee for review in accordance with the statute. The Committee also must determine that the applicant meets the regular OL loan eligibility requirements, that the applicant meets the beginning farmer and rancher definition, and has not operated a farm or ranch for more than 5 years. In addition, they must determine that during the 5-year period prior to the date of initial application, the applicant has had sufficient education and experience to indicate the ability to conduct a successful farming or ranching operation. This latter requirement is more restrictive than the current "education and/or farm experience" eligibility requirement under the regular direct OL loan program.

The Agency shall, subject to availability of funds, and a feasible plan of operation, make a conditional commitment to the applicant for each year of the commitment period to provide direct or guaranteed funding for operating and capital purchase purposes in accordance with the 5-year plan. During the commitment period, the applicant shall receive priority in the purchase of inventory equipment necessary for the success of the operation, either by credit sale or loan guarantee.

Based on CONACT section 318(f), special beginning farmer OL loans, after the first year, are contingent on the revision of the projected plan based on an analysis of the prior year's operation. The plan revision must occur not later than 60 days prior to the assistance being provided for the particular year.

The length of the commitment period will be determined by an automated analysis of projected financial and income data to reflect a financially viable operation, as previously discussed. The commitment period cannot exceed 10 years. A commitment period established for less than 10 years may be extended, subject to the 10-year limit, providing that the borrower's failure to meet established goals were the result of circumstances beyond the borrower's control and did not materially reduce the likelihood of the operation becoming financially viable. Examples of circumstances beyond the borrower's control have been set out in § 1941.15 of subpart A of part 1941. These are consistent with those listed in FmHA servicing regulations, subpart S

of part 1951. According to statute, a commitment period will be terminated if the borrower fails to meet the goals specified in the plan for 2 consecutive years, unless the failure has not materially reduced the likelihood of the operation becoming financially viable and is due to circumstances beyond the borrower's control. The commitment will also be revoked if the County Committee fails to recertify the borrower as eligible for regular OL loan assistance after 5 years. By statute, the borrower shall not be eligible for assistance under this section for a 3-year period beginning from the date the commitment was terminated.

Section 318 of the CONACT also restricts the applicant to 8 years of special direct OL loan assistance during the 10-year commitment period. The Congressional Record, dated October 8, 1992 (S 17861), indicates that this limit does not preclude the borrower from receiving another 2 years of direct loans, if necessary, under the regular operating loan program, consistent with the overall graduation requirements in section 9 of the Act.

Pursuant to CONACT section 346(b), during the first 6 months of Fiscal Year (FY) 1994, not less than 30 percent of the direct OL funds will be targeted for loans to beginning farmers or ranchers. During the first 6 months of FYs 1995 and 1996, not less than 40 percent of available direct OL funds shall be targeted. During the first 6 months of FY 1997, and thereafter, not less than 50 percent of available direct OL funds shall be targeted for loans to beginning farmers or ranchers.

Since Congress has targeted funds to beginning farmers, the Agency believes that it will be able to assist a substantial number of beginning farmers under its existing operating loan program and new program for beginning farmers and ranchers. The law does not require the Agency to target funds solely to beginning farmers or ranchers receiving assistance under the special OL program. OL funds are targeted to all beginning farmers requesting any OL assistance.

The special beginning farmer OL assistance program, however, has several restrictions which will limit its availability to the public. The general beginning farmer definition states that the applicant must have farmed less than 10 years; however, under the special OL assistance program, applicants must have farmed less than 5 years. In addition, the special OL assistance program requires a 5-year plan, including a projection that within 10 years the operation will become financially viable. Applicants must also have had education and experience during the 5-year period prior to application. Sufficient education and/or experience is required for regular OL loans. Furthermore, special OL applicants cannot obtain FmHA financing to purchase a farm until the applicant has farmed for at least 5 years, and nonfarm income can only be used to cover living expenses in measuring cash flow.

Despite the greater restrictions of the program, there are two benefits for a participant in the special beginning farmer OL assistance program. First, the Agency can make up to a 10-year commitment to provide special beginning farmer OL assistance to the applicant. As mentioned above, the beginning farmer definition states that applicants must have farmed less than 10 years. Once the applicant receives assistance under this program, the applicant would not need to meet this beginning farmer definition, since the commitment has been made. (The applicant would have to continue to meet regular OL loan eligibility requirements.) Thus, if a beginning farmer has been farming for 4 years when special OL assistance is first received, a 10-year commitment would allow the beginning farmer to have access to targeted funds throughout the commitment period. Had the beginning farmer received assistance under the regular OL program, the applicant would only have access to targeted funds for 6 more years (the remaining years in which the definition of beginning farmer could be met).

Another benefit under this program is that if an applicant receives special beginning farmer OL assistance and obtains FmHA financing to purchase a farm after operating a farm for at least 5 years, the applicant will still have access to targeted beginning farmer OL funds. The beginning farmer definition restricts land ownership to no more than 15 percent of the average farm acreage in the County where the farm is located. As mentioned above, once an applicant receives a commitment under the special beginning farmer OL assistance program, the applicant meets the beginning farmer definition throughout the commitment period. Thus, if the beginning farmer obtained a farm during the commitment period, the beginning farmer would remain eligible for targeted funds even if the acreage exceeded the 15 percent limit. By contrast, if the applicant obtains FmHA financing to purchase a farm, was not involved in the special beginning farmer OL program, and owned land which exceeds 15 percent of the average acreage of the farms or ranches in the County, the applicant would not have access to targeted funds.

In accordance with section 318 of the CONACT, the Agency also amends subpart C of part 1955 by adding a new paragraph to § 1955.122 to indicate that beginning farmers and ranchers in the special OL loan assistance program will be given priority in the purchase of equipment in FmHA inventory. The priority will be throughout the commitment period and only when necessary for the success of the operation described in the loan application. This priority will be limited to the FmHA County Office service area, and the applicant will be given 10 working days to respond if interested in any item of inventory equipment. As a result of the statutory requirement, any former borrower-owner, including spouse or children, will no longer have first priority to purchase equipment in FmHA inventory under subpart C of part 1955.

Section 9—Graduation of Borrowers with Operating Loans or Guarantees to Private Commercial Credit (CONACT Section 319) (7 U.S.C. 1949)

CONACT section 319(a) requires FmHA to establish a plan to encourage direct and guaranteed OL borrowers to graduate to private credit without further FmHA OL assistance, as expeditiously as possible. When fully implemented, this directive will be coordinated with FmHA's "borrower training," "loan assessment," "market placement," and "supervised credit" activities required by CONACT sections 359, 360, 361 and 362, respectively. Supervised credit has long been a basic activity in FmHA's loan programs. The regulations implementing "borrower training," "loan assessment," and "market placement", however, are being promulgated through the proposed rule-making process. The anticipated final rule publication date for these regulations is on or about October 1, 1994. Coordination between the activities required by CONACT section 319(a) and the "borrower training," "loan assessment," and "market placement" will be implemented in stages through October 1, 1994, as the proposed rules are finalized.

To implement CONACT section 319(a), § 1924.60 of subpart B of part 1924 is revised to include the graduation of direct OL borrowers to private credit as one of the purposes listed for analyzing the agricultural business. The section also requires a plan for graduation in conjunction with FmHA's normal loan servicing and credit counseling activities. Section 1924.56(b)(3) of this subpart has been

added to require County Supervisors to counsel borrowers on the need to graduate to commercial credit as expeditiously as possible. Such graduation is important due to the 10 and 15 year time limitations on obtaining FmHA direct and guaranteed OL loans that were established by CONACT section 319(b).

In addition, FmHA will attempt to promote and encourage graduation of existing guaranteed OL loan borrowers, as required by the Act. FmHA is changing § 1980.147 of subpart B of part 1980 to direct FmHA County Supervisors to encourage lenders to provide non-guaranteed operating loans to their present borrowers that are obtaining operating credit by virtue of an FmHA OL loan guarantee.

This policy is being adopted in light of the special challenges to providing a comprehensive graduation requirement in relation to guaranteed loans. First, farmers who obtain financing through FmHA loan guarantees are generally paying the average commercial bank rates for similar loans, and are usually not suffering from the same level of management/financial/production distress that typifies many FmHA direct OL borrowers. Since a guaranteed loan borrower has already obtained commercial credit by means of the FmHA loan guarantee, a "graduation" can be accomplished only if the commercial lender somehow terminates an existing loan guarantee. FmHA will attempt to encourage lenders to do this in appropriate cases, but there is no legal requirement for the lenders to comply. Guaranteed loans have a specific exemption from graduation requirements under section 333 of the CONACT.

Second, financial incentive is lacking to attract typical lenders to comply with an FmHA "graduation" request. The lender will have already paid the mandatory guarantee fee of: One percent multiplied by the loan amount and again by the percentage of guarantee. Since providing pro-rata refunds to lenders would be administratively burdensome, it has been ruled out as a practical alternative. The loan guarantee is also backed by the full faith and credit of the U.S. Government, which makes it a federal security and not subject to the full reserve requirements of the banking regulators. If a lender surrendered an outstanding loan guarantee, its regulator would require a higher dollar reserve since the entire loan would now be considered "at risk," *i.e.*, subject to the loss of principal and interest. The guaranteed portion of a loan covered by a loan note guarantee may also be sold by a lender at any time (except when in default) on the secondary market to investors. While many lenders never sell the guaranteed farm loans they originate, it is a financial option that FmHA would be asking lenders to voluntarily surrender for no off-setting benefit.

A final aspect of the practical challenges facing FmHA in implementing guaranteed borrower graduation is that if FmHA were successful in persuading lenders to relinquish a portion of their outstanding OL loan guarantees, a rational lender would choose to dispose of those loans believed to be risk free because the lender would want to retain the guarantees on loans with a higher risk to protect itself against loss. Any cost savings would be remote since there would be a negligible probability of FmHA paying any losses on the risk-free type loans.

The general rule under CONACT section 319(b) prohibits FmHA from guaranteeing an OL loan if the borrower has already received 15 years of direct or guaranteed OL assistance from FmHA after the date of enactment (October 28, 1992). The legislative history of the provision, however, makes clear that Congress intended to prohibit FmHA from making or guaranteeing OL loans after the 15-year limit. FmHA regulations, therefore, reflect the broader prohibition. The statute further restricts the maximum number of years for direct loan assistance to 10 of these 15 years. For example, if an individual first receives FmHA direct OL loan assistance in 1993, that individual would be eligible to receive direct OL assistance for 10 years and guaranteed assistance for 5 years, for a total of 15 years. House Report 102–783 elaborates on this and expresses an intent that the OL limitations not be counted over consecutive years from the date a borrower first receives FmHA direct and/or guaranteed OL assistance, but only over the years in which assistance actually was received. For example, if an individual received and then repaid a direct OL loan in 1993, and then neither received nor had outstanding any other direct OL loans until 1999 when a new application was submitted, this individual would be eligible for 14 more years of FmHA direct and guaranteed assistance, 9 years of which could be direct OL assistance. The fact that several years had passed since the individual first obtained OL assistance will have no bearing on remaining years of eligibility.

Neither the Act nor the House Report are specific as to whether the OL limits should apply to the total number of years that a borrower can have OL loans outstanding, or to the number of years that a borrower can remain eligible for new loans, without regard to the years required for a borrower to repay the loan(s). FmHA intends to implement the OL limitation based on the latter method. The Agency selected this approach to provide the most flexibility to those borrowers who request loans for other than annual operating expenses, and who will require the maximum repayment terms of 7 years. To illustrate, the selected approach will enable borrowers to obtain a 7-year, direct OL loan for a machinery purchase in the 10th year of their eligibility. Under the first approach, which was not selected by FmHA, this borrower would have been unable to obtain such a loan because all OL loans would have had to have been repaid (as opposed to approved and closed) by the end of 10th year. The selected approach will not place as many constraints on both beginning and established farmers by forcing them to make major capital purchases within the first few years so that there would be sufficient years remaining to repay the loan. Another illustration of this is as follows: A new borrower who received 1-year direct OL loans in years 1, 3, 5, and 10, and a 3-year equipment loan in year 7 (years 7, 8 and 9), would have received operating credit in a cumulative total of 7 years. The borrower will have 3 years of eligibility left for direct OL assistance and 8 years for guaranteed OL assistance. In the final year of eligibility, the borrower could receive a 7-year OL loan for the purchase of machinery since the loan only need be closed, not repaid, during the period of eligibility.

The eligibility period will be determined by counting the years that any direct or guaranteed loan (made after October 28, 1992) has or had been outstanding. This is clearly the intent of Congress, as indicated in House Report 102–783. One full year will be counted against the eligibility period when a loan is outstanding during any portion of a calendar year. The Agency cannot administratively track various portions of years. However, a borrower who has multiple direct and/or guaranteed OL loans outstanding in any portion of the same calendar year will only have 1 year counted against their eligibility period. For example, a new borrower receives a 7-year direct OL loan in year 1, and then applies for a 1-year direct OL loan in year 3. FmHA would have determined that in year 3, the borrower has had 3 years of outstanding loans and 12 remaining years of eligibility for OL loans, of which no more than 7 years may be in the form of direct OL loans.

Again, the borrower may obtain multiple loans concurrent with other loans and it will count as one year. Should the borrower pay off the 7-year OL loan early, in year 5, for example, and have no other direct or guaranteed operating loans outstanding, the borrower's remaining years of eligibility would be 10 years, of which no more than 5 years could be direct OL loans.

Whenever a borrower's OL loan is closed after October 28, 1992, and is given an extended term through loan servicing or bankruptcy, FmHA will count each additional year the loan is outstanding against the borrower's eligibility period. Once again, the House Report addresses limitations based upon loans outstanding. For example, if a borrower fails to repay a 1-year annual operating loan and it is restructured for repayment over a 15-year period, the borrower will lose one year of direct loan eligibility for every year the restructured loan is outstanding. If the restructured OL loan is repaid in 11 years, the borrower will not be eligible for another direct OL loan thereafter. However, it should be reemphasized that additional direct OL loans can be made within the 10-year limit even though the borrower has a direct OL loan outstanding. Operating loans closed prior to October 28, 1992, that are given extended terms after October 28, 1992, will not be counted against the eligibility period, since the general rule under the statute applies only to loans made after October 28, 1992. Section 1941.17 of subpart A of part 1941 is modified to implement this change in the direct OL program. The preceding description of the eligibility limitation for direct OL loans is precisely the same for guaranteed OL borrowers, except the limitation is 15 rather than 10 years. §§ 1980.124(a)(1) and 1980.175 of subpart B of part 1980 is modified to implement this change in the Guaranteed OL program.

A transition period for the 10 and 15 year limitation is also provided in § 1941.17 of subpart A of part 1941 and § 1980.175 of subpart B of part 1980 for direct and guaranteed OL borrowers, respectively, to cover borrowers with loans outstanding as of October 28, 1992. CONACT section 319(b) states that if a direct OL loan had been made to a borrower for 5 years or more, or a guaranteed OL loan had been made for 10 years or more, from the date of enactment (October 28, 1992), the borrower cannot receive direct or guaranteed OL loan assistance "after the 5th year occurring after the enactment for which a loan is made under [Subtitle B] or such a guarantee is provided with respect to, the borrower." This language is ambiguous as to whether further loans/guarantees are prohibited after the 5th anniversary of the statute or after 5 years of OL assistance post-October 28, 1992. The legislative history on the provision is not clear on the issue. The Agency has decided to implement the transition rule by using borrower records for 5 calendar years for direct loans and 10 calendar years for guaranteed loans. Due to the Federal Retention Records Schedule, inactive borrower records generally are destroyed after 3 years. The Agency's Finance Office, however, does have complete and accurate records on existing direct borrowers from January 1, 1988, and on guaranteed borrowers from January 1, 1983. Therefore, the Agency will be able to determine if direct OL applicants were indebted in each of the 5 calendar years prior to October 28, 1992, and if guaranteed OL applicants were indebted in each of the 10 calendar years prior to October 28, 1992. While this may seem unfair to existing borrowers, the Agency is required to implement the statutory provision to the fullest extent reasonably possible.

For direct OL borrowers indebted to FmHA on October 28, 1992 (date of enactment), the following rules will apply: All direct OL loans outstanding since January 1, 1988, will be considered to determine if the borrower was indebted for 5 calendar years of direct OL assistance through the date of enactment. An OL loan outstanding in any portion of any calendar year shall be counted as 1 year. If the borrower had direct OL loans outstanding for 5 calendar years, that borrower will be eligible for any combination of direct and guaranteed OL loans for an additional 5 years (consecutive or non-consecutive), beginning with the first OL loan(s) made after October 28, 1992. For example: A borrower had an annual direct OL loan outstanding as of October 28, 1992. The borrower also had a direct, term OL loan outstanding from October 28, 1988, through October 28, 1992. Since the borrower had direct OL loans that spanned the 5 previous calendar years, the borrower would fall under the transition rule and be eligible for only 5 more consecutive or non-consecutive years of direct or guaranteed assistance beginning with the first OL loan made after October 28, 1992. FmHA will count the years beginning with the first loan made after October 28, 1992, as under the general rule. If a multi-year loan is made prior to October 28, 1992, the years of assistance on the loan after this date would not count towards the 5-year limit. As previously stated, the House Report clearly intended that eligibility under the general rule not to be limited to a consecutive number of years from the date of the borrower's first direct or guaranteed loan closed after October 28, 1992. The Agency will apply the same methodology under the transition rule for consistency. For guaranteed OL loans, the transition rule will work precisely the same way, except that it will apply after 10 years of assistance prior to enactment, instead of 5 years.

To ensure the eligibility limitation is applied uniformly and equitably, all individual members of a business entity will be defined as borrowers and will be personally liable for loan repayment. Thus, all business entity members will be required to sign the promissory note(s) as individuals. The Agency does not anticipate this to cause an inconvenience on entity applicants. Some State laws already require all members of an entity to sign the note. Of applicants applying for FmHA Farmer Programs assistance, a great majority are individual applicants. Those that are entity applicants consist of family-size farmers, the majority of whom are related by blood or marriage. There will be very few instances when the entity will include a large number of shareholders, some of whom own an insignificant percentage of interest in the operation.

The major reason for changing the definition of "borrower" is to ensure that the intent of Congress is not circumvented by borrowers reorganizing to acquire a new 10/15 year OL loan eligibility period. Cosigners, who sign the note only as additional security, are also defined to distinguish them from borrowers. The 10/15 year OL loan eligibility requirements do not apply to cosigners as they have not applied for loan assistance and are receiving no direct loan benefits. To effect these described changes concerning entity borrowers and cosigners, the following regulations will be modified: § 1941.4 of subpart A of part 1941; § 1941.54(b)(2) of subpart B of part 1941; §§ 1943.4 and 1943.38(g)(3)(ii) of subpart A of part 1943; §§ 1943.54 and 1943.88(g)(3)(ii) of subpart B of part 1943; §§ 1945.154 and 1945.169(c) (2) and (3) of subpart D of part 1945; and §§ 1980.106(b), 1980.108(a)(2), and 1980.109(a)(2) of subpart B of part 1980.

Section 19—Definition of Qualified Beginning Farmer or Rancher (CONACT Section 343(a)) (7 U.S.C. 1991(a))

7 CFR part 1941, subpart A; 7 CFR part 1943, subparts A and B; 7 CFR part 1945, subpart D; and 7 CFR part 1980,

subpart B have been revised by adding the definition of "beginning farmer or rancher" required by the Act. The former definition in 7 CFR part 1955, subpart C, which has been revised, gave priority to beginning farmers or ranchers when requesting the purchase of FmHA inventory farmland pursuant to the Food, Agriculture, Conservation and Trade Act of 1990 (FACT Act). Section 1943.80 of subpart B of part 1943 (Soil and Water Loans) and § 1945.180 of subpart D of part 1945 (Emergency Loans) were revised to state that the County Committee will certify as to beginning farmer or rancher status for tracking purposes only. The beginning farmer determination is not a consideration for soil and water or emergency loan assistance. However, it is the sense of Congress, as stated in the 1990 FACT Act, that FmHA maintain statistics on the number of direct and guaranteed loans made to beginning farmers and ranchers. Applicants who apply for the Special OL Assistance or Downpayment FO Program must meet the definition to qualify for such assistance. All eligible direct and guaranteed OL/FO applicants, and eligible guaranteed OL applicants who receive a subsidized loan, and are determined beginning farmers or ranchers, will have access to targeted funds.

The statutory definition of "qualified beginning farmer or rancher," in part, requires individual applicants to provide "substantial day-to-day labor and management of the farm or ranch * * *" The Congressional Record dated October 8, 1992 (S 17861), indicates that this applies only to beginning farmers and ranchers and is not intended to apply to other applicants. The entity eligibility requirement for beginning farmers or ranchers is more restrictive than in the general farmer programs loan making regulations. Entity members must be related by blood or marriage to meet the definition of qualified beginning farmer or rancher. Entity members of a Farmer Programs entity applicant do not have to be related by blood or marriage. The beginning farmer definition also requires that all members of entities must materially and substantially participate in the operation of the farm or ranch. Only one member of a Farmer Programs entity applicant must operate the farm or ranch. In addition, all stockholders of a corporation must meet the "beginning farmer or rancher" definition.

Another requirement of the beginning farmer definition is that an applicant has not operated a farm or ranch, or has operated a farm or ranch for not more than 10 years. The Agency has determined that this requirement will apply to all members of an entity. This was added to prohibit individuals that have farmed in excess of 10 years from forming an entity to circumvent this requirement to obtain beginning farmer or rancher loan assistance.

Under CONACT Section 343(a)(11)(F), the applicant must not own land or must not, directly or through interests in family farm corporations, own land, the "aggregate acreage of which does not exceed 15 percent of the median acreage of the farms or ranches in the county in which the farm or ranch operations of the applicant are located, as reported in the most recent Census of Agriculture* * *" The Agency has changed the reference in its regulations from median acreage to average acreage based on its perception of legislative intent. The Census of Agriculture does not capture median acreage but references only the average acreage of farms by county. For clarification purposes, the Agency has stated that when the farm is located in more than one County, the average farm acreage of the County where the applicant's residence is located will be used in the calculation. If the applicant's residence is not located on the farm or if the applicant is an entity, the average farm acreage of the County where the major portion of the farm is located will be used.

Section 1941.25(a) of subpart A of part 1941 also has been amended by removing the requirement for FmHA to complete chattel and real estate appraisals when borrower's accounts are being serviced. This issue is covered in servicing regulations described in subpart A of part 1951.

Section 1945.161(a)(1) of subpart D of part 1945 also has been amended by removing the last sentence which read, "These applications must be processed within 12 months after they are filed." This statement is outdated as a result of the 60 day time frame requirements to process a complete application, established by CONACT Section 333A(a)(1).

Finally, references to "Insured Loans" have been changed to "Direct Loans" to reflect changes in terminology required by the Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

List of Subjects

7 CFR Part 1910

Applications, Credit, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing, Marital status discrimination, Sex discrimination.

7 CFR Part 1924

Agriculture, Construction management, Construction and repair, Energy conservation, Housing, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing.

7 CFR Part 1941

Crops, Livestock, Loan programs—Agriculture, Rural areas, Youth.

7 CFR Part 1943

Credit, Loan Programs—Agriculture, Recreation, Water resources.

7 CFR Part 1945

Agriculture, Disaster assistance, Loan programs—Agriculture.

7 CFR Part 1955

Government acquired property, Sale of government acquired property, Surplus government property.

7 CFR Part 1980

Agriculture, Loan programs—Agriculture, Loan programs—Community programs, Rural Development Assistance.

Therefore, by the Under Secretary's authority 7 CFR 2.23, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

CHAPTER XVIII—[AMENDED]

1–2. 7 CFR chapter XVIII is amended by revising the word "insured" and/or "Insured" to read "direct" and/or "Direct" in the following places:

a. Part 1941, Subpart A

§ 1941.1

§ 1941.33 (a)

b. Part 1941, Subpart B

§ 1941.51

c. Part 1943, Subpart A

Subpart A—heading

§ 1943.1

§ 1943.17 (a)(1)

§ 1943.29, title, (b)(1), and (b)(2) [11 places].

d. Part 1943, Subpart B

Subpart B—heading

§ 1943.51

e. Part 1945, Subpart D

§ 1945.151 (a)

f. Part 1980, Subpart B

§ 1980.108 (b)(2) [2 places], the heading for paragraph (d), (d)(1), introductory (d)(2), (d)(2)(i), and (d)(2)(ii).

§ 1980.175 (c)(1)(iv), (d)(1), and (h)(2).

PART 1910—GENERAL

3. The authority citation for part 1910 is revised to read as follows:

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

Subpart A—Receiving and Processing Applications

4. Section 1910.4 is amended by adding a new paragraph (b)(24), revising paragraph (g)(1), and revising paragraph (h) to read as follows:

§ 1910.4 Processing applications.

* * * * *

(b) * * *

(24) For special beginning farmer or rancher operating (OL) loan assistance, a plan of operation will be developed for each of the first 5 years for which such assistance is requested. A projection of the financial status of the operation showing financial viability within the commitment period will also be developed. The 5-year plan and projection will be developed as described in § 1941.15 of Subpart A of Part 1941 of this chapter. This information will be presented on reports generated on the FmHA automated Farm and Home Plan System, or in other plans or documents consistent and acceptable to FmHA.

* * * * *

(g) * * *

(1) The County Committee will certify whether or not the applicant meets the eligibility requirements and whether or not the applicant is a beginning farmer or rancher, as defined in the applicable Farmer Programs loan making regulation by use of Form FmHA 440–2, "County Committee Certification or Recommendation." An eligible OL or FO applicant, who is considered a beginning farmer or rancher, will have access to targeted funds. An eligible FO applicant requesting to purchase suitable farmland, who is considered a beginning farmer or rancher, will be given priority as outlined in § 1955.107 (f) of subpart C of part 1955 of this chapter. In addition, it is the responsibility of the County Committee to determine whether or not the FO applicant is an operator of not larger than a family size farm, as of the time immediately after the contract of sale or lease is entered into, even though the applicant is not in need of FmHA credit assistance on eligible rates and terms to purchase suitable farmland. The County Committee will not determine the applicant's projected repayment ability, or the adequacy of collateral equity to secure the requested loan(s), or the feasibility of the proposed operation. These decisions must be made by the loan approval official.

(h) *County Committee actions.* All actions by the committee regarding applicant eligibility will be taken in committee meetings attended by at least two committee members. If the County Committee is unable to reach a decision based on the information available, they may request a personal interview with the applicant. Applicants may not be interviewed for reasons unrelated to proper eligibility considerations. The County Committee will act on the application after considering all pertinent information. For special beginning farmer OL applicants, plans required under § 1941.15 (e) of subpart A of part 1941 of this chapter must be included with the application for the County Committee to review. County Committee members are required to adhere to all applicable provisions of this regulation when determining eligibility of applicants. This action will be taken in the absence of the applicant.

* * * * *

PART 1924—CONSTRUCTION AND REPAIR

5. The authority citation for part 1924 is revised to read as follows:

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

Subpart B—Management Advice to Individual Borrowers and Applicants

6. Section 1924.56 is amended by adding a new paragraph (b)(3) to read as follows:

§ 1924.56 Credit counseling.

* * * * *

(b) * * *

(3) Discuss with the applicant the need to expeditiously graduate to private credit due to FmHA's limitation on providing OL assistance, as set forth in § 1941.17 of subpart A of part 1941 of this chapter.

7. Section 1924.60 is amended by redesignating current paragraphs (a)(4) through (a)(11) as (a)(5) through (a)(12), revising the introductory text of paragraph (a) and adding a new paragraph (a)(4) to read as follows:

§ 1924.60 Analysis.

(a) *Purpose of analyses.* Analyses are used to develop information for sound lending and supervisory decisions that will assist borrowers in utilizing sound business planning, management practices, and graduation to commercial sources of credit. Analysis is also used to provide a basis for determining if loan servicing under subpart S of part 1951 of this chapter is needed or whether financial assistance is necessary to meet essential family living and operating expenses. Analysis will be used to:

* * * * *

(4) Establish a plan for graduation from OL assistance to private or other financing in coordination with the activities in this subpart.

* * * * *

PART 1941—OPERATING LOANS

8. The authority citation for part 1941 is revised to read as follows:

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

Subpart A—Operating Loan Policies, Procedures, and Authorizations

9. Section 1941.4 is amended by revising the definition of "Borrower," and by adding, alphabetically, the definitions of "Beginning farmer or rancher," "Cosigner," and "Financially viable operation," to read as follows:

§ 1941.4 Definitions.

* * * * *

Beginning farmer or rancher. A beginning farmer or rancher is an individual or entity who:

(a) Meets the loan eligibility requirements for OL loan assistance in accordance with § 1941.12 of this subpart.

(b) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 years. This requirement applies to all members of an entity.

(c) Will materially and substantially participate in the operation of the farm or ranch.

(1) In the case of a loan made to an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.

(2) In the case of a loan made to an entity, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that the members provide some amount of the management, or labor and management necessary for day-to-day activities, such that if the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

(d) Agrees to participate in any loan assessment, borrower training, and financial management programs required by FmHA regulations.

(e) Does not own real farm or ranch property or who, directly or through

interests in family farm entities, owns real farm or ranch property, the aggregate acreage of which does not exceed 15 percent of the average farm or ranch acreage of the farms or ranches in the county where the property is located. If the farm is located in more than one county, the average farm acreage of the county where the applicant's residence is located will be used in the calculation. If the applicant's residence is not located on the farm or if the applicant is an entity, the average farm acreage of the county where the major portion of the farm is located will be used. The average county farm or ranch acreage will be determined from the most recent Census of Agriculture developed by the U.S. Department of Commerce, Bureau of the Census. State Directors will publish State supplements containing the average farm or ranch acreage by county.

(f) Demonstrates that the available resources of the applicant and spouse (if any) are not sufficient to enable the applicant to enter or continue farming or ranching on a viable scale.

(g) In the case of an entity:

(1) All the members are related by blood or marriage.

(2) All the stockholders in a corporation are eligible beginning farmers or ranchers.

Borrower. An individual or entity which has outstanding obligations to the FmHA under any Farmer Programs loan(s), without regard to whether the loan has been accelerated. A borrower includes all parties liable for the FmHA debt, including collection-only borrowers, except for debtors whose total loans and accounts have been voluntarily or involuntarily foreclosed or liquidated, or who have been discharged of all FmHA debt.

* * * * *

Cosigner. A party who joins in the execution of a promissory note to assure its repayment. The cosigner becomes jointly and severally liable to comply with the terms of the note. The 10 and 15 year loan limits under § 1941.17(a) of this subpart and § 1980.175(d)(1) of subpart B of part 1980 of this chapter do not apply to cosigners. In the case of an entity applicant, the cosigner cannot be a member, partner, joint operator, or stockholder of the entity.

* * * * *

Financially viable operation. A financially viable operation is one which, with FmHA assistance, is projected to improve its financial condition over a period of time to the point that the operator can obtain commercial credit without further FmHA direct or guaranteed assistance. Such an operation must generate sufficient income to: Meet annual operating expenses and debt payments as they become due, meet basic family living expenses to the extent they are not met by dependable nonfarm income, provide for replacement of capital items, and provide for long-term financial growth. A borrower that will meet the FmHA classification of "Commercial," as defined in FmHA Instruction 2006–W (available in any FmHA office), will be considered to be financially viable.

* * * * *

§ 1941.14 [Amended]

10. Section 1941.14 (b) is amended by revising the reference from "Section 1962.17(b)(2)(ii)(A)" to "§ 1962.17."

11. Section 1941.15 is added to read as follows:

§ 1941.15 Special beginning farmer or rancher OL loan assistance.

(a) *Objectives.* The basic objective of this special OL loan program is to provide the applicant, whose primary occupation is or will be farming, with a reliable source of FmHA-assisted operating credit for annual operating and capital expenses needed to conduct a financially viable farming or ranching operation. The goal is to move the borrower through varying types of assistance, ranging from limited resource direct loans, regular interest direct loans, subsidized guaranteed loans, and unsubsidized guaranteed loans, with graduation to private credit occurring no later than 10 years from the date of initial assistance. Supervision will be provided to the extent necessary to achieve the objectives of the loan and to protect the interests of the Government in accordance with subpart B of part 1924 of this chapter.

(b) *Eligibility requirements for special beginning farmer or rancher OL loan assistance.* Applicants must:

(1) Meet the "beginning farmer or rancher" definition in § 1941.4 of this subpart, and

(2) Have not operated a farm or ranch, or have operated a farm or ranch for not more than 5 years. This requirement applies to all members of an entity.

(3) During the 5-year period prior to applying for assistance, have sufficient education and experience to indicate that the applicant is able to conduct a successful farming or ranching operation.

(4) Own, lease, or have a commitment to lease the site of the operation, that is or will be sufficient to carry out the planned operation.

(5) Present a plan of operation in accordance with paragraph (e) of this section, which projects feasibility for each year of the 5-year period, and a financial projection reflecting a financially viable operation at the end of the commitment period referenced in paragraph (f) of this section.

(6) Have or will have access to livestock and equipment, sufficient to carry out the planned operation.

(c) *Loan purposes.* Loan purposes are as set forth in § 1941.16 of this subpart. Applicants approved for loan assistance under this section will also receive priority in the purchase of FmHA inventory equipment as stated in § 1955.122(a) of subpart C of part 1955 of this chapter.

(d) *Loan limitations.* In addition to the loan limitations stated in § 1941.17 of this subpart, the following limitations apply:

(1) The borrower shall not be eligible to receive additional special direct OL loan assistance during the commitment period referenced in paragraph (f) of this section after 8 years from the date of receiving the first such loan. This does not prohibit the borrower from receiving an additional 2 years of OL loan assistance under the regular direct OL loan program during the commitment period.

(2) The borrower is not eligible for special beginning farmer OL loan assistance for a 3-year period beginning on the date that a previous commitment is terminated under paragraph (h) of this section.

(e) *Plan of operation for special beginning farmer OL loan assistance.* In addition to the planning requirements set forth in § 1924.57 of subpart B of part 1924 of this chapter and subject to paragraph (e)(3) of this section, the following information must be submitted to the County Supervisor with the application for County Committee review:

(1) A first-year plan of the farming operation from the applicant providing the following details:

(i) How the operation is to be conducted.

(ii) The types and quantities of commodities to be produced.

(iii) The production methods to be employed by the operator.

(iv) The conservation measures to be utilized in the operation.

(v) The livestock and equipment needed to conduct the farming operation (including expected replacements or additions), and whether the applicant owns, leases, or has access to the item(s), or plans to purchase or lease the needed item(s).

(vi) The expected income and expenses of the operation.

(vii) The expected credit needs, including the types, amounts and sources.

(viii) The site or sites where the farming operation is, or will be, located.

(2) Upon receipt of the plan from the applicant, including any future planned purchases and changes to the operation, the County Supervisor will develop a 5-year plan by use of an automated analysis, described in § 1910.4 (b) of subpart A of part 1910 of this chapter, and a projection of the financial status of the farming operation after special beginning farmer OL loan assistance (direct/guaranteed OL) has been provided for the period necessary, not to exceed 10 years. The projected plan must indicate the operation will be financially viable without further FmHA assistance within 10 years. This plan will detail the specific goals addressed by the applicant in order to graduate to other credit in an expeditious manner. Failure to meet these goals may result in termination of the commitment under paragraph (h) of this section.

(3) An applicant has the option to develop the 5-year plan and financial projection without the use of FmHA's automated Farm and Home Plan system. The County Supervisor will notify the applicant of this option. For each year of the 5-year plan, the items listed under paragraph (e)(1) of this section must be provided. The financial projection must conform with the requirements set out in paragraph (e)(2) of this section.

(f) *Commitment period.* In making OL loans under this section, the County Supervisor will make a commitment to the borrower to provide direct and guaranteed operating credit for a period not to exceed 10 years, subject to loan limitations stated in paragraph (d) of this section. FmHA Form Letter 1941–A–2, "Conditional Commitment to Provide Special Operating Loan Assistance to Beginning Farmers or Ranchers," will be used for this purpose, and provided to the applicant when the loan is approved. The following conditions apply:

(1) The length of the commitment period will be determined by an automated analysis of projected financial and income data reflecting a financially viable operation as defined in § 1941.4 of this subpart.

(2) After the first year, subsequent loans under this section are contingent on the revision of the projected plan of operation required in paragraph (e)(1) of this section. The plan will be for the 5-year period beginning with the particular year for which assistance is requested, or if shorter, the period beginning with the particular year for which assistance is requested and ending with the year the plan projects a financially viable operation. A revised plan will be developed each year. This must be based on an analysis of the prior year's operation. The plan must be revised at least 60 days before the assistance will be needed for that particular year. The type of assistance provided each year (direct OL-Limited Resource, direct OL, guaranteed OL-Interest Assistance, or guaranteed OL) will depend upon the financial progress made by the loan applicant in accordance with FmHA regulations setting forth the eligibility requirements for each of the listed types of assistance.

(3) Borrowers under this section must demonstrate progress toward the specified goals with the objective of eliminating the need for FmHA credit after not more than 10 years. A borrower will be considered to have met the goals if FmHA payments are made on a timely basis, agreements with FmHA are kept, and financial progress is made such that the operation continues to be financially viable.

(g) *Extension of commitment period.* If a commitment has been issued for less than 10 years, the commitment period may be extended subject to the 10-year limit providing:

(1) The annual plan is revised in accordance with paragraph (f)(2) of this section;

(2) The failure to achieve the goals within the commitment period was due to circumstances beyond the control of the borrower. Acceptable new document circumstances for not achieving the goals include, but are not limited to:

(i) The reduction in essential income from a nonfarm job due to unemployment or underemployment of the borrower-operator or spouse caused by circumstances beyond the borrower's control.

(ii) Illness, injury, or death of an individual borrower, stockholder, member or partner who operates the farm.

(iii) Natural disasters, an outbreak of uncontrollable disease, and/or uncontrollable insect damage which caused severe loss of agricultural production that reduced the repayment ability of the borrower so that scheduled payments cannot be made.

(iv) Economic factors that are widespread and not limited to an individual case, such as high interest rates or low market prices for agricultural commodities as compared to production costs, that reduce the repayment ability of the borrower so that scheduled payments cannot be made, and;

(3) The failure to achieve such goals has not materially reduced the likelihood of the farming operation becoming financially viable.

(h) *Termination of commitment period.* (1) The commitment will be revoked if the County Committee fails to recertify the applicant as eligible for the regular direct and/or guaranteed OL loan programs under paragraph (k)(2) of this section.

(2) The commitment for FmHA-assisted operating credit also shall be revoked if the applicant fails, for 2 consecutive years, to meet the goals specified in the plan, unless both of the following are met:

(i) The failure has not materially reduced the likelihood of the operation becoming financially viable. (An updated projection of the financial status of the operation still reflects financial viability at the end of the commitment period.)

(ii) The failure to meet the goals of the 5-year plan was due to circumstances beyond the control of the borrower as described in paragraph (g)(2) of this section.

(3) Upon revocation of the commitment, the borrower will be given appeal rights in accordance with subpart B of part 1900 of this chapter.

(i) *Relationship between FmHA loans, direct and guaranteed.* The provisions of § 1941.29 of this subpart apply as stated. When a commitment is made to an applicant for 8 or more years, and no guaranteed special OLs are made, all direct operating loans are to be special operating loans for the first 8 years. OL loans made in the 9th and/or 10th years will be regular direct operating loans. With respect to loan objectives as stated in paragraph (a) of this section, and in accordance with paragraph (f)(2) of this section, whether the borrower receives a direct or guaranteed OL loan during the commitment period will depend on the borrower's financial condition, the projected 5-year plan of operation, and the availability of credit.

(j) *Completion of the 10-year commitment period.* If the borrower is unable to graduate to other credit without FmHA's assistance, FmHA may provide direct or guaranteed loan assistance subject to the lifetime loan limitations set forth in § 1941.17 of this subpart and § 1980.175 (d) of subpart B of part 1980 of this chapter and all other loan making regulations of this chapter.

(k) *County Committee certification.* A special beginning farmer OL loan application will not be presented to the County Committee until such time as a complete 5-year plan of operation and a projection of the financial status of the operation, as set forth in paragraph (e)

of this section, is submitted to FmHA for review. In addition to the requirements of § 1941.30 of this subpart, the following conditions apply:

(1) For initial special beginning farmer OL loan applicants, the County Committee will certify to the applicant meeting all the eligibility requirements as stated in paragraph (b) of this section. This certification is effective throughout the commitment period.

(2) For subsequent loan requests during the commitment period, the County Committee will certify as to the applicant meeting the eligibility requirements for the regular direct and/or guaranteed OL loan programs when the 5-year eligibility expires on the current Form FmHA 440–2, "County Committee Certification or Recommendation," unless the County Supervisor has determined that the applicant's situation has changed such that the eligibility determination would potentially be affected. If recertification is rejected, no subsequent loan will be made under the commitment and the commitment will be revoked in accordance with paragraph (h) of this section.

(l) *Loan approval or disapproval.* In addition to the requirements of § 1941.33 of this subpart, it must be determined that:

(1) *Initial loans.* (i) The plan of operation reflects that farm income is sufficient to cover farm operating expenses, replacement of capital items, debt service, and that part of living expenses not covered by nonfarm income (if any) for each year. Nonfarm income cannot be relied on to cover farm expenses or debt service.

(ii) At the end of the commitment period the operation will project financial viability without further assistance from FmHA, and the identified goals are reasonable and practicable.

(2) *Subsequent loans.* Subsequent loans will be approved or disapproved in accordance with FmHA Form Letter 1941–A–2 and paragraph (f) of this section.

12. Section 1941.17 is amended by redesignating current paragraphs (a) through (d) as paragraphs (b) through (e) and by adding new paragraphs (a) and (f) to read as follows:

§ 1941.17 Loan limitations.

An OL loan will not be approved:

(a) If the applicant:

(1) Received direct OL loans after October 28, 1992, and the sum of all calendar years those direct OL loans were outstanding (including any extension of terms through loan servicing or bankruptcy) is more than 10. The borrower, however, could still receive assistance in the following Example: A borrower received a 1-year, direct OL on February 1, 1993, and repaid it on December 15, 1993. The borrower does not apply for any more direct OL loans until the year 1996. This borrower still has 9 years in which new direct OL loans may be closed. The repayment term on any loan may extend beyond the 10-year eligibility limit as long as the loan is closed within the 10-year time period. Multiple loans outstanding in a given year count only as 1 year of eligibility. A loan outstanding in any portion of a year will be counted as a full year. For example, had this borrower repaid the OL loan on January 2, 1994, only 8 years of eligibility would remain.

(2) Received direct and/or guaranteed OL loans after October 28, 1992, and the sum of all calendar years that any combination of those loans were outstanding (including any extension of terms through loan servicing or bankruptcy) is more than 15. The borrower, however, could still receive assistance in the following Example: On February 1, 1993, a borrower obtains the first of 8 consecutive direct annual OL loans. In year 9, the borrower obtains a 7-year guaranteed OL loan. A few months prior to the end of the 15th year of having OL loans/guarantees outstanding, the borrower applies for a 7-year direct OL loan. This borrower is eligible providing the loan can be closed within the 15th year of eligibility. The repayment term on the loan may extend beyond the 15-year eligibility limit. Multiple loans outstanding in a given year count only as 1 year of eligibility. A loan outstanding in any portion of a year is counted as a full year.

(3) As of October 28, 1992, had one or more direct OL loans outstanding during each of the last 5 calendar years (January 1, 1988–October 28, 1992) and has had direct and/or guaranteed OL loans made after October 28, 1992, that have been outstanding for a sum of more than 5 calendar years (including any extension of terms through loan servicing or bankruptcy) since that date. The borrower, however, could still receive assistance in the following Example: A borrower had one direct OL loan outstanding on October 28, 1992, and had one direct OL loan outstanding every year since June 10, 1988 (the borrower received an annual OL loan every year between 1988 and 1992. Each year the loan was paid off in November). The borrower received a 3-year direct OL loan on January 28, 1993 (after October 28, 1992) and repaid the loan on December 31, 1995. The borrower does not apply for any more direct or guaranteed OL loans until 1997. The borrower still has 2 years in which new direct OL loans may be closed. The repayment term on any loan may extend beyond the 5-year eligibility period. Multiple loans outstanding in a given year count only as 1 year of eligibility. A loan outstanding in any portion of a year is counted as a full year.

(4) As of October 28, 1992, had one or more guaranteed OL loans outstanding during each of the last 10 calendar years, (January 1, 1983–October 28, 1992), and has had direct and/or guaranteed OL loans made after October 28, 1992, that have been outstanding for a sum of more than 5 calendar years (including any extension of terms through servicing or bankruptcy) since that date. The borrower, however, could still receive assistance in the following Example: A borrower had a guaranteed OL loan outstanding as of October 28, 1992, which had been outstanding for 7 calendar years. The borrower had a guaranteed OL loan prior to this one, also for 7 calendar years. (There were no overlapping years of assistance.) The borrower obtained a 3-year guaranteed OL loan on February 11, 1993 (after October 28, 1992). The loan was paid off on February 11, 1996. The borrower still has 2 years in which new direct OL loans may be closed. The repayment term on any loan may extend beyond the 5-year eligibility period. Multiple loans outstanding in a given year count only as 1 year of eligibility. A loan outstanding in any portion of a year is counted as a full year.

* * * * *

(f) For special beginning farmer or rancher OL loan assistance loan limitations, see § 1941.15 (d) of this subpart.

§ 1941.25 [Amended]

13. Section 1941.25 is amended by removing paragraphs (a)(3) and (a)(5)(iii), and by redesignating paragraphs (a)(4) and (a)(5) as paragraphs (a)(3) and (a)(4).

14. Section 1941.30 is amended by removing form title "County Committee Certification or Recommendation" and adding a new sentence at the end of the paragraph to read as follows:

§ 1941.30 County Committee Certification.

* * * See § 1941.15 (k) of this subpart for County Committee actions relative to special beginning farmer or rancher OL loan assistance.

Subpart B—Closing Loans Secured by Chattels

15. Section 1941.54 is amended in paragraph (b)(3) by revising the word

"cosigners" to read "individuals" and by revising paragraph (b)(2) to read as follows:

§ 1941.54 Promissory note.

* * * * *

(b) * * *

(2) *Cooperatives or corporations.* The promissory note(s) will be executed so as to evidence liability of the entity as well as individual liability of all member(s) or stockholder(s) in the entity.

* * * * *

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

16. The authority citation for part 1943 is revised to read as follows:

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

Subpart A—Direct Farm Ownership Loan Policies, Procedures and Authorizations

17. Section 1943.4 is amended by revising the definition of "Borrower," and by adding, alphabetically, the definitions of "Beginning farmer or rancher," "Cosigner," and "State Beginning Farmer program," to read as follows:

§ 1943.4 Definitions.

* * * * *

Beginning farmer or rancher. A beginning farmer or rancher is an individual or entity who:

(a) Meets the loan eligibility requirements for FO loan assistance in accordance with § 1943.12 of this subpart.

(b) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 years. This requirement applies to all members of an entity.

(c) Will materially and substantially participate in the operation of the farm or ranch.

(1) In the case of a loan made to an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.

(2) In the case of a loan made to an entity, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that the individual provides some amount of the management, or labor and management necessary for day-to-day activities, such that if the individual did not provide these inputs, operation of the farm or ranch would be seriously impaired.

(d) Agrees to participate in any loan assessment, borrower training, and financial management programs required by FmHA regulations.

(e) Does not own real farm or ranch property or who, directly or through interests in family farm entities, owns real farm or ranch property, the aggregate acreage of which does not exceed 15 percent of the average farm or ranch acreage of the farms or ranches in the county where the property is located. If the farm is located in more than one county, the average farm acreage of the county where the applicant's residence is located will be used in the calculation. If the applicant's residence is not located on the farm or if the applicant is an entity, the average farm acreage of the county where the major portion of the farm is located will be used. The average county farm or ranch acreage will be determined from the most recent Census of Agriculture developed by the U.S. Department of Commerce, Bureau of the Census. State Directors will publish State supplements containing the average farm or ranch acreage by county.

(f) Demonstrates that the available resources of the applicant and spouse (if any) are not sufficient to enable the applicant to enter or continue farming or ranching on a viable scale.

(g) In the case of an entity:

(1) All the members are related by blood or marriage.

(2) All the stockholders in a corporation are qualified beginning farmers or ranchers.

Borrower. An individual or entity which has outstanding obligations to the FmHA under any Farmer Programs loan(s), without regard to whether the loan has been accelerated. A borrower includes all parties liable for the FmHA debt, including collection-only borrowers, except for debtors whose total loans and accounts have been voluntarily or involuntarily foreclosed or liquidated, or who have been discharged of all FmHA debt.

* * * * *

Cosigner. A party who joins in the execution of a promissory note to assure its repayment. The cosigner becomes jointly and severally liable to comply with the terms of the note. The 10 and 15 year loan limits under § 1941.17 (a) of subpart A of part 1941 and § 1980.175 (d)(1) of subpart B of part 1980 do not apply to cosigners. In the case of an entity applicant, the cosigner cannot be a member, partner, joint operator, or stockholder of the entity.

* * * * *

State Beginning Farmer program. Any program that is carried out by or under contract with a State and designed to assist persons in obtaining the financial assistance necessary to establish and/or maintain viable farming or ranching operations.

* * * * *

18. Section 1943.14 is added to read as follows:

§ 1943.14 Downpayment FO loan program for beginning farmers or ranchers.

(a) *Objectives.* The basic objective of the downpayment FO loan program is to provide credit and assistance to eligible beginning farmers or ranchers to become owner-operators of family-size farms, including inventory farm property. Supervision will be provided borrowers to the extent necessary to achieve the objectives of the loan and to protect the interests of the Government in accordance with subpart B of part 1924 of this chapter.

(b) *Eligibility requirements.* Applicants must meet the "beginning farmer or rancher" definition in § 1943.4 of this subpart to qualify for a downpayment loan.

(c) *Loan purposes.* Loans may be made to provide an amount equal to 30 percent of the purchase price or appraised value, whichever is lower, of the farm or ranch to be acquired, unless the applicant requests a lesser amount. The remaining balance of the purchase price or appraised value, whichever is lower, not to exceed 60 percent, may be guaranteed by FmHA.

(d) *Loan limitations.* In addition to the loan limitations stated in § 1943.17 of this subpart, the loan will not be approved if:

(1) The applicant cannot provide at least 10 percent of the purchase price of the farm or ranch.

(2) The purchase price or appraised value, whichever is lower, exceeds $250,000.

(3) Financing provided by FmHA and other credit exceeds 90 percent of the purchase price or appraised value, whichever is lower.

(4) The other financing for the balance of the purchase price is amortized for less than 30 years and/or a balloon payment is scheduled within the 10 years of the FmHA loan.

(e) *Rates and terms*—(1) *Interest rate.* Interest rates are specified in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office). The interest rate for beginning farmer or rancher downpayment loans shall be 4 percent.

(2) *Terms of loans.* (i) Each loan made under this section shall be amortized over a period of 10 years or less, at the option of the borrower.

(ii) Loans under this section shall be repaid in equal annual installments.

(f) *Security.* (1) Each loan will be secured by a lien on the property being acquired with loan funds. Security requirements under § 1943.19 of this subpart do not apply under this section.

(2) FmHA's secured interest in the farm or ranch being acquired will be junior only to the party providing the financing for the balance of the purchase price to the applicant.

(3) The borrower must agree to obtain permission from the County Supervisor prior to granting any additional security interest in the farm or ranch as stated in § 1965.16 of subpart A of part 1965 of this chapter.

(g) *Relationship between FmHA and a State Beginning Farmer program.* State Directors are delegated authority to execute a Memorandum of Understanding (MOU) with any State expressing an interest in coordinating financial assistance to beginning farmers or ranchers. The MOU must be executed within 60 days of the State notifying the State Director in writing of such interest, and will be developed in accordance with FmHA Guide Letter 1943–A–1 (available in any FmHA office). Under the MOU, FmHA will agree to provide qualified beginning farmers or ranchers with a downpayment loan under this section and/or a guarantee of the balance of the purchase price provided by the State program. This agreement will be subject to applicable law, loan approval requirements, and the availability of funds. FmHA will not charge a fee to obtain or retain a guarantee in connection with any joint funding under the MOU. If any changes are made to the MOU, the Regional Office of the General Counsel (OGC) will be consulted prior to signing the MOU. States will send copies of signed MOUs to the attention: Director, Farmer Programs Loan Making Division, National Office.

(h) *Program outreach.* The State Director shall be responsible for publicizing the Downpayment FO Loan program, with special emphasis on Socially Disadvantaged Individuals, and facilitating the transfer of retirees farms or ranchers to eligible FO applicants within the respective State. Program outreach will include:

(1) Maintaining close liaison and attending meetings with local, State and national organizations serving the agricultural community.

(2) Providing information to community and farm oriented organizations, agriculture colleges, other USDA Agencies and community leaders who are active in the farming area.

(3) Use of newspaper articles, radio announcements, and/or public television announcements.

19. Section 1943.16 is amended by adding paragraph (a)(4) to read as follows:

§ 1943.16 Loan purposes.

* * * * *

(a) * * *

(4) Making a Downpayment FO loan as referenced in § 1943.14 of this subpart.

20. Section 1943.17 is amended by adding paragraphs (a)(4) and (a)(5) to read as follows:

§ 1943.17 Loan limitations.

(a) * * *

(4) The applicant has received special beginning farmer or rancher OL assistance under § 1941.15 of subpart A of part 1941 of this chapter and has been farming for 5 years or less, including the period of time in which special OL assistance was received.

(5) The applicant has received special beginning farmer or rancher OL assistance and has not conducted the operation in accordance with the plan required under § 1941.15 of subpart A of part 1941 of this chapter.

* * * * *

21. Section 1943.28 is amended by adding a new sentence at the beginning of paragraph (a) to read as follows:

§ 1943.28 FmHA loans simultaneous with other lenders.

(a) FmHA Guide Letter 1943–A–1 (available in any FmHA office), will serve as a guide in executing MOUs with State Beginning Farmer programs by which FO loans will be made simultaneously with loans by any State Beginning Farmer program. * * *

* * * * *

§ 1943.29 [Amended]

22. Section 1943.29 is amended in paragraph (a) by revising the word "Insured" to "Direct," and in the introductory text of paragraph (b) by revising the words "An insured" to "A direct."

23. Section 1943.30 is amended by adding a new sentence at the end of the paragraph to read as follows:

§ 1943.30 County Committee certification.

* * * The County Committee will also determine if the applicant is a beginning farmer or rancher as defined in § 1943.4 of this subpart.

24. Section 1943.38 is amended by revising the word "co-signers" to "individuals" in paragraph (g)(3)(iii) and revising paragraph (g)(3)(ii) to read as follows:

§ 1943.38 Loan closing actions.

* * * * *

(g) * * *

(3) * * *

(ii) Cooperatives or corporations. The promissory note(s) will be executed so as to evidence liability of the entity as well as individual liability of all member(s) or stockholder(s) in the entity.

* * * * *

Subpart B—Direct Soil and Water Loan Policies, Procedures, and Authorizations

25. Section 1943.54 is amended by revising the definition of "Borrower," and by adding, alphabetically, the definitions of "Beginning farmer or rancher," and "Cosigner," to read as follows:

§ 1943.54 Definitions.

* * * * *

Beginning farmer or rancher. A beginning farmer or rancher is an individual or entity who:

(a) Meets the loan eligibility requirements for SW loan assistance in accordance with § 1943.62 of this subpart.

(b) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 years. This requirement applies to all members of an entity.

(c) Will materially and substantially participate in the operation of the farm or ranch.

(1) In the case of a loan made to an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.

(2) In the case of a loan made to an entity, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that the individual provides some amount of the management, or labor and management necessary for day-to-day activities, such that if the individual did not provide these inputs, operation of the farm or ranch would be seriously impaired.

(d) Agrees to participate in any loan assessment, borrower training, and

financial management programs required by FmHA regulations.

(e) Does not own real farm or ranch property or who, directly or through interests in family farm entities owns real farm or ranch property, the aggregate acreage of which does not exceed 15 percent of the average farm or ranch acreage of the farms or ranches in the county where the property is located. If the farm is located in more than one county, the average farm acreage of the county where the applicant's residence is located will be used in the calculation. If the applicant's residence is not located on the farm or if the applicant is an entity, the average farm acreage of the county where the major portion of the farm is located will be used. The average county farm or ranch acreage will be determined from the most recent Census of Agriculture developed by the U.S. Department of Commerce, Bureau of the Census. State Directors will publish State supplements containing the average farm or ranch acreage by county.

(f) Demonstrates that the available resources of the applicant and spouse (if any) are not sufficient to enable the applicant to enter or continue farming or ranching on a viable scale.

(g) In the case of an entity:

(1) All the members are related by blood or marriage.

(2) All the stockholders in a corporation are qualified beginning farmers or ranchers.

Borrower. An individual or entity which has outstanding obligations to the FmHA under any Farmer Programs loan(s), without regard to whether the loan has been accelerated. A borrower includes all parties liable for the FmHA debt, including collection-only borrowers, except for debtors whose total loans and accounts have been voluntarily or involuntarily foreclosed or liquidated, or who have been discharged of all FmHA debt.

* * * * *

Cosigner. A party who joins in the execution of a promissory note to assure its repayment. The cosigner becomes jointly and severally liable to comply with the terms of the note. The 10 and 15 year loan limits under § 1941.17(a) of Subpart A of Part 1941 and § 1980.175(d)(1) of Subpart B of part 1980 of this chapter do not apply to cosigners. In the case of an entity applicant, the cosigner cannot be a member, partner, joint operator, or stockholder of the entity.

* * * * *

§ 1943.75 [Amended]

26. Section 1943.75 is amended in paragraph (c)(4)(iii) by revising the word "Its" to "The."

§ 1943.79 [Amended]

27. Section 1943.79 is amended by removing the words "so used" at the end of paragraph (d).

28. Section 1943.80 is revised to read as follows:

§ 1943.80 County Committee certification.

The County Committee will certify that an applicant is eligible on Form FmHA 440–2, "County Committee Certification or Recommendation," before a loan is approved. In some instances the Committee may want to interview the applicant or see the farm before making any recommendations. The County Committee will also determine whether the applicant is a beginning farmer or rancher for tracking purposes only.

29. Section 1943.88 is amended by revising the word "co-signers" to "individuals" in paragraph (g)(3)(iii) and revising paragraph (g)(3)(ii) to read as follows:

§ 1943.88 Loan closing actions.

* * * * *

(g) * * *

(3) * * *

(ii) Cooperatives or corporations. The promissory note(s) will be executed so as to evidence liability of the entity as well as individual liability of all member(s) or stockholder(s) in the entity.

* * * * *

PART 1945—EMERGENCY

30. The authority citation for part 1945 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1980; 7 CFR 2.23 and 2.70.

Subpart D—Emergency Loan Policies, Procedures and Authorization

31. Section 1945.154(a) is amended by revising, the term "Insured loan" to read "Direct loan" and placing it in alphabetical order, revising the definition of "Borrower," and adding the definitions, alphabetically, of Beginning farmer or rancher," and "Cosigner," to read as follows:

§ 1945.154 Definitions and abbreviations.

(a) * * *

Beginning farmer or rancher. A beginning farmer or rancher is an individual or entity who:

(1) Meets the loan eligibility requirements for EM loan assistance in accordance with § 1945.162 of this subpart.

(2) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 years. This requirement applies to *all* members of an entity.

(3) Will materially and substantially participate in the operation of the farm or ranch.

(i) In the case of a loan made to an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.

(ii) In the case of a loan made to an entity, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that the individual provides some amount of the management, or labor and management necessary for day-to-day activities, such that if the individual did not provide these inputs, operation of the farm or ranch would be seriously impaired.

(4) Agrees to participate in any loan assessment, borrower training, and financial management programs required by FmHA regulations.

(5) Does not own real farm or ranch property or who, directly or through interests in family farm entities owns real farm or ranch property, the aggregate acreage of which does not exceed 15 percent of the average farm or ranch acreage of the farms or ranches in the county where the property is located. If the farm is located in more than one county, the average farm acreage of the county where the applicant's residence is located will be used in the calculation. If the applicant's residence is not located on the farm or if the applicant is an entity, the average farm acreage of the county where the major portion of the farm is located will be used. The average county farm or ranch acreage will be determined from the most recent Census of Agriculture developed by the U.S. Department of Commerce, Bureau of the Census. State Directors will publish State supplements containing the average farm or ranch acreage by county.

(6) Demonstrates that the available resources of the applicant and spouse (if any) are not sufficient to enable the applicant to enter or continue farming or ranching on a viable scale.

(7) In the case of an entity:

(i) All the members are related by blood or marriage.

(ii) All the stockholders in a corporation are qualified beginning farmers or ranchers.

Borrower. An individual or entity which has outstanding obligations to the FmHA under any Farmer Programs loan(s), without regard to whether the loan has been accelerated. A borrower includes all parties liable for the FmHA debt, including collection-only borrowers, except for debtors whose total loans and accounts have been voluntarily or involuntarily foreclosed or liquidated, or who have been discharged of all FmHA debt.

* * * * *

Cosigner. A party who joins in the execution of a promissory note to assure its repayment. The cosigner becomes jointly and severally liable to comply with the terms of the note. The 10 and 15 year loan limits under § 1941.17 (a) of subpart A of part 1941 and § 1980.175 (d)(1) of subpart B of Part 1980 of this chapter do not apply to cosigners. In the case of an entity applicant, the cosigner cannot be a member, partner, joint operator, or stockholder of the entity.

* * * * *

§ 1945.161 [Amended]

32. Section 1945.161 is amended by removing the last sentence in paragraph (a)(1).

33. Section 1945.169 is amended by revising the word "cosigners" to "individuals" in paragraph (c)(3) and by revising paragraph (c)(2) to read as follows:

1945.169 Security.

* * * * *

(c) * * *

(2) Cooperatives or corporations. The promissory note(s) will be executed so as to evidence liability of the entity as well as individual liability of all member(s) or stockholder(s) in the entity.

* * * * *

34. Section 1945.180 is amended by adding a new sentence at the end of the paragraph to read as follows:

§ 1945.180 County Committee certification.

* * * The County Committee will also determine whether the applicant is a beginning farmer or rancher for tracking purposes only.

§ 1945.182 [Amended]

35. Section 1945.182 is amended in the first sentence of paragraph (a) by revising "Insured" to "Direct."

PART 1955—PROPERTY MANAGEMENT

36. The authority citation for part 1955 is revised to read as follows:

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

Subpart C—Disposal of Inventory Property

37. Section 1955.103 is amended by revising the definition of "Beginning farmer or rancher," and adding the definition "Borrower" to read as follows:

1955.103 Definitions.

* * * * *

Beginning farmer or rancher. A beginning farmer or rancher is an individual or entity who:

(1) Is an eligible applicant for FO loan assistance in accordance with § 1943.12 of subpart A of part 1943 of this chapter or § 1980.180 of subpart B of part 1980 of this chapter.

(2) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 years. This requirement applies to all members of an entity.

(3) Will materially and substantially participate in the operation of the farm or ranch.

(i) In the case of a loan made to an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.

(ii) In the case of a loan made to an entity, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that the individual provides some amount of the management, or labor and management necessary for day-to-day activities, such that if the individual did not provide these inputs, operation of the farm or ranch would be seriously impaired.

(4) Agrees to participate in any loan assessment, borrower training, and financial management programs required by FmHA regulations.

(5) Does not own real farm or ranch property or who, directly or through interests in family farm entities, owns real farm or ranch property, the aggregate acreage of which does not exceed 15 percent of the average farm or ranch acreage of the farms or ranches in the county where the property is located. If the farm is located in more than one county, the average farm acreage of the county where the applicant's residence is located will be used in the calculation. If the applicant's residence is not located on the farm or if the applicant is an entity, the average farm acreage of the county where the major portion of the farm is located will be used. The average county farm or ranch acreage will be determined from the most recent Census of Agriculture developed by the U.S. Department of Commerce, Bureau of the Census. State Directors will publish State supplements containing the average farm or ranch acreage by county.

(6) Demonstrates that the available resources of the applicant and spouse (if any) are not sufficient to enable the applicant to enter or continue farming or ranching on a viable scale..

(7) In the case of an entity:

(i) All the members are related by blood or marriage.

(ii) All the stockholders in a corporation are qualified beginning farmers or ranchers.

Borrower. An individual or entity which has outstanding obligations to the FmHA under any Farmer Programs loan(s), without regard to whether the loan has been accelerated. A borrower includes all parties liable for the FmHA debt, including collection-only borrowers, except for debtors whose total loans and accounts have been voluntarily or involuntarily foreclosed or liquidated, or who have been discharged of all FmHA debt.

* * * * *

38. Section 1955.122 is amended by redesignating current paragraphs (a) through (f) as (b) through (g), respectively, by adding a new paragraph (a), and revising newly redesignated paragraph (b) to read as follows:

§ 1955.122 Method of sale (Chattel).

* * * * *

(a) *Sale to beginning farmers or ranchers.* Beginning farmers or ranchers obtaining special OL loan assistance under § 1941.15 of Subpart A of part 1941 of this chapter will receive priority in the purchase of farm equipment held in government inventory during the commitment period. The County Supervisor will notify such applicants/borrowers of any farm equipment held in government inventory within the service area of the FmHA County Office. These applicants/borrowers will be given 10 working days to respond that they are interested in purchasing any or all items of equipment at the appraised fair market value established by FmHA. FmHA Form Letter 1955–C–1 will be used to notify applicants/borrowers of the availability of farm equipment in FmHA inventory. The equipment must be essential to the success of the operation described in the loan application in order for the applicant to have an opportunity to purchase such

equipment. The County Supervisor will determine what equipment is essential.

(b) *Repurchase by former borrower-owner.* If the former borrower-owner is participating in leaseback/buyback and/or homestead retention, the former borrower-owner will have an opportunity to repurchase the chattel property which has been conveyed to FmHA by the borrower, after special OL borrowers as described in paragraph (a) of this section. The sale will be market value and may be for cash or an FmHA credit sale. The borrower must repurchase all remaining chattel property conveyed to FmHA and may not pick and choose items to purchase. If the spouse or children of the previous owner, entity members of the previous owner or the immediate previous operator are leasing or purchasing the property under the leaseback/buyback program, such person may also have second opportunity (after special OL borrowers) to purchase all remaining chattels.

* * * * *

PART 1980—GENERAL

39. The authority citation for part 1980 is revised to read as follows:

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

Subpart A—General

§ 1980.6 [Amended]

40. Section 1980.6 (a) is amended under the definition for "Borrower" by revising "§ 1980.106 (b)(4)" to read "§ 1980.106 (b)."

41. Section 1980.21 is amended by revising paragraph (a) to read as follows:

§ 1980.21 Guarantee fee.

(a) *Initial fee.* The fee will be the applicable rate multiplied by the principal loan amount or the Line of Credit ceiling amount multiplied by the percent of guarantee, paid one time only at the time the Loan Note Guarantee or Contract of Guarantee is issued. No guarantee fee will be charged when financing is provided by a State Beginning Farmer program as described in § 1980.108 (e) of Subpart B of this part.

(1) The fee will be paid to FmHA by the lender and is nonreturnable. The lender may pass on the fee to the borrower.

(2) Guarantee fee rates are specified in Exhibit K of FmHA Instruction 440.1 (available in any FmHA Office).

* * * * *

42. Section 1980.22 is amended by revising paragraph (a) to read as follows:

§ 1980.22 Charges and fees by lender.

(a) *Routine charges and fees.*

(1) Guarantee fees for Downpayment FO loan applicants. When a guaranteed loan is made in conjunction with the Downpayment FO Loan program for beginning farmers or ranchers referenced in § 1943.14 of subpart A of part 1943 of this chapter, the lender may charge a loan origination and servicing fee for an amount not to exceed 1 percent of the loan amount for the life of the loan.

(2) All Other Program Guarantees. Under all programs except the Downpayment FO Loan program for beginning farmers or ranchers, the lender may establish the charges and fees for the loan, provided they are the same as those charged other applicants for similar types of transactions. "Similar types of transactions" means those transactions involving the same type of loan requested for which a non-guaranteed loan applicant would be assessed charges and fees.

* * * * *

43. Appendix F of Subpart A is revised to read as follows:

BILLING CODE 3410-07-U

Appendix F—Conditional Commitment (Farmer Programs)

USDA-FmHA
Form FmHA 1980-15
(Rev. 9-93)

FORM APPROVED
OMB NO. 0575-0079

CONDITIONAL COMMITMENT
(Farmer Programs)

TO: LENDER	TYPE OF LOAN ☐ FO ☐ SW ☐ OL ☐ OL/LOC
LENDER MAILING ADDRESS	NAME OF LOAN APPLICANT
	FmHA CASE NUMBER
CITY, STATE, AND ZIP CODE	PRINCIPAL AMOUNT OF LOAN/LINE OF CREDIT $

From an examination of information supplied by the Lender on the above proposed loan/line of credit, the County Committee certification or recommendation, if required, and other relevant information deemed necessary, it appears that the transaction can be properly completed.

Therefore, the United States of America acting through the Farmers Home Administration (FmHA) hereby agrees that, in accordance with applicable provisions of the FMHA regulations published in the Federal Register and related forms, it will execute Form FmHA 449-34, "Loan Note Guarantee," or Form FmHA 1980-27, "Contract of Guarantee (Line of Credit)", as appropriate, subject to the conditions and requirements specified in said regulations and included below.

The guarantee fee payable by the Lender to FmHA will be the amount as specified in the regulations on the date of this Conditional Commitment.

The interest rate for the loan/line of credit is ____ % ☐ fixed, ☐ variable which cannot exceed the rate the lender charges his average farm customer. If a variable rate is used, it cannot change more often than _____.

If the interest rates will be different on the guaranteed and nonguaranteed portions of the loan, in accordance with Section 1980.175 of Subpart B of Part 1980, the overall rate will be ☐ fixed ☐ variable. The interest rate on the guaranteed portion cannot exceed the nonguaranteed portion.

A Loan Note Guarantee or Contract of Guarantee will not be issued until the Lender certifies to conditions in Form FmHA 1980-22, "Lender Certification," that there has been no adverse change(s) in the loan Applicant's financial condition, nor any other adverse change in the Loan Applicant's condition during the period of time from FmHA's issuance of the conditional Commitment, (Farmer Programs) to issuance of the Loan Note Guarantee or contract of Guarantee.

Unless indicated in the section "Additional Conditions and Requirements," the purposes for which the loan funds will be used are set out on the Farmer Programs Application.

The Lender agrees that, if liquidation of the account becomes imminent, the Lender will consider the Loan Applicant for Interest Assistance under Exhibit D of 7 CFR Part 1980, Subpart B, and request a determination of the Loan Applicant's eligibility by FmHA. The Lender may not initiate foreclosure action on the loan until 60 calendar days after a determination has been made with respect to the eligibility of the Loan Applicant to participate in the Interest Assistance Program.

INTEREST ASSISTANCE REQUIREMENTS

☐ N/A The subject guaranteed loan/line of credit does not have Interest Assistance.

☐ INTEREST ASSISTANCE

The subject guaranteed loan/line of credit has been approved for participation in the Interest Assistance program. Interest Assistance during the first annual operating plan period will be _____ percent per annum of average outstanding principal. The Maximum Rate of Interest Assistance Available (MRIAA) under this commitment is _____ percent per annum of outstanding principal balance. Interest Assistance is available under this commitment for a period not to exceed _____ years. Availability of Interest Assistance is subject to the loan being closed in accordance with the conditions of this commitment and with the conditions of this commitment and with FmHA regulations. Interest Assistance availability is also subject to the execution of Form FmHA 1980-64, "Interest Assistance Agreement," and compliance with the conditions of that agreement. conditions include the requirement that the rate of Interest Assistance be adjusted annually based on an analysis of the borrower's need for Interest Assistance, with which the lender is required to perform and obtain FmHA concurrence.

porting burden for this collection of information is estimated to average 30 minutes per esponse, including the time for reviewing instrucitons, searching existing data sources, gathering and maintaining the data needed, and completing 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 Department of Agriculture, Clearance Officer, OIRM, AG Box 7630, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575-0079), Washington, D.C. 20503 Please DO NOT RETURN this form to either of these addresses. Forward to FmHA only.

REQUIREMENTS FOR LOANS SECURED BY CHATTELS

A) All collateral for the loan, i.e., livestock, farming and other equipment, crops, other farm products, supplies, inventory, accounts and contract rights, and general intangibles, must be accounted for on a disposition or collateral control sheets. An assignment will be obtained on all USDA crop and livestock program payments. All collateral pertains to that now owned and hereafter acquired. A yearly accounting and reconciliation with the Security Agreement is required.

B) The Lender's financing statement must cover the proceeds and products of collateral and the following statement must be included· "Disposition of the collateral is not authorized hereby."

FOR OPERATING LOAN(S) / LINE OF CREDIT REQUIREMENTS

For an Operating Loan/Line of Credit loan(s), prior to any advances for the second or third plan year, Non-Certified Lenders must submit a copy of the borrower's income and expenses for the previous year, the projected cash flow for the borrower's operation for the upcoming operating cycle, a current financial statement a/k/a balance sheet, and a certification that the borrower is in compliance with the provisions of the Line of Credit Agreement and the income and expenses for the previous year have been accounted for. All of the above items are to be submitted to the County Supervisor for written approval.

GENERAL REQUIREMENTS

Lender agrees that any provisions in its security instruments, including promissory notes, security agreements, financing statements, deeds of trust, or other forms used by the lender to evidence or secure a loan to a guaranteed loan applicant, which do not comply with 7 CFR Parts 1980-A and B; are unenforceable by the lender without the written concurrence of FmHA. Such provisions and enforcement are hereby waived by the lender.

The Lender agrees that FmHA has not nor will certify to the validity, accuracy, legality, or enforceability of any note, security agreement, financing statement, deed of trust or other form which Lender has provided to FmHA, the providing of such forms being for informational purposes only.

HIGHLY ERODIBLE LAND AND WETLAND CONSERVATION

A) This commitment is conditional upon loan proceeds not being used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity.

B) All guaranteed lenders will be required to monitor compliance of these requirements as part of their servicing responsibilities. During loan servicing contacts the borrower's compliance is to be reviewed and analyzed. If the borrower violates 7 CFR Part 1940, Subpart G, Exhibit M requirements, the loan will be in default.

C) ☐ N/A The loan applicant's farm properties do not contain any highly erodible land, wetland, or converted wetland.

☐ The lender will, for all applicants having highly erodible land, wetland, or converted wetlands on their farm properties, include the following provisions in its loan instruments:

PROMISSORY NOTES:

Borrower recognizes that the loan described in this note will be in default should any loan proceeds be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetland to produce or to make possible the production of an agricultural commodity, subject to 7 CFR Part 1940, Subpart G, Exhibit M.

MORTGAGES OR DEEDS OF TRUST:

"Borrower further agrees that the loan(s) secured by this instrument will be in default should any loan proceeds be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetland to produce or to make possible the production of an agricultural commodity, as further explained in 7 CFR Part 1940, Subpart G, Exhibit M."

SECURITY AGREEMENTS:

"Default shall also exist if any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetland to produce or to make possible the production of an agricultural commodity, as further explained in 7 CFR Part 1940, Subpart G, Exhibit M."

ADDITIONAL CONDITIONS AND REQUIREMENTS

1) Purpose for which guaranteed loan funds will be used:

2) Security required for the guaranteed loan:

3) Type and frequency of financial reports required by FmHA but not required by the Lender:

4) Other requirements: (Insert any additional conditions or requirements in this space or on an attachment referred to in this space; otherwise, insert "NONE.")

This conditional commitment becomes null and void unless the conditions are accepted by the Lender and Loan Applicant and will expire on _____ unless the time is extended in writing by FmHA, or upon the Lender's earlier notification to FmHA that it does not desire to obtain and FmHA guarantee. Any negotiations concerning these conditions must be completed by that time. Once this instrument is executed and returned to FmHA, no major change of conditions or approved loan purpose as listed on the Form FmHA 1910-1, "Farmer Programs Application," will be considered.

UNITED STATES OF AMERICA
FARMERS HOME ADMINISTRATION

By: _____

_____ _____ FmHA: _____
(Date)

ACCEPTANCE OR REJECTION OF CONDITIONS

To: Farmers Home Administration (FmHA)

The condition(s) of Form FmHA 1980-15 outlined on previous pages:

1. ☐ are acceptable and the undersigned Lender intends to proceed with the loan transaction and to request issuance of Form FmHA 449-34, "Loan Note Guarantee," or Form FmHA 1980-27, "Contract of Guarantee (Line of Credit)," as applicable, at the appropriate time.

2. ☐ are acceptable, but not for other reasons as the undersigned Lender does not desire a Form FmHA 449-34, "Loan Note Guarantee," or Form FmHA 1980-27, "Contract of Guarantee (Line of Credit)," as applicable. We withdraw our guaranteed loan application.

3. ☐ are not acceptable, and for that reason the undersigned Lender does not desire a Form FmHA 449-34, "Loan Note Guarantee," or Form FmHA 1980-27, "Contract of Guarantee (Line of Credit)," as applicable. If you desire FmHA to withdraw your guaranteed loan application, check the following box ☐ WITHDRAW APPLICATION. If you do not withdraw the guaranteed loan application, a formal rejection letter notifying you of your appeal rights will be forthcoming.

4. ☐ are not acceptable but would be acceptable if the following changes were made:

Lender hereby certifies that it will comply with the requirements and regulations of 7 CFR Part 1980, Subparts A and B and Form FmHA 1980-38, "Agreement For Participation In Farmer Programs Guaranteed Loan Programs of the United States Government."

If block number "1" above is checked:

(a) It is understood that the following information may now be released upon request: Name and address of applicant, name and address of lender, amount of loan, and general purpose of loan.

(b) It is anticipated that Form FmHA 449-34, "Loan Note Guarantee," or Form FmHA 1980-27, "Contract of Guarantee (Line of Credit)," as applicable, will be requested in approximately _____ days.

NOTE TO LENDER: Complete and execute the Acceptance or Rejection of Conditions as indicated above on the copy of this form and return it to FmHA.

_____
(Name of Lender)

_____ By: _____
(Date) (Signature of Lender)

[1] Insert the period prescribed in the applicable FmHA regulations.
[2] Insert expiration date. (Allow sufficient time for processing and issuance of the forms.)
[3] Return completed and signed copy of this form to FmHA office from which it was received.

BILLING CODE 3410-07-C

Subpart B—Farmer Program Loans

44. Section 1980.106 is amended by removing paragraph designations (b)(1) through (b)(23); by redesignating, under paragraph (b), the definition of "Family farm," paragraphs (i), (ii), (ii) (A), (B) and (C), (iii), (iii) (A) and (B), (iv), (iv) (A) and (B), and (v) as paragraphs (1), (2), (2) (i), (ii) and (iii), (3), (3) (i) and (ii), (4), (4) (i) and (ii), and (5), respectively; by redesignating, under the definition of "Positive cash flow," paragraphs (i), (ii), (iii) and (iv) as paragraphs (1), (2), (3) and (4), respectively; by revising the definition of "Borrower;" and by adding, alphabetically, the definitions of "Beginning farmer or rancher," "Cosigner," "Financially viable operation," and "State Beginning Farmer program," to read as follows:

§ 1980.106 Abbreviations and definitions.

* * * * *

Beginning farmer or rancher. A beginning farmer or rancher is an individual or entity who:

(1) Meets the loan eligibility requirements for OL, FO or SW loan assistance, as applicable, in accordance with §§ 1980.175(b), 1980.180(b) or 1980.185(b) of this subpart.

(2) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 years. This requirement applies to all members of an entity.

(3) Will materially and substantially participate in the operation of the farm or ranch.

(i) In the case of a loan made to an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.

(ii) In the case of a loan made to an entity, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that the individual provide some amount of the management, or labor and management necessary for day-to-day activities, such that if the individual did not provide these inputs, operation of the farm or ranch would be seriously impaired.

(4) Agrees to participate in any loan assessment, borrower training, and financial management programs required by FmHA regulations.

(5) Does not own real farm or ranch property or who, directly or through interests in family farm entities owns real farm or ranch property, the aggregate acreage of which does not exceed 15 percent of the average farm or ranch acreage of the farms or ranches in the county where the property is located. If the farm is located in more than one county, the average farm acreage of the county where the loan applicant's residence is located will be used in the calculation. If the loan applicant's residence is not located on the farm or if the loan applicant is an entity, the average farm acreage of the county where the major portion of the farm is located will be used. The average county farm or ranch acreage will be determined from the most recent Census of Agriculture developed by the U.S. Department of Commerce, Bureau of the Census. State Directors will publish State supplements containing the average farm or ranch acreage by county.

(6) Demonstrates that the available resources of the loan applicant and spouse (if any) are not sufficient to enable the applicant to enter or continue farming or ranching on a viable scale.

(7) In the case of an entity:

(i) All the members are related by blood or marriage.

(ii) All the stockholders in a corporation are qualified beginning farmers or ranchers.

Borrower. An individual or entity which has outstanding obligations to the FmHA under any Farmer Programs loan(s), without regard to whether the loan has been accelerated. A borrower includes all parties liable for the FmHA debt, including collection-only borrowers, except for debtors whose total loans and accounts have been voluntarily or involuntarily foreclosed or liquidated, or who have been discharged of all FmHA debt.

* * * * *

Cosigner. A party who joins in the execution of a promissory note to assure its repayment. The cosigner becomes jointly and severally liable to comply with the terms of the note. The 10 and 15 year loan limits under § 1941.17(a) of subpart A of part 1941 and § 1980.175(d)(1) of this subpart do not apply to cosigners. In the case of an entity loan applicant, the cosigner cannot be a member, partner, joint operator, or stockholder of the entity.

* * * * *

Financially viable operation. A financially viable operation is one which, with FmHA assistance, is projected to improve its financial condition over a period of time to the point that the operator can obtain commercial credit without further FmHA direct or guaranteed assistance. Such an operation must generate sufficient income to: Meet annual operating expenses and debt payments as they become due, meet basic family living expenses to the extent they are not met by dependable nonfarm income, provide for replacement of capital items, and provides for long-term financial growth. A borrower that will meet the FmHA classification of "Commercial," as defined in FmHA Instruction 2006–W (available in any FmHA office), will be considered to be financially viable.

* * * * *

State Beginning Farmer program. Any program that is carried out by or under contract to a State and designed to assist persons in obtaining the financial assistance necessary to establish and/or maintain viable farming or ranching operations.

* * * * *

45. Section 1980.108 is amended by removing paragraph (a)(2)(i), redesignating current paragraphs (a)(2)(ii) through (a)(2)(iv) as paragraph (a)(2)(i) through (a)(2)(iii), revising the reference "§ 1980.106(b)(23)" to read "§ 1980.106(b)" in paragraph (b)(1), revising newly redesignated paragraph (a)(2)(i), and adding a new paragraph (e) preceding the heading "Administrative" to read as follows:

§ 1980.108 General provisions.

(a) * * *

(2) * * *

(i) Guarantees of parent, subsidiary, or affiliated companies may be required. Guarantees will be required in an amount which reasonably assures repayment of the loan/line of credit and provides sufficient security. If a review of all credit factors indicates the need for additional security, the lender and/or FmHA may require additional personal and corporate guarantees. The lender and/or FmHA may also require that such guarantees be secured.

* * * * *

(e) *Relationship between FmHA and a State Beginning Farmer program.* FmHA can provide an eligible beginning farmer with a guarantee of the financing provided by the State program. State Directors are delegated authority to execute a Memorandum of Understanding (MOU) with any State expressing an interest in coordinating financial assistance to beginning farmers and ranchers. The MOU must be executed within 60 days of the State notifying the State Director in writing of such interest, and will be developed in accordance with FmHA Guide Letter 1943–A–1 (available in any FmHA office). Under the MOU, FmHA will agree to provide qualified beginning

farmers or ranchers with a guarantee of any FO or OL financing provided by the State program. This agreement will be subject to applicable law, loan approval requirements, and the availability of funds. FmHA will not charge a fee to obtain or retain a guarantee in connection with any joint funding under the MOU. If any changes are made to the MOU, the Regional Office of the General Counsel (OGC) will be consulted prior to signing the MOU. States will send copies of signed MOUs to the attention: Director, Farmer Programs Loan Making Division, National Office.

* * * * *

46. Section 1980.109 is amended by revising the word "cosigners" to the word "individuals" in paragraph (a)(2)(ii), removing paragraph (a)(2)(iv), and revising paragraph (a)(2)(iii) to read as follows:

§ 1980.109 Promissory notes, line of credit agreements, security instruments, and financing statements.

(a) * * *

(2) * * *

(iii) Corporations or cooperatives. The promissory note(s) or Line of Credit Agreement will be executed so as to evidence liability of the entity as well as individual liability of all member(s) or stockholder(s) in the entity.

§ 1980.114 [Amended]

47. Section 1980.114, ADMINISTRATIVE B. is amended by revising "§ 1980.106(b)(17)" to read "§ 1980.106(b)."

48. Section 1980.115 introductory text is revised to read as follows:

§ 1980.115 County Committee review.

The County Committee will review loan applications to determine whether the loan applicants meet FmHA eligibility requirements and meet the definition of "beginning farmer and rancher," as defined in § 1980.106 of this subpart. See § 1980.176(k) for County Committee actions relative to special OL assistance to beginning farmers or ranchers. Applications do not need to be complete before they are reviewed by the County Committee; however, all information relating to the eligibility must be received. The County Supervisor will promptly notify both the lender and loan applicant in writing within 5 calendar days of the County Committee's determination.

* * * * *

49. Section 1980.124 is amended by revising paragraph (a)(1) to read as follows:

§ 1980.124 Consolidation, rescheduling, reamortizing and deferral.

(a) * * *

(1) The borrower meets the eligibility requirements under §§ 1980.175(b), 1980.176, 1980.180(b), and 1980.185(b) of this subpart for FO, SW, and OL loans/lines of credit, as applicable, and the lender's security position would not be adversely affected. For FO, SW loans and OL loans/lines of credit refer to this subpart for these requirements. For EM loans refer to subpart D of part 1945 of this chapter for eligibility and security requirements. For RL loans refer to SW eligibility and security requirements as set out in this subpart.

* * * * *

50. Section 1980.147 is revised to read as follows:

§ 1980.147 Graduation.

FmHA County Supervisors will encourage lenders to provide nonguaranteed operating credit, wherever possible, to existing OL borrowers. This effort will be made a part of FmHA contacts with lenders.

51. Section 1980.175 is amended in paragraph (b)(2)(iv)(A) by revising the reference "§ 1980.106 (b)(21)" to read "§ 1980.106 (b)," redesignating current paragraphs (d)(1) through (d)(5) as paragraphs (d)(2) through (d)(6), adding new paragraphs (d)(1) and (d)(7), and revising paragraphs (e)(1) and the first sentence of paragraph (e)(2) to read as follows:

§ 1980.175 Operating loans.

* * * * *

(d) * * *

(1) An OL guarantee/line of credit will not be approved if:

(i) The loan applicant received guaranteed and/or direct OL loans after October 28, 1992, and the sum of all calendar years that any combination of those loans were outstanding (including any extension of terms through servicing or bankruptcy) is more than 15. The borrower, however, could still receive assistance in the following Example: On February 1, 1993, a loan applicant receives the first of 6 consecutive direct annual OL loans. In year 7, the borrower obtains a 7-year guaranteed OL loan. The borrower receives no further FmHA OL assistance for 5 years. In year 12, the lender then submits a 7-year OL loan guarantee request. The loan applicant is eligible since direct and/or guaranteed loans/lines of credit have not been outstanding more than 15 calendar years. The repayment term on any loan may extend beyond the 15-year eligibility limit. A loan outstanding in any portion of a year will be counted as 1 year.

(ii) As of October 28, 1992, the loan applicant had one or more direct OL loan(s) outstanding during each of the last 5 calendar years (January 1, 1988—October 28, 1992) and has had direct and/or guaranteed OL loans made after October 28, 1992, that have been outstanding for a sum of more than 5 calendar years (including any extension of terms through servicing or bankruptcy) since that date. The borrower, however, could still receive assistance in the following Example: A loan applicant had two direct OL loans outstanding on October 28, 1992, one of which had been outstanding since March 15, 1988 (counted as 5 years). This loan applicant also received direct and/or guaranteed OL loans beginning on November 1, 1992 (after October 28, 1992), that have been outstanding for all or a portion of each year through 1995. The lender then applies for a guaranteed OL loan on January 1, 1996. This loan applicant is eligible for assistance. However, this is the loan applicant's last year that direct and/or guaranteed OL assistance can be received. The repayment term on any loan may extend beyond the 5-year eligibility limit. Multiple loans outstanding in a given year count only as 1 year of eligibility. A loan outstanding in any portion of a year is counted as a full year.

(iii) As of October 28, 1992, the loan applicant had one or more guaranteed OL loans outstanding during each of the last 10 calendar years (January 1, 1983—October 28, 1992) and has had direct and/or guaranteed OL loans made after October 28, 1992, that have been outstanding for a sum of more than 5 calendar years (including any extension of terms through servicing or bankruptcy) since that date. The borrower, however, could still receive assistance in the following Example: A borrower had two guaranteed OL loans outstanding as of October 28, 1992, and one of which had been outstanding for 7 of the last 10 calendar years. This borrower is eligible for 15 years of guaranteed/direct OL loan assistance since guaranteed OL loans had been outstanding for less than 10 calendar years as of October 28, 1992. (Direct OL loans also would be suspect to a 10-year limitation. See § 1941.17 of subpart A of part 1941 of this chapter.) The repayment term on any loan may extend beyond the 5-year eligibility limit. Multiple loans outstanding in a given year count only as 1 year of eligibility. A loan outstanding in any portion of a year is counted as a full year.

* * * * *

(7) For special beginning farmer or rancher OL loan assistance loan limitations see § 1980.176 of this subpart.

(e) * * *

(1) The interest rate for the entire loan may be a fixed or variable rate as agreed upon by the borrower and the lender. The guaranteed portion of the loan may carry an interest rate lower than the rate on the nonguaranteed portion. Lines of credit may also have fixed or variable rates but the rate must be the same on the guaranteed and nonguaranteed portions.

(2) The lender may charge a rate on both the guaranteed and nonguaranteed loan portion, not to exceed the rate the lender charges its average farm customer. * * *

* * * * *

52. Section 1980.176 is added to read as follows:

§ 1980.176 Special beginning farmer or rancher OL loan assistance.

(a) *Objectives.* The basic objective of this special OL loan program is to provide the loan applicant, whose primary occupation is or will be farming, with a reliable source of FmHA-assisted operating credit for annual operating and capital expenses needed to conduct a viable farming or ranching operation. The goal is to move the borrower through varying types of assistance, ranging from limited resource direct loans, regular interest direct loans, subsidized guaranteed loans, and unsubsidized guaranteed loans, with graduation to private credit occurring no later than 10 years from the date of initial assistance. The lender will provide borrower supervision to the extent necessary to achieve the objectives of the loan and to protect the interests of the Government in accordance with Form FmHA 1980–38.

(b) *Eligibility requirements.* Loan applicants must:

(1) Meet the "beginning farmer or rancher" definition in § 1980.106(b) of this subpart.

(2) Have not operated a farm or ranch, or have operated a farm or ranch for not more than 5 years. This requirement applies to all members of an entity.

(3) During the 5-year period prior to applying for assistance, have sufficient education and experience to indicate that the loan applicant is able to conduct a successful farming or ranching operation.

(4) Own, lease, or have a commitment to lease the site of the operation, that is or will be sufficient to carry out the planned operation.

(5) Present a plan of operation in accordance with paragraph (e) of this section which projects feasibility for each year of the 5-year period, and a financial projection reflecting a financially viable operation at the end of the commitment period referenced in paragraph (f) of this section.

(6) Have or will have access to livestock and equipment, sufficient to carry out the planned operation.

(c) *Loan purposes.* Loan purposes are as set forth in § 1980.175(c) of this subpart. Applicants approved for loan assistance under this section will receive priority in the purchase of FmHA inventory equipment as stated in § 1955.122(a) of subpart C of part 1955 of this chapter.

(d) *Loan limitations.* In addition to the loan limitations stated in § 1980.175(d) of this subpart, the borrower is not eligible for special beginning farmer OL loan assistance for a 3-year period beginning on the date that a previous commitment is terminated under paragraph (h) of this section.

(e) *Plan of operation for special beginning farmer OL loan assistance.* In addition to the planning requirements set forth in § 1980.113(a) of this subpart, and subject to paragraph (e)(3) of this section, the following information must be submitted to the County Supervisor with the application for County Committee review:

(1) A plan of farming operation for each of the first 5 years for which special beginning farmer OL loan assistance is requested, providing the following details:

(i) How the operation is to be conducted.

(ii) The types and quantities of commodities to be produced.

(iii) The production methods to be employed by the operator.

(iv) The conservation measures to be utilized in the operation.

(v) The livestock and equipment needed to conduct the farming operation (including expected replacements and additions), and whether the loan applicant owns, leases, or has access to the item(s), or plans to purchase or lease the needed item(s).

(vi) The expected income and expenses of the operation.

(vii) The expected credit needs, including the types, amounts, and sources.

(viii) The site or sites where the farming operation is, or will be, located.

(2) A plan projecting the financial status of the farming operation after special beginning farmer OL loan assistance (direct/guaranteed OL loan) has been provided for the period necessary, not to exceed 10 years. The projected plan must indicate the operation will be financially viable without further FmHA assistance within 10 years. This plan will detail the specific goals addressed by the loan applicant in order to graduate to other credit in an expeditious manner. Failure to meet these goals may result in termination of the commitment under paragraph (h) of this section.

(3) The lender and loan applicant have the option of developing and submitting only a first year plan to the County Supervisor covering items listed under paragraph (e)(1) of this section. The County Supervisor then will develop a 5-year plan and financial projection, based upon FmHA's automated Farm and Home Plan system described in § 1910.4 (b) of subpart A of part 1910 of this chapter. The County Supervisor will notify the lender and loan applicant of this option.

(f) *Commitment period.* In making OL loans under this section, the County Supervisor will make a commitment to the borrower to provide FmHA-assisted direct and/or guaranteed operating credit for a period not to exceed 10 years, subject to loan limitations stated in paragraph (d) of this section. FmHA Form Letter 1941–A–2, "Conditional Commitment to Provide Special Operating Loan Assistance to Beginning Farmers or Ranchers," will be used for this purpose, and provided to the loan applicant when the loan is approved. The length of the commitment period will be determined by an automated analysis of projected financial and income data reflecting a financially viable operation as defined in § 1980.106 (b) of this subpart. The following conditions apply:

(1) The loan applicant will not be eligible for special guaranteed beginning farmer OL loan assistance after 10 years from the date of the first special direct or guaranteed OL loan.

(2) After the first year, subsequent loans under this section are contingent on the revision of the projected plan of operation required in paragraph (e)(1) of this section. The plan will be for the 5-year period beginning with the particular year for which assistance is requested or, if shorter, the period beginning with the particular year for which assistance is requested and ending with the year the plan projects a financially viable operation. A revised plan will be developed each year. This must be based on an analysis of the prior year's operation. The plan must be revised at least 60 days before the assistance will be needed for that particular year. The type of assistance provided each year (guaranteed OL, guaranteed OL-Interest Assistance, direct OL, direct or OL-Limited Resource) will depend upon the

financial progress made by the loan applicant in accordance with FmHA regulations setting forth the eligibility requirements for each of the listed types of assistance.

(3) Borrowers under this section must demonstrate progress toward the specified goals with the objective of eliminating the need for FmHA credit after not more than 10 years. A borrower will be considered to have met the goals if FmHA payments are made on a timely basis, agreements with FmHA are kept, and financial progress is made such that the operation continues to be financially viable.

(g) *Extension of commitment period.* If a commitment has been issued for less than 10 years, the commitment period may be extended subject to the 10-year limit providing:

(1) The annual plan is revised in accordance with paragraph (f)(2) of this section.

(2) The failure to achieve the goals within the commitment period was due to circumstances beyond the control of the borrower. Acceptable circumstances for not achieving the goals include, but are not limited to:

(i) The reduction in essential income from a nonfarm job due to unemployment or underemployment of the borrower-operator or spouse caused by circumstances beyond the borrower's control.

(ii) Illness, injury, or death of an individual borrower, stockholder, member or partner who operates the farm.

(iii) Natural disasters, an outbreak of uncontrollable disease, and/or uncontrollable insect damage which caused severe loss of agricultural production that reduced the repayment ability of the borrower so that scheduled payments cannot be made.

(iv) Economic factors that are widespread and not limited to an individual case, such as high interest rates or low market prices for agricultural commodities as compared to production costs, that reduce the repayment ability of the borrower so that scheduled payments cannot be made, and;

(3) The failure to achieve such goals has not materially reduced the likelihood of the farming operation becoming financially viable.

(h) *Termination of commitment period.*

(1) The commitment will be revoked if the County Committee fails to recertify the applicant as eligible for the regular direct and/or guaranteed OL loan programs under paragraph (k)(2) of this section.

(2) The commitment for FmHA-assisted operating credit also shall be revoked if the applicant fails, for 2 consecutive years, to meet the goals specified in the plan, unless both of the following are met:

(i) The failure has not materially reduced the likelihood of the operation becoming financially viable. (An updated projection of the financial status of the operation still reflects financial viability at the end of the commitment period.)

(ii) The failure to meet the goals of the 5-year plan was due to circumstances beyond the control of the borrower as described in paragraph (g)(2) of this section.

(3) Upon revocation of the commitment, the borrower will be given appeal rights in accordance with subpart B of part 1900 of this chapter.

(i) *Relationship between FmHA loans, direct and guaranteed.* The provisions of § 1980.108 (d) of this subpart apply as stated. With respect to loan objectives as stated in paragraph (a) of this section, and in accordance with paragraph (f)(2) of this section, whether the borrower receives a direct or guaranteed OL loan during the commitment period, will depend on the borrower's financial condition, the projected 5-year plan of operation, and availability of guaranteed credit.

(j) *Completion of the 10-year commitment period.* If the borrower is unable to graduate to other credit without FmHA's assistance, FmHA may provide direct or guaranteed loan assistance subject to the lifetime loan limitations set forth in § 1941.17 of subpart A of part 1941 of this chapter, and § 1980.175(d) of this subpart and all other loan making regulations of this chapter.

(k) *County Committee certification.* A special beginning farmer or rancher OL application will not be presented to the County Committee until such time as a complete 5-year plan of operation and a projection of the financial status of the operation, as set forth in paragraph (e) of this section, is submitted to FmHA for review. In addition to the requirements of § 1980.115 of this subpart, the following conditions apply:

(1) For initial special beginning farmer OL loan applicants, the County Committee will certify to the loan applicant meeting all the eligibility requirements as stated in paragraph (b) of this section. This certification is effective throughout the commitment period.

(2) For subsequent loan requests during the commitment period, the County Committee will certify as to the loan applicant meeting the eligibility requirements for the regular direct and/or guaranteed OL loan programs, when the 5-year eligibility expires on the current Form FmHA 440–2, "County Committee Certification or Recommendation," unless the County Supervisor has determined that the loan applicant's situation has changed such that the eligibility determination would potentially be affected. If recertification is rejected, no subsequent loan/guarantee will be made under the commitment, and the commitment will be revoked in accordance with paragraph (h) of this section.

(l) *Loan approval or disapproval.* In addition to the requirements of §§ 1980.114 and 1980.115 of this subpart, it must be determined that:

(1) *Initial loans.* (i) Farm income is sufficient to cover farm expenses and debt service as nonfarm income cannot be relied on to cover farm expenses or debt service.

(ii) At the end of the commitment period the operation will be financially viable without further assistance from FmHA, and the identified goals are reasonable and practicable.

(2) *Subsequent loans.* Subsequent loans will be approved or disapproved in accordance with FmHA Form Letter 1941–A–2 and paragraph (f) of this section.

53. Section 1980.180 is amended by adding paragraphs (c)(1)(iv), (d)(4), and (d)(5) to read as follows:

* * * * *

§ 1980.180 Farm ownership loans.

* * * * *

(c) * * *

(1) * * *

(iv) Provide a guarantee in conjunction with the Beginning Farmer Downpayment FO Loan Program referenced in § 1943.14 of subpart A of part 1943 of this chapter.

* * * * *

(d) * * *

(4) The loan applicant has received special beginning farmer OL loan assistance and has been farming or ranching for less than 5 years, including the period of time special OL loan assistance was first received.

(5) The loan applicant has received special beginning farmer or rancher OL assistance and has not conducted the operation in accordance with the plan required under paragraph (e) of this section.

* * * * *

§ 1980.185 [Amended]

54. Section 1980.185 is amended by revising the reference "§ 1980.106(b)(21)" to read

"§ 1980.106(b)" in paragraphs (b)(1)(i) and (b)(2)(iii).

Exhibit A, Subpart B [Amended]

55. Exhibit A, Attachment 1, to subpart B is amended in paragraph VII.C.9. by revising the reference "§ 1980.106(b)(4)" to read "1980.106(b)."

Exhibit E, Subpart B [Amended]

56. Exhibit E of subpart B is amended by revising the reference "§ 1980.106(b)(7)" to read "§ 1980.106(b)" in paragraph III.B.(2); by revising the reference "§ 1980.106(b)(17)" to read "§ 1980.106(b)" in paragraph III.E.; by revising the reference "§ 1980.106(b)(6)" to read "§ 1980.106(b)" in the third sentence of paragraph IV.B.; and by revising the reference "§ 1980.106(b)(17)(iii)" to read "§ 1980.106(b)" in paragraph III.E. and the last sentence of paragraph IV.A.

Subpart E—Business and Industrial Loan Program

57. Section 1980.498 is amended by revising the reference "§ 1980.113(d)(7)(ii)" to read "§ 1980.113" in paragraph (l)(4); by revising the reference "§ 1980.106(b)(8)" to read "§ 1980.106(b)" in paragraph (m)(5)(iii) and by revising paragraph (m)(3)(i) to read as follows:

§ 1980.498 Business and industry disaster loans.

* * * * *

(m) * * *

(3) * * *

(i) The abbreviations and definitions found in § 1980.106 of subpart B of part 1980 of this chapter will apply to loans made under this section except for "family farm," "related by blood or marriage," and "subsequent loans."

* * * * *

Dated: August 23, 1993.

Bob J. Nash,

Under Secretary for Small Community and Rural Development.

[FR Doc. 93–22375 Filed 9–14–93; 8:45 am]

BILLING CODE 3410–07–U

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1944

RIN 0575–AB36

Section 502 Rural Housing Loan Policies, Procedures and Authorizations

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations to clarify that the appraisal fee is to be included in the loan as an authorized loan purpose and to authorize a rural housing loan to exceed the market value of the security by the appraisal fee. The effect is to provide timely processing of home ownership loans for low- and very low-income families.

EFFECTIVE DATE: October 15, 1993.

FOR FURTHER INFORMATION CONTACT: Betsy McDaniel, Senior Loan Specialist, Farmers Home Administration, USDA, room 5334–S, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250, Telephone (202) 690–4209.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined to be nonmajor because there is no substantial change from practices under existing rules that would have an annual effect on the economy of $100 million or more. There is no major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies; or geographical regions. Furthermore, there are no significant adverse effects on competition, employment, productivity, innovation, or in the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Background

This regulation was published on December 30, 1992 as a proposed rule and a final rule effective through September 30, 1993. This final rule is being published to respond to comments from the public on the proposed rule. No changes are being made to the regulation as it appeared in final form on December 30, 1992, therefore, the reference to the September 30, 1993 date in the regulation is correct.

Prudent lending practices dictate that appraisers should produce an objective opinion about the market value of a property. This objectivity may be compromised if the appraiser is involved in deciding to extend credit that is secured by such property. Under Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, it is intended that appraisals conform to the Uniform Standards of Professional Appraisal Practice (USPAP) as promulgated by the Appraisal Standards Board of the Appraisal Foundation. These appraisal standards were mandatory as of January 1, 1993. The Executive Office of the President, Office of Management and Budget (OMB), directed credit Agencies through OMB Circular A–129 to comply with USPAP. Under the Conduct Section of the Ethics Provision of USPAP, the appraiser must perform appraisal assignments with objectivity, independence, and without accommodation of personal interests.

In order for FmHA to institute an appraisal process that institutes prudent lending practices and complies with the conduct provisions of USPAP, it must separate the duties of the appraiser and loan approval official. FmHA has instituted an appraisal process that does this and it is in the public interest that this process continues to ensure that the security value of a property is determined independently from a determination of the applicant's eligibility to purchase the property. To ensure the separation of loan approval and appraisal functions FmHA established a policy of hiring private appraisers. However, because of a reduction in the funds available for expenses such as the hiring of private appraisers, FmHA can no longer continue to pay for private appraisers for housing applicants without affecting its ability to deliver services to its borrowers and grantees. By instituting a fee for appraisal services that is included in the loan amount, FmHA has the resources to continue its appraisal process in compliance with the conduct provision of USPAP and have funds for other expenses which cannot be recovered for applicants, borrowers, or grantees. To minimize the impact of the appraisal fee on borrowers, the Agency is authorizing the loan to exceed the security value of the property purchased by the amount of the appraisal fee.

Section 510 of the Housing Act of 1949 requires that fee appraisers be used in any county or district office where loan applications can not be

expeditiously processed and to include the cost of the appraisal services in the loan or grant. By including the fee in the loan, when necessary, and amortizing the loan over 33 to 38 years, the borrower's payment for this cost is minimal and repayment ability is not affected.

Discussion of Comments

A proposed rule was published in the Federal Register (57 FR 62243) on December 30, 1992, and invited comments for 60 days ending March 1, 1993. Three comments were received. All comments were considered. Two comments were received from groups who work with FmHA applicants on a regular basis, or by employees of these groups. One respondent was an FmHA employee writing on behalf of the Rural Housing Committee of the National Association of County Supervisors.

One respondent was concerned that FmHA was not exercising prudent underwriting practices by lending over the appraised value. It is within the Secretary's discretion to loan over the appraised value for authorized purposes when necessary for low-income people to remain eligible for the program. We have determined this is an equitable method of obtaining appraisal fees from families who would not be able to pay for an appraisal with their own funds at loan closing.

All three respondents were concerned about contracting for appraisals, in-house appraisals and the collection of fees from borrowers. One respondent commented the fee should be split between FmHA and the borrowers or another payment rate established for very low-income borrowers. Another comment stated FmHA should do as many in-house appraisals as possible and only use contract appraising as a supplement. Another comment stated FmHA should seek adequate funding for contracting rather than relying on borrowers to pay for appraisals. FmHA will continue to do as many in-house appraisals as possible and only use contract appraisers as a supplement. A decision was made to charge an across the board fee to all borrowers regardless of their income. Any other approach would be subjective and possibly perceived as unfair. Additionally, the fee we are charging is not directly related to the cost of the appraisal. The fee is based on a number of factors which contribute to keeping the cost to the borrower as low as possible. In arriving at the appraisal fee charged to a borrower, we considered the varying costs of appraisals nationwide, the advantage of one appraiser charging a negotiated flat fee for appraisals in a subdivision and the use of FmHA appraisers. We determined this as a reliable and fair method to establish the amount charged for an appraisal. This fee will be adjusted as better cost data and fee collection information are known.

Another respondent recommended to be consistent we should charge appraisal fees to borrowers for credit sales. FmHA plans to adopt this to provide consistency to all borrowers.

Environmental Impact Statement

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

Civil Justice Reform

This document has been reviewed in accordance with Executive Order (EO) 12778. It is the determination of FmHA that this action does not unduly burden the Federal Court Systems in that it meets all applicable standards provided in section 2 of the EO.

Programs Affected

This program is listed in the catalog of Federal Domestic Assistance under 10.410, Low-Income Housing Loans.

Intergovernmental Consultation

For the reason set forth in the final rule and related Notice to 7 CFR part 3015, subpart V, 48 FR 29115, June 24, 1983, this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

List of Subjects in 7 CFR Part 1944

Home improvement, Loan programs-Housing and community development, Low and moderate income housing-Rental, Mobile homes, Mortgages, Rural housing, Subsidies.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1944—HOUSING

1. The authority citation for part 1944 continues to read as follows:

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

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

2. Section 1944.3 is amended by revising paragraph (b)(9) and (b)(14) to read as follows:

§ 1944.3 Loan purposes.

* * * * *

(b) * * *

(9) Pay incidental expenses such as fees for tax monitoring service, legal, title clearance, loan closing, architectural, appraisal, surveying, environmental, and other technical services and incidental expenses authorized in Exhibit F of this subpart.

* * * * *

(14) Provide living area for all members of the applicant's household including "extended family," as provided in § 1944.16(b).

3. Section 1944.17 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 1944.17 Maximum loan amounts.

(a) An RH loan to buy or build a dwelling may be made up to the market value of the security plus an appraisal fee less the unpaid principal balance and past-due interest of any other liens against the security property for:

* * * * *

Dated: August 10, 1993.

Bob Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 93–22495 Filed 9–14–93; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90–AWA–10]

Establishment of Jet Route J–569; MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Jet Route J–569 between Great Falls, MT, and Cransbrook, B.C., Canada. This action stems from a request from Transport Canada and coincides with changes in the Canadian airspace structure. This action will improve traffic flow during transborder operations and will support the Canadian request.

EFFECTIVE DATE: 0901 UTC, November 11, 1993.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, 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) 267–9230.

SUPPLEMENTARY INFORMATION:

History

On August 31, 1990, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Jet Route J–569 in the vicinity of Great Falls, MT (55 FR 35650).

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, this amendment is the same as that proposed in the notice. Jet routes are published in Paragraph 2004 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The jet route listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Jet Route J–569 between Great Falls, MT, and Cranbrook, B.C., Canada. This action is at the request of Transport Canada to support airway changes in the Canadian airspace structure. This action will improve traffic flow during transborder operations.

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 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

Airspace, Incorporation by reference, Navigation (air).

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 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 2004 Jet Routes

* * * * *

J–569 [New]

From Great Falls, MT; to Cranbrook, BC, Canada. The portion within Canada is excluded.

* * * * *

Issued in Washington, DC, on September 8, 1993.

Willis C. Nelson,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–22548 Filed 9–14–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 799

[Docket No. 930827–3227]

Removal of National Security-Based Validated License Requirements for Exports to Controlled Destinations of Certain Voice Band Modems With a "Data Signalling Rate" Not Exceeding 19,200 Bits per Second

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends ECCN 5A02A to remove national security-based validated license requirements for exports to controlled destinations, i.e., Country Groups Q, W, Y, and Z and the People's Republic of China, of modems using the "bandwidth of one voice channel" that are capable of operating at a "data signalling rate" not exceeding 19,200 bits per second. This action is a result of a determination that foreign availability exists for these modems within the meaning of section 5(f) of the Export Administration Act (EAA) and part 791 of the Export Administration Regulations (EAR). The Bureau of Export Administration (BXA) published an interim rule in the **Federal Register** on May 12, 1993 (58 FR 27930), that included the foreign availability determination and removed national security-based validated license requirements for exports of these modems to non-controlled destinations (i.e., Country Groups T and V, except the People's Republic of China).

This final rule also conforms with changes in the International Industrial List (IL) that the governments participating in the Coordinating Committee for Multilateral Export Controls (COCOM) made, effective August 16, 1993, following a review of multilateral export controls on strategic items.

A validated license continues to be required for national security reasons for exports to all destinations of voice band modems controlled by ECCN 5A02.c.1 that operate at a "data signalling rate" exceeding 19,200 bits per second.

A validated license also continues to be required for foreign policy reasons for exports of all modems to Country Groups S and Z and military and police entities in the Republic of South Africa and for exports of voice band modems with a "data signalling rate" exceeding 9,600 bits per second to Iran and Syria.

This rule is expected to result in a reduction in the number of export license applications that will have to be submitted for modems controlled by 5A02.c.1, thereby reducing the paperwork burden on exporters.

EFFECTIVE DATE: August 16, 1993.

FOR FURTHER INFORMATION CONTACT: For questions of a technical nature, contact Dale Jensen, Office of Technology and Policy Analysis, Telephone: (202) 482–0730.

For questions on the foreign availability assessment, contact Steven C. Goldman, Director, Office of Foreign Availability, Bureau of Export Administration, Department of Commerce, Telephone: (202) 482–0074.

SUPPLEMENTARY INFORMATION:

Background

Section 5(f)(3) of the EAA and part 791 of the EAR set forth the procedures and criteria for determining the foreign availability of items controlled for national security reasons. The Secretary of Commerce, or the Secretary's designee, is authorized to determine whether foreign availability exists.

With limited exceptions, the Department of Commerce may not maintain national security controls on exports of an item to countries when the Department determines that items of comparable quality are available in fact to such countries from foreign sources in quantities sufficient to render the controls ineffective in achieving their purpose.

On December 7, 1992, the Office of Foreign Availability (OFA) initiated a foreign availability assessment of voice band modems controlled by ECCN 5A02.c.1. OFA initiated the assessment in response to a claim filed with OFA pursuant to section 791 of the EAR. The Department published a notice of the initiation of the assessment in the Federal Register on January 11, 1993 (58 FR 3531).

On April 7, 1993, the Acting Assistant Secretary, having considered the assessment and other relevant information, determined that foreign availability of voice band modems operating at a "data signalling rate" not exceeding 19,200 bits per second exists within the meaning of section 5(f) of the EAA and part 791 of the EAR. The Department provided all interested agencies an opportunity to review and comment on the assessment and determination.

On May 12, 1993, the Department published an interim rule containing the foreign availability determination. This rule removed validated license requirements for exports to most non-controlled destinations (i.e., Country Groups T and V, except the People's Republic of China) of modems controlled by ECCN 5A02.c.1 that have a "data signalling rate" not exceeding 19,200 bits per second. Subject to the restrictions in § 771.2(c), these modems became eligible for export to most Country Group T and V destinations under General License GFW.

Effective August 16, 1993, these modems became eligible for export to most non-controlled destinations under General License G–DEST.

This final rule also reflects the foreign availability determination as it applies to most controlled destinations (i.e., Country Groups Q, W, Y, and Z and the People's Republic of China). ECCN 5A02A is amended to remove national security-based validated license requirements for exports to controlled destinations of voice band modems that use the "bandwidth of one voice channel" and operate at a "data signalling rate" not exceeding 19,200 bits per second. This change conforms with revisions in the International Industrial List (IL) that the governments participating in the Coordinating Committee for Multilateral Export Controls (COCOM) made, effective August 16, 1993, following a review of multilateral export controls on strategic items.

ECCN 5A02A continues to require a validated license for national security reasons for exports to all destinations of voice band modems that operate at a "data signalling rate" exceeding 19,200 bits per second.

In addition, a validated license continues to be required for foreign policy reasons for exports of all voice band modems to Country Groups S and Z and military and police entities in the Republic of South Africa. A validated license also continues to be required for foreign policy reasons for exports to Iran and Syria of voice band modems with a "data signalling rate" exceeding 9,600 bits per second.

Exporters should also be aware that the Department of the Treasury's Office of Foreign Assets Control maintains an embargo on other destinations, such as Iraq and the Federal Republic of Yugoslavia (Serbia and Montenegro).

Specifically, this final rule amends ECCN 5A02A by making the following changes:

(1) Revises the GFW paragraph in the Requirements section to remove GFW eligibility for voice band modems with a "data signalling rate" not exceeding 19,200 bits per second—General License GFW no longer applies to these modems because they may now be exported under General License G–DEST to most destinations;

(2) Revises paragraph c.1 in the List of Items Controlled to raise the control level from a "data signalling rate" exceeding 9,600 bits per second to a "data signalling rate" exceeding 19,200 bits per second;

(3) Removes the Note on dedicated stand-alone facsimile equipment that previously followed 5A02.c.1.

In addition, this rule revises Advisory Note 4 to eliminate administrative exceptions treatment for exports to the People's Republic of China of voice band modems with a "data signalling rate" not exceeding 19,200 bits per second. This change is being made because this rule removes national security-based validated license requirements for all of the modems previously eligible for administrative exceptions treatment under Advisory Note 4.

Finally, this rule adds a new ECCN 5A91F to maintain foreign policy-based validated license requirements on exports to Country Groups S and Z, Iran, Syria, and military and police entities in the Republic of South Africa of voice band modems not controlled by ECCN 5A02A that have a "data signalling rate" exceeding 9,600 bits per second. Voice band modems with a "data signalling rate" not exceeding 9,600 bits per second continue to be controlled by ECCN 5A96G, which requires a validated license for foreign policy reasons to Country Groups S and Z and military and police entities in the Republic of South Africa.

The August 16, 1993, effective date of this rule corresponds to the effective date of the COCOM revisions to ECCN 5A02A.

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694–0005 and 0694–0010.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in the effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 799

Exports, Reporting and recordkeeping requirements

Accordingly, part 799 of the Export Administration Regulations (15 CFR parts 730–799) is amended as follows:

1. The authority citation for 15 CFR part 799 continues to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93–153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94–163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94–258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95–372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103–10, 107 Stat. 40); sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978; E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 25, 1992 (57 FR 44649, September 28, 1992); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 11, 1992 (57 FR 53979, November 13, 1992).

PART 799—[AMENDED]

2. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 5 (Telecommunications and "Information Security"), Section I (Telecommunications), ECCN 5A02A is revised to read as follows:

5A02A "Telecommunications transmission equipment" or systems and specially designed components and accessories therefor, having any of the following characteristics, functions or features.

Requirements

Validated License Required: QSTVWYZ
Unit: Equipment in number; parts and accessories in $ value
Reason for Control: NS
GLV: $5,000
GCT: Yes
GFW: Yes for items identified in Telecommunications Advisory Notes 11, 14, 19, 20, and 21 only

List of Items Controlled

Note: "Telecommunication transmission equipment."

a. Categorized as follows, or combinations thereof:
1. Radio equipment (e.g., transmitters, receivers and transceivers);
2. Line terminating equipment;
3. Intermediate amplifier equipment;
4. Repeater equipment;
5. Regenerator equipment;
6. Translation encoders (transcoders);
7. Multiplex equipment (statistical multiplex included);
8. Modulators/demodulators (modems);
9. Transmultiplex equipment (see CCITT Rec. G701);
10. "Stored program controlled" digital crossconnection equipment;
11. "Gateways" and bridges;
12. "Media access units"; and

b. Designed for use in single or multi-channel communication via:
1. Wire (line);
2. Coaxial cable;
3. Optical fiber cable;
4. Electromagnetic radiation.

"Telecommunication transmission equipment" or systems and specially designed components and accessories therefor, having any of the following characteristics, functions or features:

a. Employing digital techniques, including digital processing of analog signals, and designed to operate at a "digital transfer rate" at the highest multiplex level exceeding 45 Mbit/s or a "total digital transfer rate" exceeding 90 Mbit/s.

Note: 5A02.a does not control equipment specially designed to be integrated and operated in any satellite system for civil use.

b. Being "stored program controlled" digital cross connect equipment with a "digital transfer rate" exceeding 8.5 Mbit/s per port;

c. Being equipment containing:

c.1. Modems using the "bandwidth of one voice channel" with a "data signalling rate" exceeding 19,200 bit/s;

c.2. "Communication channel controllers" with a digital output having a "data signalling rate" exceeding 64,000 bit/s per channel; or

c.3. "Network access controllers" and their related common medium having a "digital transfer rate" exceeding 33 Mbit/s;

Note: If any uncontrolled equipment contains a "network access controller", it cannot have any type of telecommunications interface except those described in, but not controlled by, 5A02.c.

d. Employing a "laser" and having any of the following characteristics:

d.1. Having a transmission wavelength exceeding 1,000 nm;

d.2. Employing analog techniques and having a bandwidth exceeding 45 MHz;

d.3. Employing coherent optical transmission or coherent optical detection techniques (also called optical heterodyne or homodyne techniques);

d.4. Employing wavelength division multiplexing techniques; *or*

d.5. Performing "optical amplification".

e. Being radio equipment operating at input or output frequencies exceeding:

e.1. 31 GHz for satellite-earth station applications; *or*

e.2. 26.5 GHz for other applications;

Note: 5A02.e.2 does not control equipment for civil use when conforming with an ITU allocated band between 26.5 and 31 GHz.

f. Being radio equipment:

f.1. Employing quadrature-amplitude-modulation (QAM) techniques above level 4 if the "total digital transfer rate" exceeds 8.5 Mbit/s;

f.2. Employing quadrature-amplitude-modulation (QAM) techniques above level 16 if the "total digital transfer rate" is equal to or less than 8.5 Mbit/s; *or*

f.3. Employing other digital modulation techniques and having a "spectral efficiency" greater than 3 bit/s/Hz;

Note: 5A02.f.2 does not control equipment specially designed to be integrated and operated in any satellite system for civil use.

g. Being radio equipment operating in the 1.5 to 87.5 MHz band and having either of the following characteristics:

g.1.a. Automatically predicting and selecting frequencies and "total digital transfer rates" per channel to optimize the transmission; and

g.1.b. Incorporating a linear power amplifier configuration having a capability to support multiple signals simultaneously at an output power of 1 kW or more in the 1.5 to 30 Mhz frequency range or 250 W or more in the 30 to 87.5 MHz frequency range, over an "instantaneous bandwidth" of one octave or more and with an output harmonic and distortion content of better than -80 dB; *or*

g.2. Incorporating adaptive techniques providing more than 15 dB suppression of an interfering signal;

h. Being radio equipment employing "spread spectrum" or "frequency agility" (frequency hopping) techniques having any of the following characteristics:

h.1. User programmable spreading codes; *or*

h.2. A total transmitted bandwidth that is 100 or more times the bandwidth of any one information channel and in excess of 50 kHz.

i. Being digitally controlled radio receivers having more than 1,000 channels, which:

i.1. Search or scan automatically a part of the electromagnetic spectrum;

i.2. Identify the received signals or the type of transmitter; and

i.3. Have a "frequency switching time" of less than 1 ms;

j. Providing functions of digital "signal processing" as follows:

j.1. Voice coding at rates less than 2,400 bit/s;

j.2. Employing circuitry that incorporates "user-accessible programmability" of digital "signal processing" circuits exceeding the limits of 4A03.f;

k. Being underwater communications systems having any of the following characteristics:

k.1. An acoustic carrier frequency outside the range of 20 to 60 kHz;

k.2. Using an electromagnetic carrier frequency below 30 kHz; or

k.3. Using electronic beam steering techniques.

3. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 5 (Telecommunications and "Information Security"), Section I (Telecommunications), Notes for Telecommunications, Advisory Note 4 is revised to read as follows:

Notes for Telecommunications:

* * * * *

Advisory Note 4: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in the People's Republic of China of "network access controllers" controlled by 5A02.c.3, when exported under the conditions of Advisory Note 2 to Category 4, with a "digital transfer rate" not exceeding 100 Mbits/s.

* * * * *

4. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 5 (Telecommunications and "Information Security"), Section III (Other Equipment, Materials, "Software", and Technology), a new ECCN 5A91F is added immediately following ECCN 5A80D to read as follows:

5A91F Modems, not controlled by 5A02, using the "bandwidth of one voice channel" with a "data signalling rate" exceeding 9,600 bits per second.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

Dated: September 9, 1993.

Iain S. Baird,

Acting Assistant Secretary for Export Administration.

[FR Doc. 93–22497 Filed 9–10–93; 10:48 am]

BILLING CODE 3510–DT–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefits in Single-Employer Plans; Amendment Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the regulation on Valuation of Plan Benefits in Single-Employer Plans contains the interest rates and factors for the period beginning October 1, 1993. the use of these interest rates and factors to value benefits is mandatory for some terminating single-employer pension plans and optional for others. The Pension Benefit Guaranty Corporation adjusts the interest rates and factors periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after October 1, 1993, which will remain in effect until the PBGC issues new interest rates and factors.

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202–778–8850 (202–778–8859 for TTY and TDD only). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation's ("PBGC's") regulation on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619) sets forth the methods for valuing plan benefits of terminating single-employer plans covered under title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Under ERISA section 4041(c), all plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities", i.e., all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619, subpart C. (Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart C formulas to determine the amount of the plan's underfunding.

Appendix B in part 2619 sets forth the interest rates and factors that are to be used in the formulas contained in the regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The rates and factors currently in use have been in effect since August 1, 1993. This amendment adds to Appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after October 1, 1993, which set reflects a decrease of ½ percent in the immediate interest rate from 4¾ percent to 4¼ percent.

Generally, the interest rates and factors will be in effect for at least one month. However, any published rates and factors will remain in effect until such time as the PBGC publishes another amendment changing them. Any change in the rates normally will be published in the **Federal Register** by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans that will terminate on or after October 1, 1993, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

In consideration of the foregoing, part 2619 of chapter XXVI, title 29, Code of Federal Regulations, is hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, and 1362 (1988).

2. Rate Set 106 of Appendix B is revised and Rate Set 107 of Appendix B is added to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix B—Interest Rates and Quantities Used to Value Immediate and Deferred Annuities

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "Gy" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, k_1, k_2, k_3, n_1, and n_2 are defined in § 2619.45.

Rate set	For plans with a valuation date		Immediate annuity rate (%)	Deferred annuities				
	On or after	Before		k_1	k_2	k_3	n_1	n_2
* *	*	*		*	*	*		
106	8–1–93	10–1–93	4.75	1.0400	1.0400	1.0400	7	8
107	10–1–93		4.25	1.0400	1.0400	1.0400	7	8

Issued in Washington, DC, on this 10th day of September, 1993.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 93–22558 Filed 9–14–93; 8:45 am]

BILLING CODE 7708–01–M

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal—Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule updates the table of interest rates issued by the Pension Benefit Guaranty Corporation (PBGC) for actuarial valuations of multiemployer pension plans following mass withdrawal. The rule adds to the rate series for October 1993.

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington DC 20006; 202–778–8820 (202–778–1958 for TTY and TDD).

SUPPLEMENTARY INFORMATION: This rule amends the PBGC's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of October 1993.

The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (See 5 U.S.C. 553 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans and Pensions.

In consideration of the foregoing, part 2676 of subchapter H of chapter XXVI of title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. §§ 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates the new entries to read as follows:

§ 2676.15 Interest.

* * * * *

(c) *Interest Rates.*

For valuation dates occurring in the month	The values for i_x are:															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_{16}
*	*		*		*			*			*			*		
October 1993	.0450	.0450	.0450	.0450	.0450	.04	.04	.04	.04	.04	.04	.04	.04	.04	.04	.04

Issued at Washington, DC, on this 10th day of September 1993.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 93–22559 Filed 9–14–93; 8:45 am]

BILLING CODE 7708–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 342

[DOD Directive 5124.4]

Department of Defense Civilian Personnel Management Service

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This part reflects organizational changes made in the Department of Defense. It establishes the DoD Civilian Personnel Management Service (CPMS) as a DoD Field Activity under the authority, direction, and control of the Assistant Secretary of Defense for Personnel and Readiness. The mission of the CPMS is to provide

civilian personnel policy support, functional information management, and civilian personnel administrative services to the DoD Components and their activities.

EFFECTIVE DATE: August 30, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. D. Clerk, Office of Organizational and Management Planning, telephone 703–695–4281.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 342

Organization and functions (Government agencies).

Accordingly, title 32, subchapter R is amended to add part 342 to read as follows:

PART 342—DEPARTMENT OF DEFENSE CIVILIAN PERSONNEL MANAGEMENT SERVICE

Sec.

342.1 Purpose.
342.2 Mission.
342.3 Organization and management.
342.4 Responsibilities and functions.
342.5 Relationships.
342.6 Authorities.
342.7 Administration.

Appendix A to Part 342—Delegations of Authority

Authority: 10 U.S.C. 301.

§ 342.1 Purpose.

(a) Establishes the DoD Civilian Personnel Management Service (CPMS) within the Department of Defense, pursuant to the authority vested in the Secretary of Defense under title 10, with the mission, organization, responsibilities, functions, relationships, and authorities as prescribed herein.

(b) Applies to the Office of the Secretary of Defense; the Military Departments; the Chairman of the Joint Chiefs of Staff and the Joint Staff; the Unified and Specified Combatant Commands; the Office of the Inspector General, Department of Defense; the Defense Agencies; and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

§ 342.2 Mission.

The CPMS shall provide civilian personnel policy support, functional information management, and civilian personnel administrative services to the DoD Components and their activities.

§ 342.32 Organization and management.

The CPMS is hereby established as a DoD Field Activity under the authority, direction, and control of the Assistant Secretary of Defense (Personnel and Readiness) (ASD(P&R)). The CPMS shall consist of a Director and such subordinate elements as the Director establishes, within the resources authorized by the Secretary of Defense.

§ 342.4 Responsibilities and functions.

(a) The Director, DoD Civilian Personnel Management Service shall:

(1) Organize, direct, and manage the CPMS and all assigned resources.

(2) Advise and assist the ASD(P&R) and the Deputy Assistant Secretary of Defense (Civilian Personnel Policy and Equal Opportunity) (DASD(CPP/EO)) within assigned responsibilities and functions.

(3) Provide support to the DoD Components in the administration of civilian personnel policy and programs, as directed.

(4) Administer civilian personnel functional information management activities including, but not limited to, business improvement and functional economic analyses.

(5) Administer civilian personnel programs specified in DoD Directive 5120.39 [1]; DoD Directive 5120.42 [2]; DoD Directive 5010.31 [3]; DoD Directive 1400.20 [4]; and DoD Directive 1430.14 [5].

(6) Perform such other functions as the ASD(P&R) may prescribe.

(b) The Assistant Secretary of Defense (Personnel and Readiness) shall:

(1) Exercise authority, direction, and control over the CPMS.

(2) Recommend policies and resources for the administration of the CPMS to the Secretary of Defense.

§ 342.5 Relationships.

(a) In the performance of assigned duties, the Director, CPMS, shall:

(1) Exchange information and advice and coordinate actions with DoD Components, as required, to carry out assigned responsibilities and functions.

(2) Use established facilities and services in the Department of Defense and other Government Agencies, whenever practicable, to achieve maximum efficiency and economy of operations

(3) Consult and coordinate with other governmental and nongovernmental agencies, as required, to carry out assigned responsibilities and functions.

(b) All DoD Components shall coordinate with the Director, CPMS, as appropriate, on matters affecting the operation of the CPMS.

[1] Copies may be obtained, at cost, from the National Technical Information Services, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 342.4(a)(5).

[3] See footnote 1 to § 342.4(a)(5).

[4] See footnote 1 to § 342.4(a)(5).

[5] See footnote 1 to § 342.4(a)(5).

§ 342.6 Authorities.

The Director, CPMS, is specifically delegated authority to:

(a) Represent the ASD(P&R) and the DASD(CPP/EO) on matters which fall within assigned responsibilities and functions.

(b) Obtain reports, information, advice, and assistance, consistent with the policies and criteria of DoD Directive 8910.1 [6], as deemed necessary.

(c) Communicate directly with appropriate representatives of the DoD Components and other governmental and nongovernmental agencies on matters related to the CPMS. Communications to the Commanders of Unified and Specified Combatant Commands shall be transmitted through the Chairman of the Joint Chiefs of Staff.

(d) Exercise the administrative authorities in enclosure 2, when delegated by the ASD(P&R).

§ 342.7 Administration.

(a) The Director, CPMS, shall be a civilian selected by the ASD(P&R).

(b) The CPMS shall be authorized such personnel, facilities, funds, and other resources as the Secretary of Defense deems necessary.

(c) The Military Departments shall assign military personnel to the CPMS in accordance with approved authorizations and established procedures for assignment to joint duty.

(d) Administrative support for the CPMS shall be provided by the DoD Components through inter-service support agreements in accordance with DoD Directive 4000.19 [6].

Appendix A to Part 342—Delegations of Authority

Pursuant to the authority vested in the Secretary of Defense, and subject to the direction, authority, and control of the Secretary of Defense, and in accordance with DoD policies, Directives, and Instructions, the Assistant Secretary of Defense (Personnel and Readiness) (ASD(P&R)), or in the absence of the ASD(P&R), the person acting for the ASD(P&R), is hereby delegated authority as required in the administration and operation of the DoD Civilian Personnel Management Service to:

1. Establish advisory committees and employ temporary or intermittent experts or consultants, as approved by the Secretary of Defense, for the performance of DoD Civilian Personnel Management Service functions consistent with 10 U.S.C. 173; 5 U.S.C. 3109(b); DoD Directive 5105.4 [1] and the agreement between the Department of

[6] See footnote 1 to § 342.4(a)(5).

[1] Copies may be obtained, at cost, from the National Technical Information Services, 5285 Port Royal Road, Springfield, VA 22161.

Defense and the Office of Personnel Management (OPM) on employment of experts and consultants, June 21, 1977.

2. In accordance with 5 U.S.C. 7532; E.O. 10450, 18 FR 2489, 3 CFR, 1949–1953 Comp., p. 936; E.O. 12333, 46 FR 59941, 3 CFR, 1981 Comp., p. 200; and E.O. 12356, 47 FR 14874 and 15557, 3 CFR, 1982 Comp., p. 166; and DoD Directive 5200.2[2]; as appropriate:

a. Designate any position in the DoD Civilian Personnel Management Service as a "sensitive" position.

b. Authorize, in case of an emergency, the appointment of a person to a sensitive position in the DoD Civilian Personnel Management Service for a limited period of time and for whom a full field investigation or other appropriate investigation, including the National Agency Check, has not been completed.

c. Authorize the suspension, but not terminate the services, of a DoD Civilian Personnel Management Service employee in the interest of national security.

d. Initiate investigations, issue personnel security clearances and, if necessary, in the interest of national security, suspend, revoke, or deny a security clearance for personnel assigned, detailed to, or employed by the DoD Civilian Personnel Management Service. Any action to deny or revoke a security clearance shall be taken in accordance with procedures prescribed in DoD 5200.2–R[3].

3. Authorize and approve:

a. Temporary duty travel for military personnel assigned or detailed to the DoD Civilian Personnel Management Service in accordance with volume I, Joint Federal Travel Regulations.

b. Travel for DoD Civilian Personnel Management Service civilian employees in accordance with Volume II, Joint Travel Regulations.

c. Invitational travel to non-DoD personnel whose consultative, advisory, or other highly specialized technical services are required in a capacity that is directly related to, or in connection with, DoD Civilian Personnel Management Service activities, in accordance with Volume II, Joint Travel Regulations.

d. Overtime work for DoD Civilian Personnel Management Service civilian employees in accordance with chapter 55, subpart V, of 5 U.S.C. and applicable OPM regulations.

4. Approve the expenditure of funds available for travel by military personnel assigned or detailed to the DoD Civilian Personnel Management Service for expenses incident to attendance at meetings of technical, scientific, professional, or other similar organizations in such instances where the approval of the Secretary of Defense, or designee, is required by 37 U.S.C. 412, and 5 U.S.C. 4110 and 4111.

5. Develop, establish, and maintain an active and continuing Records Management Program pursuant to 44 U.S.C. 3102 and DoD Directive 5015.2[4].

6. Establish and use imprest funds for making small purchases of material and services, other than personal services, for the DoD Civilian Personnel Management Service, when it is determined more advantageous and consistent with the best interests of the Government, in accordance with DoD Directive 7360.10[5].

7. Authorize the publication of advertisements, notices, or proposals in newspapers, magazines, or other public periodicals as required for the effective administration and operation of the DoD Civilian Personnel Management Service, consistent with 44 U.S.C. 3702.

8. Establish and maintain, for the functions assigned, an appropriate publications system for the promulgation of common supply and service regulations, instructions, and reference documents, and changes thereto, pursuant to the policies and procedures prescribed in DoD 5025.1–M[6].

9. Enter into support and service agreements with the Military Departments, other DoD Components, or other Government Agencies, as required, for the effective performance of DoD Civilian Personnel Management Service functions and responsibilities.

10. Enter into and administer contracts, directly or through a Military Department, a DoD contract administration services component, or other Federal Agency, as appropriate, for supplies, equipment, and services required to accomplish the mission of the DoD Civilian Personnel Management Service. To the extent that any law or Executive order specifically limits the exercise of such authority to persons at the Secretarial level of a Military Department, such authority shall be exercised by the appropriate Under Secretary or Assistant Secretary of Defense.

11. Exercise the authority delegated to the Secretary of Defense by the Administrator of General Services on the disposal of surplus personal property.

12. The ASD (P&R) may redelegate these authorities, as appropriate, and in writing, except as otherwise provided by law or regulation.

13. These delegations of authority are effective August 30, 1993.

Dated: September 10, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–22522 Filed 9–14–93; 8:45 am]

BILLING CODE 5000–04–M

[2] See footnote 1 to section 1. of this Appendix.

[3] See footnote 1 to section 1. of this Appendix.

[4] See footnote 1 to section 1. of this Appendix.

[5] See footnote 1 to section 1. of this Appendix.

[6] See footnote 1 to section 1. of this Appendix.

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32 CFR Part 371

[DoD Directive 5110.10]

Defense Prisoner of War/Missing in Action Office (DPMO)

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This part reflects organizational changes made in the Department of Defense. It establishes the Defense Prisoner of War/Missing in Action Office (DPMO) as a DoD Field Activity under the authority, direction, and control of the Assistant Secretary of Defense for Regional Security Affairs, with mission, organization and management, responsibilities and functions, relationships, and authorities. The mission of the DPMO is to provide centralized management of prisoner of war/missing in action affairs within the Department of Defense. Administrative support for the DPMO shall be provided by the Director, Washington Headquarters Services.

EFFECTIVE DATE: July 16, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. D. Clark, Office of Organizational and Management Planning, telephone 703–695–4281.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 371

Organization and functions (Government agencies).

Accordingly, title 32, subchapter R is amended to add part 371 to read as follows:

PART 371—DEFENSE PRISONER OF WAR/MISSING IN ACTION OFFICE (DPMO)

Sec.

371.1 Purpose.
371.2 Applicability.
371.3 Mission.
371.4 Organization and management.
371.5 Responsibilities and functions.
371.6 Relationships.
371.7 Authorities.
371.8 Administration.

Authority: 10 U.S.C. 113 and 191.

§ 371.1 Purpose.

Under the authority vested in the Secretary of Defense by 10 U.S.C. 113 and 191, this part establishes the DPMO within the Department of Defense, with the mission, organization, responsibilities, functions, relationships, and authorities prescribed herein.

§ 371.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD); the Military Departments; the Chairman of the Joint Chiefs of Staff and the Joint Staff; the Unified and Specified Combatant Commands; the Inspector General of the Department of Defense; the Defense Agencies; and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

§ 371.3 Mission.

The DPMO provides centralized management of prisoner of war/missing in action (POW/MIA) affairs within the Department of Defense.

§ 371.4 Organization and management.

The DPMO is hereby established as a DoD Field Activity under the authority, direction, and control of the Assistant Secretary of Defense for Regional Security Affairs (ASD(RSA)). The DPMO shall consist of a Director and such subordinate elements as the Director establishes, within the resources authorized by the Secretary of Defense.

§ 371.5 Responsibilities and functions.

(a) The *Director, Defense Prisoner of War/Missing in Action Office* shall:

(1) Organize, direct, and manage the DPMO and all assigned resources.

(2) Advise and assist the Under Secretary of Defense for Policy (USD(P)) and the ASD(RSA) within assigned mission, responsibilities, and functions.

(3) Support the USD(P) and the ASD(RSA) in the execution of their responsibilities to develop, coordinate, and oversee the implementation of POW/MIA policy.

(4) Serve as the DoD focal point for POW/MIA matters.

(5) Provide DoD participation in the conduct of negotiations with officials of foreign governments in efforts to achieve the fullest possible accounting of missing American service members.

(6) Assemble and analyze information on U.S. military and civilian personnel who are, or were, prisoners of war or missing in action.

(7) Maintain data bases on U.S. military and civilian personnel who are, or were, prisoners of war or missing in action.

(8) Declassify DoD documents for disclosure and release in accordance with section 1082 of Public Law 102–190 and Executive Order 12812, 57 FR 32879, 3 CFR, 1992 Comp., p. 311.

(9) Maintain open channels of communication on POW/MIA matters between the Department of Defense and the Congress, POW/MIA families, and veteran organizations, through periodic consultations and other appropriate measures.

(10) Provide appropriate representation to established POW/MIA-related interagency fora.

(11) Provide a statement of intelligence collection requirements to the Defense Intelligence Agency, for which the DPMO identifies a need.

(12) Perform such other functions as the ASD(RSA) may prescribe.

(b) The *Assistant Secretary of Defense for Regional Security Affairs* shall:

(1) Exercise authority, direction, and control over the DPMO.

(2) Recommend policies and resources for the administration of the DPMO to the Under Secretary of Defense for Policy.

§ 371.6 Relationships.

(a) In the performance of assigned responsibilities and functions, the Director, DPMO, shall:

(1) Report directly to the ASD(RSA).

(2) Coordinate and exchange information with other OSD officials, heads of the DoD Components, and other Federal officials having collateral or related functions.

(3) Use existing facilities and services of the Department of Defense and other Federal Agencies, when practicable, to avoid duplication and to achieve maximum efficiency and economy.

(b) Other OSD officials and heads of the DoD Components shall coordinate with the Director, DPMO, on all matters related to the responsibilities and functions of the DPMO.

§ 371.7 Authorities.

The Director, DPMO, is hereby delegated authority to:

(a) Obtain reports, information, advice, and assistance, consistent with the policies and criteria of DoD Directive 8910.1,[1] as deemed necessary.

(b) Communicate directly with the heads of the DoD Components. Communications to the Commanders of Unified and Specified Combatant Commands shall be transmitted through the Chairman of the Joint Chiefs of Staff.

(c) Communicate with other Government officials, representatives of the legislative branch, members of the public, and representatives of foreign governments, as appropriate, in carrying out assigned functions.

§ 371.8 Administration.

(a) The DPMO shall be authorized such personnel, facilities, funds, and other resources as the Secretary of Defense deems necessary.

(b) The Military Departments shall assign military personnel to the DPMO in accordance with approved authorizations and established procedures for assignment to joint duty.

(c) Administrative support required for the DPMO shall be provided by the Director, Washington Headquarters Services.

Dated: September 10, 1993.

Patricia L. Toppings,

Alternate OSDA Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–22523 Filed 9–14–93; 8:45 am]

BILLING CODE 5000–04–M

[1] Copies may be obtained, at cost, from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 52

[WV13–1–5870; A–1–FRL–4726–7]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia Small Business Stationary Source Technical and Environmental Compliance Assistance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a state implementation plan (SIP) revision submitted by the State of West Virginia for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM). This SIP revision was submitted by the State to satisfy the Federal mandate, found in section 507 of the Clean Air Act (CAA), to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the CAA. The rationale for the approval is set forth in this document; additional information is available at the address indicated in the ADDRESSES section. This action is being taken in accordance with section 110 of the Clean Air Act.

EFFECTIVE DATE: This action will become effective November 15, 1993, unless notice is received on or before October 15, 1993, that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and West Virginia Department of Environmental Protection, Office of Air Quality, 1558 Washington Street, East, Charleston, West Virginia 25311.

FOR FURTHER INFORMATION CONTACT: Jennifer Moss at (215) 597–2923.

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the provisions of the CAA will require regulation of many small businesses so that areas may attain and maintain the National ambient air quality standards (NAAQS) and reduce the emission of air toxics. Small businesses frequently lack the technical expertise and financial resources necessary to evaluate such regulations and to determine the appropriate mechanisms for compliance. In anticipation of the impact of these requirements on small businesses, the CAA requires that states adopt a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM), and submit this PROGRAM as a revision to the federally approved SIP. In addition, the CAA directs EPA to oversee these small business assistance programs and report to Congress on their implementation. The requirements for establishing a PROGRAM are set out in section 507 of title V of the CAA. In February 1992, EPA issued *Guidelines for the Implementation of Section 507 of the 1990 Clean Air Act Amendments*, in order to delineate the Federal and state roles in meeting the new statutory provisions and as a tool to provide further guidance to the states on submitting acceptable SIP revisions.

On January 13, 1993, the State of West Virginia submitted a SIP revision to EPA in order to satisfy the requirements of section 507. In order to gain full approval, a state submittal must provide for each of the following PROGRAM elements:

(1) The establishment of a Small Business Assistance Program (SBAP) to provide technical and compliance assistance to small businesses;

(2) The establishment of a state Small Business Ombudsman to represent the interests of small business stationary sources in connection with the implementation of the CAA; and

(3) The creation of a Compliance Advisory Panel (CAP) to determine and report on the overall effectiveness of the SBAP and state Small Business Ombudsman.

II. Analysis

1. Small Business Assistance Program

Section 16–20–19 of the Code of West Virginia authorizes the Secretary of the Department of Commerce, Labor and Environmental Resources (DCLER) to establish a Small Business Stationary Source Technical and Environmental Compliance Assistance Program which meets the requirements of title V of the CAA. In developing West Virginia's PROGRAM submittal, the Secretary of DCLER has delegated the authority to implement the provisions of West Virginia's SBAP to the Division of Environmental Protection's Office of Air Quality (OAQ).

Section 507(a) of the CAA sets forth seven requirements that states must meet to have an approvable SBAP. Six requirements will be discussed in this section of this notice, while the seventh requirement, establishment of a state Small Business Ombudsman, will be discussed in the next section. The first requirement is to establish adequate mechanisms for developing, collecting and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs to encourage lawful cooperation among such sources and other persons to further compliance with the CAA. The second requirement is to establish adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution. Under its authority to implement the SBAP, the OAQ will meet these requirements by serving as a clearinghouse for information related to compliance methods and control technologies, pollution prevention and accidental release prevention and detection. Information on pollution prevention/accidental release will focus on the requirements under the accidental release provisions of title III of the CAA, the Emergency Planning and Community Right-to-Know Act of 1986, the Occupational Safety and Health Administration (OSHA) process safety standards, etc. Relevant clearinghouse material will be translated into layman's terms and organized into information packets. The OAQ will maintain a directory of additional information resources, such as U.S. EPA's Control Technology Center (CTC), Emissions Measurement Technical Information Center (EMTIC) and Pollution Prevention Clearinghouse (PPIC) and other state, regional and private resources. The OAQ will work closely with other State agencies, particularly the West Virginia Small Business Development Center (SBDC) and establish memoranda of understanding as necessary to optimize information exchange and program effectiveness. Information dissemination shall take two forms. *Proactive* or "outreach" mechanisms will utilize industry groups, trade associations, the West Virginia SBDC, and additional avenues as needed to disseminate information to eligible small business stationary sources. Under its delegated authority to implement the SBAP, the OAQ will also disseminate information in a *reactive* manner by designating a contact person who will be responsible for answering questions directly or referring them to appropriate agency experts. The contact person will also be responsible for distributing information packets on request and helping sources access information resources housed in the directory.

The third requirement is to develop a compliance and technical assistance program for small business stationary sources which assists small businesses in determining applicable requirements and in receiving permits under the CAA in a timely and efficient manner. Pursuant to its authority to implement the SBAP, the OAQ will develop fact sheets which will detail new and existing regulatory requirements on a source category basis. The fact sheets will be disseminated in a timely manner by the proactive and reactive mechanisms described in the preceding paragraph. Specific questions about permitting eligibility, responsibilities and procedures will be directed to appropriate experts in the Permitting Branch of the OAQ.

The fourth requirement is to develop adequate mechanisms to assure that small business stationary sources receive notice of their rights under the CAA in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standards issued under the CAA. The fifth requirement is to develop adequate mechanisms for informing small business stationary sources of their obligations under the CAA, including mechanisms for referring such sources to qualified auditors or, at the option of the state, for providing audits of the operations of such sources to determine compliance with the CAA. Under its delegated authority to implement the SBAP, the OAQ will maintain a database of all small business stationary sources subject to Federal and/or state requirements. The OAQ will collect source information from the SBDC, commerce data, permitting and emission inventory lists. Database sources will be notified, in a timely manner by the proactive mechanisms described above, about rights and obligations under the CAA, related West

Virginia statutes and associated air quality regulations. In addition, the OAQ will be responsible for developing and maintaining a list of qualified auditors for small business stationary sources to contact. The list will include qualified OAQ personnel who will perform simple complimentary audits on request as well as other environmental consultants who will charge for their activities.

The sixth requirement is to develop procedures for consideration of requests from a small business stationary source for modification of: (A) Any work practice or technological method of compliance, or (B) the schedule of milestones for implementing such work practices or compliance methods preceding any applicable compliance date. Under its delegated authority to implement the SBAP, the OAQ will meet this requirement by developing, in consultation with the state Small Business Ombudsman, formal procedures in accordance with section 507(a)(7) of the CAA to receive, review and process requests for work practice, compliance method or milestone modifications by no later than November 15, 1994. The Ombudsman will serve as a facilitator for these requests.

2. Ombudsman

Section 507(a)(3) of the CAA requires the designation of a state office to serve as the Ombudsman for small business stationary sources in connection with the implementation of the CAA. West Virginia's Secretary of DCLER will designate an office within the DCLER to serve as Ombudsman for small business concerns as they relate to the implementation of the CAA. It is anticipated that the Ombudsman will be located in the Economic Development Office. The DCLER will provide written notification to EPA confirming the designation and location of the Ombudsman's office by March 30, 1994. The Ombudsman will be readily accessible to small businesses and, on their behalf, be authorized to provide reports to and communicate with state air pollution control authorities and the Secretary of DCLER. The Ombudsman will also participate in many aspects of SBAP implementation such as assisting small businesses in locating sources of funds to comply with environmental regulations. Provisions in the PROGRAM submittal indicate that the Ombudsman's office will be adequately staffed and funded to fulfill its function in relation to the program.

3. Compliance Advisory Panel

Section 507(e) of the CAA requires the state to establish a Compliance Advisory Panel (CAP) that must include two members selected by the Governor who are not owners or representatives of owners of small business stationary sources; four members selected by the state legislature who are owners, or represent owners, of small businesses; and one member selected by the head of the agency in charge of the air pollution permit program. Section 16–20–19 of the Code of West Virginia authorizes the establishment of a Compliance Advisory Panel in accordance with the method of selection described above and in section 507(e)(2) for a bicameral legislature. Panel members will be appointed no later than July 1, 1994.

In addition to establishing the minimum membership of the CAP the CAA delineates four responsibilities of the panel:

(A) To render advisory opinions concerning the effectiveness of the SBAP, difficulties encountered and the degree and severity of enforcement actions;

(B) To review and assure that information for small business stationary sources is easily understandable;

(C) To periodically report to EPA concerning the SBAP's adherence to the principles of the Paperwork Reduction Act, the Equal Access to Justice Act, and the Regulatory Flexibility Act. (Section 507(e)(1)(B) requires the CAP to report on the *compliance* of the SBAP with these three statutes. However, since state agencies are not required to comply with them, EPA believes that the State PROGRAM must merely require the CAP to report on whether the SBAP is adhering to the general principles of these Federal Statutes.); and

(D) To develop and disseminate the reports and advisory opinions made through the SBAP.

A description of the duties and authorities delegated to West Virginia's Compliance Advisory Panel indicates that it will be responsible for all four of the activities listed above.

4. Eligibility

Section 507(c)(1) of the CAA defines the term "small business stationary source" as a stationary source that:

(A) Is owned or operated by a person who employs 100 or fewer individuals,

(B) Is a small business concern as defined in the Small Business Act;

(C) Is not a major stationary source;

(D) Does not emit 50 tons per year (tpy) or more of any regulated pollutant; and

(E) Emits less than 75 tpy of all regulated pollutants.

Except for source categories which the EPA Administrator or the State of West Virginia determines, in accordance with sections 507(c)(3)(A) and (B), to have sufficient financial and technical capabilities to meet the requirements of the CAA without PROGRAM assistance, all small business stationary sources located in West Virginia will be eligible to receive assistance under the PROGRAM. West Virginia's PROGRAM criteria for defining a "small business stationary source" is equivalent to the criteria listed in section 507(c)(1) of the CAA. The State of West Virginia has not provided for the extension of eligibility for assistance under the PROGRAM beyond the requirements of sections 507(c)(1)(C)-(E). However, the State may provide "unofficial" PROGRAM assistance to any source that requests help if resources are available.

III. Summary of SIP Revision

The State of West Virginia has submitted a SIP revision implementing each of the required PROGRAM elements required by section 507 of the CAA. As previously stated, the authority to implement the SBAP has been delegated to the OAQ. Program implementation will begin no later than November 15, 1994. The Secretary of West Virginia's DCLER will designate an office within DCLER to serve as Ombudsman for small business concerns as they relate to the SBAP by no later than March 30, 1994. Section 16–20–19 of the code of West Virginia authorizes the creation of a Compliance Advisory Panel to periodically review the effectiveness of the SBAP. All panel members will be appointed by no later than July 1, 1994. In this action, EPA is approving the SIP revision submitted by the State of West Virginia. Accordingly, § 52.2560 is added to 40 CFR part 52, subpart XX-West Virginia to reflect EPA's approval action and the fact that it is considered part of the West Virginia SIP.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by simultaneously publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of

the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on November 15, 1993.

IV. Final Action

EPA is approving West Virginia's plan for the establishment of a Small Business Stationary Source Technical and Environmental Compliance Assistance Program. Accordingly, § 52.2560 is added to 40 CFR part 52, subpart XX-West Virginia to reflect EPA's approval action. The Agency has reviewed this request for revision of the federally-approved state implementation plan for conformance with the CAA including sections 507 and 110(a)(2)(E).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

By this action, EPA is approving a state program created for the purpose of assisting small businesses in complying with existing statutory and regulatory requirements. The program being approved does not impose any new regulatory burden on small businesses; it is a program under which small businesses may elect to take advantage of assistance provided by the state. Therefore, because EPA's approval of this program does not impose any new regulatory requirements on small businesses, the Administrator certifies that it does not have a significant economic impact on any small entities affected.

This action has been classified as a Table 2 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and Table 3 SIP revisions from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, approving West Virginia's Small Business Stationary Source Technical and Environmental Compliance Assistance Program, must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from date of publication]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Small business assistance program.

Dated: August 23, 1993.

W. T. Wisniewski,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52–[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart XX–West Virginia

2. Section 52.2560 is added to read as follows:

§ 52.2560 Small business technical and environmental compliance assistance program.

On January 13, 1993 the Secretary of the West Virginia Department of Commerce, Labor and Environmental Resources submitted a plan for the establishment and implementation of a Small Business Technical and Environmental Compliance Assistance Program as a state implementation plan revision (SIP), as required by title V of the Clean Air Act. EPA approved the Small Business Technical and Environmental Compliance Assistance Program on September 15, 1993, and made it part of the West Virginia SIP. As with all components of the SIP, West Virginia must implement the program as submitted and approved by EPA.

[FR Doc. 93–22062 Filed 9–14–93; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[IL 7–2–5892; FRL–4702–3]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: U.S. Environmental Protection Agency (U.S. EPA).

ACTION: Final rule.

SUMMARY: U.S. EPA is approving a request by the State of Illinois to revise its Illinois State Implementation Plan (SIP) for Total Suspended Particulate (TSP) matter. The requested revision constitutes a relaxation of existing requirements as they pertain to particulate emissions from continuous automatic stoking animal pathological waste incinerators. Included with this revision request is a demonstration that the emission relaxations will not interfere with attainment and maintenance of the PM–10 (particulate matter with a nominal diameter of 10 micrometers or less) National Ambient Air Quality Standards (NAAQS) or of any other applicable requirement of the Clean Air Act (Act). U.S. EPA's action is based upon a revision request which was submitted by the State under the requirements of part D of the Act.

EFFECTIVE DATE: This action is effective on November 15, 1993 unless notice is received by October 15, 1993 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of this revision to the Illinois SIP is available for inspection at: Jerry Kurtzweg (ANR–443), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Regulation Development Branch, Regulation Development Section (AR–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6036.

SUPPLEMENTARY INFORMATION: U.S. EPA revised the particulate matter standard on July 1, 1987 (52 FR 24634), and replaced the TSP ambient air quality

standard. The revised standard is expressed in terms of PM–10. However, at the State's option, U.S. EPA continues to process TSP SIP revisions which were in process at the time the new (PM–10) standard was promulgated. In the policy document published on July 1, 1987 (52 FR 24679, column 2), U.S. EPA stated that it would regard existing TSP SIPs as necessary interim particulate matter plans during the period proceeding the approval of State plans specifically aimed at PM–10. Section 110(l) of the amended Act, 42 U.S.C. 7410(1), prohibits U.S. EPA from approving a revision of a plan if the revision would interfere with any applicable requirements concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirements of the Act. If the SIP revision is judged to include more stringent provisions than are in the existing plan, U.S. EPA's general policy is to approve it. Regulations in the TSP SIP cannot be relaxed without a demonstration that the revision will not interfere with attainment and maintenance of the PM–10 NAAQS. It is U.S. EPA's judgment that although this revision constitutes a relaxation of existing requirements, the State has provided an approvable demonstration that this requested SIP revision will not interfere with the attainment and maintenance of the PM–10 NAAQS nor of any other applicable requirement of the amended Act, as required by section 110(l).

Description of SIP Revision

On July 21, 1986, the Illinois Environmental Protection Agency (IEPA) submitted a proposed revision to Illinois' TSP SIP for parallel processing. The proposed revision changes TSP emission limitations for continuous automatic stoking animal pathological waste incinerators. The only existing source that this revision would apply to is a pathological waste incinerator operated by the City of Chicago at Goose Island. Basic Environmental Engineering, Inc. designed and manufactured the Goose Island incinerator.

Goose Island is located in North Town Township, which has been redesignated to attainment for TSP. See 58 FR 25567 (April 27, 1993). The 1990 Amendments to the Act, upon enactment, provided that all areas of the country be designated either nonattainment or unclassifiable for PM–10 (section 107(d)(4)(B)). As further provided in section 107(d)(4)(B)(iii) of the Act, those areas in the State not designated nonattainment for PM–10 are designated as unclassifiable for PM–10. Goose Island was not among those areas designated as a nonattainment area for PM–10 under section 107(d)(4)(B). See 56 FR 56694 (November 6, 1991).

On January 4, 1984, a stack test at the Goose Island incinerator measured a TSP particulate concentration, corrected to 12 percent carbon dioxide (CO_2) utilizing the following methodology:

The emission rate (c_{12}) of particulate matter, corrected to 12 percent CO_2, is computed for each stack test run using the following equation:

$c_{12}=c_s(12/\%CO_2)$

where:

c_{12}=concentration of particulate matter, corrected to 12 percent CO_2.

c_s=concentration of particulate matter.

$\%CO_2=CO_2$ concentration.

The stack test found a particulate concentration of 0.464 gr/dscf, which is well above the current limit of 0.1 gr/scf.[1] A second stack test was conducted on April 12, 1984, with 40 pounds (lbs) of charcoal added to each load of animal carcasses entering the incinerator. Charcoal is not considered an auxiliary fuel; therefore, the CO_2 produced by the charcoal is not subtracted from the total flue gas CO_2. With the addition of charcoal, the TSP particulate concentration, corrected to 12 percent CO_2, measured at 0.097 gr/dscf. This is in compliance with the State rule. The Goose Island incinerator was granted a permit, with an operating condition requiring charcoal to be burned with the carcasses to maintain emissions in compliance with the State rule.

The source contends that adding charcoal to the charge is burdensome and expensive. The source would prefer that the incinerator have a less stringent limitation and be allowed to burn natural gas. The source also contends that the amount of particulate matter emitted per 100 lbs of charged waste is reduced when charcoal is not added to the waste.

The current regulation, Title 35 of the Illinois Administrative Code (35 IAC), Section 212.181,[2] limits particulate emissions from new incinerators burning less than 2000 lbs of refuse per hour to 0.10 gr/scf of effluent gases corrected to 12 percent carbon dioxide (CO_2).

The revision that has been submitted by Illinois, Section 212.185, would limit particulate emissions from continuous automatic stoking animal pathological waste incinerators to 0.1 lbs TSP per 100 lbs of animal pathological waste charged. In addition, the particulate matter emissions produced when burning animal pathological waste, using gaseous auxiliary fuel, shall not exceed the lbs TSP/hour emission rate equivalent to the maximum concentration rate set forth in Section 212.181(d) (the current rule) when applied to burning a maximum of 2000 lbs of mixed charge animal pathological waste plus solid waste for demonstration of compliance. "Mixed charge" shall contain no more than 25 percent by weight of solid waste other than animal pathological waste.

To determine compliance with the equivalent lbs TSP/hour emission limit, two series of tests would be performed. The first series of tests would be performed with a maximum of 2000 lbs of mixed charge and must demonstrate that the incinerator can meet the 0.1 gr/scf limit. The results of this series of tests are converted to a lbs TSP/hour rate. The second series of tests would be performed with animal pathological waste only to determine the lbs TSP/hour that is being emitted. To be in compliance with Section 212.185(d), the results of the second series of tests must be less than or equal to the results of the first series of tests.

The State rule requires that the following conditions also be met:

(1) The incinerator shall burn animal pathological waste exclusively, except as otherwise prescribed by the IEPA during specified test operations.

(2) The incinerator shall burn no more than 2000 lbs of waste per hour.

(3) The incinerator shall be a multi-stage controlled air combustion incinerator having a cyclical pulse stoking hearth.

Evaluation of Requested Revision

The requested SIP revision, Section 212.185, would establish two particulate emission limits for automatic stoking pathological waste incinerators. Section 212.185(c) establishes a 0.1 lbs TSP/100 lbs of charge limit. With a 2000 lbs of waste per hour capacity limit, this would allow the incinerator to emit up to 2 lbs TSP/hour. Section 212.185(d) limits the incinerator to a lbs TSP/hour emission rate equal to or less than the maximum equivalent lbs TSP/hour

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[1] To convert from grains per dry standard cubic foot (gr/dscf) to grains per standard cubic foot (gr/scf), multiply the gr/dscf by (1—percent moisture) to get gr/scf.

gr/scf=(gr/dscf)(1—percent moisture)

The higher the moisture content the greater the difference between "gr/dscf" and "gr/scf". The January 4, 1984 stack test averaged 14.3 percent moisture.

[2] It should be noted that Section 212.181 (35 IAC) was incorporated into the Illinois' SIP as Illinois Pollution Control Board (IPCB) Rule 203(e) on November 27, 1981 (46 FR 57893). Illinois has subsequently recodified its environmental regulations into 35 IAC. The regulations in the SIP have not been recodified. U.S. EPA treats this requested SIP revision as a modification to IPCB Rule 203(e).

emission rate allowed under a 0.1 gr/scf limit corrected to 12% CO_2.

As stated above, regulations in the TSP SIP cannot be relaxed without a demonstration that the revision will not interfere with attainment and maintenance of the PM–10 NAAQS. IEPA performed a dispersion modeling analysis according to U.S. EPA guidance to demonstrate attainment and maintenance of the PM–10 NAAQS. IEPA used the Industrial Source Complex Short Term model, version 92273. The modeling analysis was submitted on May 7, 1993, and supplementary documentation was received by U.S. EPA on June 5, 1993. The analysis models the PM–10 emissions of the incinerator and of three nearby PM–10 sources, and includes a conservative background ambient concentration estimate.

Considering all modeled sources, background emissions, and the maximum PM_{10} emissions allowed by the 0.1 lbs TSP/100 lbs charge limit at the incinerator, a maximum 24-hour ambient PM_{10} concentration of 131.5 $\mu g/m^3$ was predicted. This is well below the PM_{10} 24-hour standard of 150 $\mu g/m^3$. The annual ambient PM_{10} concentration predicted was 40 $\mu g/m^3$, which is below the PM_{10} annual standard of 50 $\mu g/m^3$. It is U.S. EPA's judgment that, in accordance with section 110(l), the State has provided an acceptable demonstration that this requested SIP relaxation revision will not interfere with attainment and maintenance of the PM–10 NAAQS nor of any other applicable requirement of the amended Act. A more detailed description of the attainment demonstration analysis may be found in the June 25, 1993 Technical Support Document available at the above address.

Rulemaking Action

Based on its review of the information presented by the State of Illinois, U.S. EPA is approving the requested SIP revision. As noted above, IEPA's submitted modeling analysis demonstrates that the requested SIP revision, while constituting a relaxation of the State of Illinois' existing requirements pertaining to particulate emissions from continuous automatic stoking animal pathological waste incinerators, will not interfere with attainment and maintenance of the PM–10 NAAQS nor of any other applicable requirement of the amended Act, as required by section 110(l).

Because U.S. EPA considers today's action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on November 15, 1993. However, if we receive notice by October 15, 1993 that someone wishes to submit adverse comments, then U.S. EPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of 2 years. U.S. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on U.S. EPA's request.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP.

U.S. EPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., U.S. EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604.) Alternatively, U.S. EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids U.S. EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 15, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental Protection, Incorporation by Reference, Particulate matter.

Note.—Incorporation by reference of the State Implementation Plan for the State of Illinois was approved by the Director of the Federal Register on July 1, 1982.

Dated: August 20, 1993.

Valdas V. Adamkus,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(98) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(98) On July 21, 1986, the State a submitted revision to its particulate matter regulations to incorporate an emission limit for continuous automatic stoking animal pathological waste incinerators.

(i) Incorporation by reference.

(A) Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter 1: Pollution Control Board, part 212 Visible and Particulate Matter Emissions, subpart D: Particulate Matter Emissions from Incinerators, section 212.185 Continuous Automatic Stoking Animal Pathological Waste Incinerators. Adopted December 18, 1986, added at 11 Ill. Reg. 1410, effective December 30, 1986.

[FR Doc. 93–22556 Filed 9–14–93; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[MA-9-5-5824; A-1-FRL-4700-7]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Stage II Vapor Recovery

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is taking action to approve Massachusetts' revised Stage II vapor recovery rule, entitled "Dispensing of Motor Vehicle Fuel," located at 310 CMR 7.24(6), as a revision to the Massachusetts State implementation plan (SIP) for ozone. Massachusetts submitted this revised regulation in response to the Stage II requirements of section 182(b)(3) of the Clean Air Act, as amended in 1990, which requires all ozone nonattainment areas classified as moderate or worse to require owners and operators of gasoline dispensing facilities to install and operate Stage II vapor recovery equipment, and EPA's December 14, 1992 Federal Register notice (57 FR 58993) regarding Massachusetts' existing Stage II regulation.

EFFECTIVE DATE: This action will become effective November 15, 1993, unless notice is received by October 15, 1993, that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; Jerry Kurtzweg, U.S. Environmental Protection Agency, 401 M Street, SW., (ANR-443), Washington, DC 20460; and the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Anne E. Arnold, (617) 565-3166.

SUPPLEMENTARY INFORMATION: Under section 182(b)(3), EPA was required to issue guidance as to the effectiveness of Stage II systems. In November 1991, EPA issued technical and enforcement guidance to meet this requirement. These two documents are entitled "Technical Guidance-Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities" (Technical Guidance)(EPA-450/3-91-022) and "Enforcement Guidance for Stage II Vehicle Refueling Control Programs" (Enforcement Guidance). In addition, on April 16, 1992, EPA published the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (General Preamble) (57 FR 13498). The guidance documents and the General Preamble interpret the Stage II statutory requirement and indicate what EPA believes a State submittal needs to include to meet that requirement.

Under section 182(b)(3) of the amended Act, moderate and above ozone nonattainment areas were required to submit Stage II vapor recovery rules by November 15, 1992. In addition, section 184(b)(2) of the amended Act requires all areas that are located in an ozone transport region (OTR) to adopt Stage II regulations in accordance with section 182(b)(3) or measures that EPA has identified as capable of achieving equivalent reductions to section 182(b)(3) Stage II controls.[1] These measures must be submitted within 1 year of EPA's completion of its Stage II comparability study.

The entire Commonwealth of Massachusetts is designated nonattainment for ozone and is classified as serious. See 56 FR 56694 (Nov. 6, 1991) and 57 FR 56762 (Nov. 30, 1992), codified at 40 CFR 81.322. In addition, Massachusetts is also located in the northeast ozone transport region. See CAA section 184(a). Thus, Massachusetts is required to adopt Stage II vapor recovery rules in accordance with sections 182(b)(3) and 184(b)(2) of the amended Act.

Under section 182(b)(3), moderate and above ozone nonattainment areas are required to adopt regulations requiring owners or operators of gasoline dispensing systems to install and operate vapor recovery equipment at their facilities. Section 182(b)(3)(A) of the Act specifies that Stage II controls must apply to any facility that dispenses more than 10,000 gallons of gasoline per month or, in the case of an independent small business marketer (ISBM), any facility that dispenses more than 50,000 gallons of gasoline per month. Section 324 of the Act defines an ISBM.

[1] Pursuant to section 184(b)(2), by November 15, 1993, EPA must complete a study identifying control measures capable of achieving emission reductions comparable to those achievable through the section 182(b)(3) State II controls. The EPA is in the process of performing that study.

In addition, EPA's guidance states that States should require that Stage II systems be tested and certified to meet a 95 percent emission reduction efficiency by using: (1) A method tested and approved by the California Air Resources Board (CARB); (2) a testing program that is equivalent to the CARB program, that will be conducted by the State (or by a third party recognized by the State), and that EPA has approved (or is proposing for approval) for incorporation into the SIP; or (3) a system approved by CARB. EPA guidance also states that facilities should be required to verify proper installation and function of Stage II equipment through use of a liquid blockage test and a leak test prior to system operation and every five years or upon major modification of a facility (i.e., 75 percent or more equipment change).

On May 17, 1990, EPA received a formal SIP submittal from the Massachusetts Department of Environmental Protection (DEP) containing the State's newly adopted Stage II vapor recovery regulation entitled "Dispensing of Motor Vehicle Fuel" located at 310 CMR 7.24(6). This state-initiated SIP submittal was submitted prior to the November 15, 1990 enactment of amendments to the Act. EPA published a Final Rulemaking Notice (FRN) approving Massachusetts' existing Stage II regulation on December 14, 1992 (57 FR 58993). As stated in EPA's FRN, although there were still outstanding issues associated with the existing Stage II rule, EPA approved this revision to the Massachusetts SIP, since it would strengthen the existing SIP and contribute to a reduction in volatile organic compound emissions until such time as DEP revised its Stage II rule to meet all of the requirements of section 182(b)(3) of the CAA. EPA's FRN also enumerated the outstanding issues associated with this rule which the State would need to address in order for EPA to approve the regulation as meeting the requirements of the CAA. Massachusetts subsequently adopted revisions to this regulation in accordance with the amendments outlined in EPA's FRN. The necessary amendments outlined in EPA's FRN and the State's response are discussed below.

On November 13, 1992, Massachusetts DEP submitted a formal request to EPA to amend the Massachusetts SIP. This SIP revision request contains amendments to the State's Stage II vapor recovery rule. In addition, on February 17, 1993, DEP submitted the adopted version of the revised Stage II regulation along with additional documentation regarding the

effective date of this rule. The EPA has reviewed this regulation against the statutory requirements and for consistency with EPA guidance. Massachusetts' regulation and EPA's evaluation are detailed in a memorandum dated April 5, 1993, entitled "Technical Support Document—Massachusetts—Stage II Vapor Recovery Revisions." Copies of that document are available, upon request, from the EPA Regional Office listed in the ADDRESSES section of this notice. A summary of EPA's analysis is provided below.

310 CMR 7.24(6)—Dispensing of Motor Vehicle Fuel

This regulation requires all existing motor vehicle fuel dispensing facilities in Massachusetts with throughput volumes of greater than 10,000 gallons per month to install and operate Stage II vapor recovery equipment. The required installation date for this equipment varies depending on a facility's annual gasoline throughput (i.e., larger throughput facilities must comply earlier than smaller throughput facilities). The required installation dates range from April 1, 1991 to April 1, 1994. In addition, this regulation also requires any motor vehicle fuel dispensing facility, which has been constructed or substantially modified after November 1, 1989, regardless of throughput, to install and operate a Stage II vapor recovery and control system at the completion of its construction or substantial modification, or April 1, 1991, whichever is later.

Outstanding Issues Cited in EPA's FRN and Massachusetts' Response

1. The first necessary amendment noted in EPA's FRN relates to the applicability levels of Massachusetts' Stage II regulation. At the time of EPA's FRN, the regulation required that all motor vehicle fuel dispensing facilities with a throughput volume of greater than 20,000 gallons of motor vehicle fuel per month since January 1, 1988 install Stage II vapor recovery systems. Section 182(b)(3)(A) of the CAA, however, requires that Stage II provisions be adopted for facilities which dispense greater than 10,000 gallons per month, or 50,000 gallons per month in the case of ISBMs. Thus, the Massachusetts applicability levels were not consistent with the requirements of the CAA. For those stations that are not considered ISBMs, the Massachusetts regulation had a less stringent applicability cutoff.

In response to this noted deficiency, Massachusetts revised subsection 310 CMR 7.24(6)(a) to state that the Stage II requirements of the regulation apply to all facilities which dispense 10,000 gallons or more per month. In addition, the State revised the compliance schedule of the regulation in accordance with this change in applicability. Specifically, subsection 310 CMR 7.24(6)(d)2c was revised to state that compliance must be achieved by April 1, 1993 for facilities where the annual throughput is less than 500,000 gallons per year but is greater than or equal to 20,000 gallons in any one calendar month. Also, a new subsection was added, 310 CMR 7.24(6)(d)2d, which requires compliance by April 1, 1994, or thirty days after dispensing 10,000 gallons in any calendar month, whichever is later, for all other facilities subject to this rule.

Massachusetts' recent revisions, therefore, sufficiently address the previously noted deficiency regarding Stage II applicability levels. The applicability of Massachusetts' revised Stage II rule is more stringent than the CAA, since, in addition to requiring facilities which dispense 10,000 gallons or more per month to install Stage II systems, this rule also requires all facilities which have been constructed or substantially modified after November 1, 1989, regardless of throughput, to install Stage II systems. Furthermore, this regulation does not contain a 50,000 gallon per month exemption for ISBMs as allowed by the CAA.

2. EPA's FRN also noted that the following testing requirements should be included in the Massachusetts' Stage II regulation as outlined in EPA's Enforcement Guidance:

a. Testing, for verification of proper installation and function of the entire system, must be required once all of the equipment is in operational condition at the gasoline dispensing pumps. Liquid Blockage testing, Leak Check testing, and all other related tests for auto shutoff and flow prohibiting mechanisms, as applicable, must be conducted in accordance with the test procedures found in Appendix J of EPA's Technical Guidance.

b. Recertification of the function of Stage II equipment must be required at least every five years, or upon major system replacement or modification, whichever occurs first. This recertification must include a Leak Check Test and any and all other functional tests that were required for the initial system certification. A major system modification is considered to be replacing, repairing or upgrading 75 percent or more of a facility's Stage II equipment.

In response to this noted deficiency, Massachusetts added a new subsection, 310 CMR 7.24(6)(i), entitled "Testing at Installation," to its Stage II regulation. This section requires that any person installing a Stage II system, or replacing 75% or more of an existing system, conduct Liquid Blockage testing, Leak Check testing, and all other related testing for automatic shutoff and flow prohibiting mechanisms in accordance with EPA's Stage II Technical Guidance. In addition, this section requires that these tests also be conducted at least once every five years over the entire lifetime of the Stage II system. Massachusetts' recent revisions, therefore, sufficiently address the previously noted deficiency regarding Stage II testing requirements.

3. The third deficiency noted in EPA's FRN relates to Stage II recordkeeping requirements. The FRN noted that the recordkeeping provision in Massachusetts' regulation would need to be amended to include that the following records be kept, as specified by EPA's Stage II Enforcement Guidance:

a. Any and all permits and licenses to operate a facility or a specific system at a facility;

b. Records which verify that the Stage II system meets or exceeds the requirements of a Liquid Blockage Test, a Leakage Test, or other applicable tests and which indicate the date of the test results and the installing and test companies' names, addresses and phone numbers;

c. A chronological file of inspection reports issued by the state;

d. A chronological file of compliance records including warnings, notices of violation, and other compliance records issued by the state; and

e. Training certification records showing proof of attendance and completion of required training.

In addition, the FRN also noted, that, although the State's recordkeeping provisions required the recording of any failures of the Stage II equipment, the recording of maintenance performed in response to these system failures should also be included.

In response to the above-noted deficiencies in the State's Stage II recordkeeping requirements, Massachusetts amended the recordkeeping section of its Stage II rule, section 310 CMR 7.24(6)(f). The amended section (f) contains seven subsections which together address all of the recordkeeping deficiencies outlined above. Specifically, the deficiency stated in 3.a. has been addressed by subsection (f)(6) which requires that any and all permits, orders

or licenses to operate issued for the facility be kept. The deficiency stated in 3.b. has been addressed by subsection (f)(4) which requires that records of the results and dates of any testing performed, and the identity of the person who performed such tests, be maintained. The deficiencies stated in 3.c. and 3.d. have been addressed by subsection (f)(7) which requires that the facility maintain a chronological file of any inspection reports or other compliance documents issued for the facility by the DEP. The deficiency stated in 3.e. has been addressed by subsection (f)(5) which requires a record of certification that facility operators and employees have received training be kept.

In addition, subsection (f)(1) requires records of the failure or malfunction of the Stage II system and the date of its repair and subsection (f)(2) requires records of all maintenance performed, including the type and date of maintenance. These two subsections, therefore, sufficiently address the previously noted lack of requirements regarding the recording of maintenance performed in response to system failures. Finally, section (f) also requires that all records be kept on site for at least five years, rather than two years as was previously required.

Massachusetts' recent revisions to subsection (f), therefore, sufficiently address all of the previously noted deficiencies regarding Stage II recordkeeping requirements.

In summary, EPA's December 14, 1992 FRN cited outstanding issues associated with the Stage II applicability levels, testing requirements, and recordkeeping requirements in Massachusetts' existing Stage II regulation. Since that time, Massachusetts has adopted revisions to this regulation which sufficiently address all of the previously noted deficiencies.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective November 15, 1993, unless, by October 15, 1993, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by simultaneously publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on November 15, 1993.

Final Action

Because EPA believes that Massachusetts' revised Stage II regulation is consistent with sections 182(b)(3) and 184(b)(2) of the Act, as interpreted in EPA's guidance, EPA is approving 310 CMR 7.24(6) "Dispensing of Motor Vehicle Fuel" (effective in the State of Massachusetts on February 12, 1993) as meeting the requirements of sections 182(b)(3) and 184(b)(2).

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 a SIP shall be considered in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirements of section 3 of Executive Order 12291 for a period of 2 years (54 FR at 2222). The EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 15, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Massachusetts was approved by the Director of the Federal Register on July 1, 1982.

Dated: August 16, 1993.

Patricia Meaney,

Acting Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart W—Massachusetts

2. Section 52.1120 is amended by adding paragraph (c)(98) to read as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(98) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on November 13, 1992, January 15, 1993, and February 17, 1993.

(i) Incorporation by reference.

(A) Letters from the Massachusetts Department of Environmental Protection dated November 13, 1992, January 15, 1993, and February 17, 1993 submitting a revision to the Massachusetts State Implementation Plan.

(B) 310 CMR 7.24(6) "Dispensing of Motor Vehicle Fuel," effective in the State of Massachusetts on February 12, 1993.

(ii) Additional materials.

(A) Nonregulatory portions of the submittal.

3. In § 52.1167, Table 52.1167 is amended by adding new entries to state citation "310 CMR 7.24(6)" to read as follows:

§ 52.1167 EPA-Approved Massachusetts regulations.

* * * * *

TABLE 52.1167.—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date submitted by state	Date approved by EPA	Federal Register citation	52.1120 (c)	Comments/unapproved sections
*	*	*	*	*	*	*
310 CMR 7.24(6)	Dispensing of motor vehicle fuel.	02/17/93	9/15/93	[Insert FR citation from published date].	98	Previous version of rule approved as strengthening the Massachusetts SIP. Revised rule being approved as meeting the Clean Air Act requirements.
*	*	*	*	*	*	*

[FR Doc. 93–22533 Filed 9–14–93; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 73

[FRL–4728–8]

Acid Rain Program: Allowance Tracking System; Manual Recordation of Allowance Transfers

AGENCY: Environmental Protection Agency.

ACTION: Notice of procedure for manual recordation of certain allowance transfers.

SUMMARY: The Environmental Protection Agency is instituting a procedure to implement subpart D of 40 CFR part 73, which governs EPA's recordation of transfers of sulfur dioxide (SO_2) emission allowances within the Allowance Tracking System (ATS). This procedure applies prior to the commencement of operation of the automated ATS in certain exceptional circumstances. Two criteria must be met before EPA will accept transfer forms for manual recordation: (1) There must be a risk of substantial loss of public funds should the transaction not be completed and the transfer not be recorded prior to the commencement of operation of the automated ATS; and (2) parties to the transfer agreement must have relied upon EPA's announced date of "late spring 1993" for the commencement of operation of the automated ATS when entering into the transfer agreement.

EFFECTIVE DATE: September 8, 1993.

ADDRESSES: All correspondence in this matter shall be sent to: U.S. Environmental Protection Agency, Acid Rain Division (6204J), 401 M Street, SW., Washington, DC 20460, Attn: ATS Manual Recordation.

FOR FURTHER INFORMATION CONTACT: Janice K. Wagner, Chief, Allowance Market Section, Acid Rain Division, (202) 233–9118 or by mail at the address above.

SUPPLEMENTARY INFORMATION: Subpart C of 40 CFR part 73 establishes an Allowance Tracking System (ATS) for the allocation, transfer, and use of SO_2 emissions allowances as required by section 403(b) of the Clean Air Act (CAA). Section 403(b) specifically provides that allowance transfers are not effective, for purposes of compliance with the allowance holding requirements of the Acid Rain Program, until EPA receives and records a written certification of the transfer signed by a responsible official of each party to the transfer. EPA will provide Allowance Transfer forms for this written certification. Subpart D of 40 CFR part 73 establishes the procedure by which EPA will record transfers of allowances to and from accounts established within the ATS.

EPA is in the process of implementing an automated system for handling the recordation of allowance transfers. To ensure the integrity of the recordation process, EPA decided that it would not begin accepting allowance transfer requests for recordation until this automated system is fully operational. EPA believes that the necessary task of recording numerous allowance transfers will be administratively feasible only if the automated ATS is operational and serial numbers for allowances involved in such transfers are issued.

EPA's general policy has been and will continue to be to not issue Allowance Transfer forms to parties nor to record allowance transfers prior to the commencement of operations of the automated ATS. When EPA developed the general policy on issuing Allowance Transfer forms and recording allowance transfers, EPA anticipated that the automated ATS would likely be operational in the late spring of 1993 and so informed ATS authorized account representatives in letters sent to them as their accounts were opened. However, the anticipated operational date for the ATS has been delayed. While the provisions of the Acid Rain Program authorize allowances to be sold without recordation with EPA, the Agency recognizes that, in certain limited circumstances, the delay in making operational the automated ATS may irreparably impair some transfer agreements. Furthermore, the failure to allow these agreements to go forward may have detrimental financial impacts not only on the parties to the transfer agreement but also on the public because of the extensive involvement of public entities in financing electricity production.

After examining the factors described above, the Agency has decided that an exception to the general policy may be appropriate in certain limited circumstances. The Agency believes that manual recordation is appropriate: (1) When substantial public funds are at risk if recording the transfer is delayed until the automated ATS commences operation; and (2) when parties to transfer agreements relied on EPA's representation concerning the anticipated operational date of the ATS to conclude agreements that are contingent on recordation.

The Agency determined that it needed to establish an exception to its general policy when it learned of the exceptional circumstances of Big Rivers Electric Corporation, a Kentucky cooperative utility with outstanding debt to the United States government in excess of $1 billion through loans from the Rural Electrification Administration (REA). Big Rivers' debt to REA did not arise in connection with this transaction or CAA Title IV. The utility is on REA's troubled loan watch list and has negative equity.

In order to meet its requirements under the Clean Air Act, the utility decided to construct and use a "scrubber" to minimize sulfur dioxide emissions and to sell excess emission allowances to finance the purchase of the scrubber. According to the utility, other methods of financing a scrubber, such as additional loans, are unavailable.

Potential buyers of the utility's allowances have not been willing to purchase them without immediately recording the transfer in the ATS because of concerns about whether the allowances would ultimately be delivered or the purchase price returned because of the utility's precarious financial position. Although ATS is designed to be a compliance tracking system, at this stage in the market's development it is viewed as the "official" ownership tracking system.

Based on EPA's representation that the automated ATS would likely be operational in late spring, an intermediary arranged for the sale of the utility's allowances to a third party, contingent on being able to immediately record the transfers with EPA. The utility committed to pay for the construction of the scrubber to be financed by the proceeds of the sale of allowances. Construction of the scrubber has begun and payments will be due prior to the date when the automated ATS will be operational.

The failure to have an operational automated ATS has put the contingent sale of the allowances at risk. Without the proceeds from the sale of allowances, the utility cannot make both payments for construction of the scrubber and anticipated debt service payments to the REA. Failure to make the necessary payments on the construction contract would result in cancellation of the scrubber contract and the incurrence of substantial cancellation charges. In addition, the cancellation charges incurred by the utility would reduce by a like amount the funds available for debt service payments to the REA. Failure to make anticipated debt service payments to the REA, either because the funds are used to meet construction payments or because the utility incurred cancellation charges, would compound the utility's precarious financial position and increase the financial risk to the public. At the request of REA, EPA agreed to look into ways to ensure that EPA's delay in making the automated ATS operational does not increase the financial risk to the public arising from the utility's $1 billion debt to the United States.

At this time, recording the transfer immediately in the automated ATS is not possible because the system is not yet fully operational. EPA investigated the feasibility of developing a manual recordation system that would be open to all ATS account holders. To make such a system work, each utility must know the serial numbers of the allowances it holds. By the time EPA could establish the serial numbers, provide them to the Authorized Account Representatives, and develop procedures, the manual ATS would be "open for business" only a few months earlier than EPA's current target for an operational automated ATS. All work on the manual system—both the development and the operation of the system—must be done by the same EPA staff who are currently working on the automated version of the ATS, so the schedule for the development of the automated ATS would slip significantly. Moreover, EPA believes that even interim use of a manual system is not feasible because without automated control procedures, EPA cannot ensure accurate recordation, which is crucial to allowance trading and to end-of-year compliance. For these reasons, EPA does not feel that it would benefit the allowance market overall for EPA to try to develop a large-scale manual recordation system.

Therefore, to respond to cases that meet the criteria established above—that is, substantial debt to the government where the risk of repayment is exacerbated by failure to sell allowances prior to the operation date of the automated ATS, and a contractual transfer arrangement that parties made contingent on recording in the ATS in reliance on EPA's statement of ATS's availability in spring of 1993—EPA is establishing a manual recordation procedure limited to such cases. To be eligible for manual recordation, a transfer must be the subject of a binding contract that: (1) Was executed prior to the date of this notice; and (2) expressly requires recordation of the transfer by EPA in accordance with subpart D of 40 CFR part 73 before the parties can fully perform their obligations under the contract. The manual recordation procedure is outlined below.

1. Apply for Eligibility Determination

Parties to allowance transfer contracts wishing to obtain manual recordation in accordance with the procedure set forth in this notice must contact EPA to obtain an eligibility determination. EPA will provide parties to an eligible transfer with Allowance Transfer forms for use in requesting recordation.

2. Complete Allowance Transfer Form

The parties must submit to EPA an Allowance Transfer form properly completed in accordance with 40 CFR 73.50(b)(1). In particular, the form must include:

(i) The transferor and transferee's ATS account numbers;

(ii) The signatures of the Authorized Account Representatives (AARs) for both the transferor and transferee accounts;

(iii) The dates of such signatures; and

(iv) The numbers identifying the AARs. The parties must follow the procedure set forth at 40 CFR part 73, subpart C to establish the ATS accounts and designate the AARs.

3. Specify Allowances To Be Transferred

The allowances to be transferred must be specified on the Allowance Transfer form. According to 40 CFR 73.50(b)(1)(ii), an Allowance Transfer form must include "a specification by serial number of each allowance to be transferred, or correct indication on the allowance transfer where a request involves the transfer of the unit's allowances in perpetuity." Because EPA has not yet assigned individual serial numbers to allowances, it is not possible at this time to list on the transfer form the official serial numbers of the allowances to be transferred. For purposes of a transfer to be recorded pursuant to the procedure set forth in this notice, however, EPA interprets this provision to be satisfied by a description of the allowances to be transferred based on the serial numbers that EPA eventually will assign to those allowances. Because such a description would permit allowances to be uniquely identified by serial number, EPA considers it "a specification by serial number," as required by the regulations, until such time as the official serial numbers are issued.

The Allowance Transfer form must identify each allowance to be transferred from a specific account by referring to a single identifying number that consists of the unit account number to which the allowance was initially

allocated, the year, and the number of the allowance. The allowances to be transferred must be a set of consecutive numbers. To ensure the integrity of the manual recordation procedure set forth in this notice, EPA will record transfers of allowances reflected in Column A of Table 1 to 40 CFR 73.10(a) or Columns E or I of Table 2 to 40 CFR 73.10(b). EPA will not allow the transfer of other allowances, such as those allocated from the Phase I Extension Reserve or pursuant to an approved Phase I substitution plan or compensating unit plan, until serial numbers have been assigned and the automated recordation system has commenced operation.

The identifying number listed on the Allowance Transfer form for a given allowance pursuant to the procedure described in this notice is based on and allows the future identification of that allowance by serial number upon EPA's assignment of serial numbers for allowances. For example, if the identifying number for an allowance identified in a transfer form pursuant to this procedure is XXXX–1995–00000001 (where "XXXX" is the unit account number and "1995" is the compliance use date of the allowance), that allowance is the one with the lowest serial number of all the serial numbers of the Table 1, Column A allowances for 1995 that are initially allocated to the unit account referred to in the identifying number. If the identifying number for an allowance identified in a transfer form pursuant to this procedure is XXXX–1995–00000150, that allowance is the one with the 150th lowest serial number of all the serial numbers of the Table 1, Column A allowances for 1995 that are initially allocated to that unit account. Thus, in this example, listing the range of consecutive identifying numbers of XXXX–1995–00000001 to XXXX–1995–00000150 on the Allowance Transfer Form specifies the 150 allowances that have the 150 lowest serial numbers of all the serial numbers of the Table 1, Column A allowances for 1995 that are initially allocated to the unit account referred to in the identifying number. Thus, use of the identifying number pursuant to the procedure described in this notice allows "specification by serial number of each allowance to be transferred," pursuant to 40 CFR 73.50 (b)(1)(ii).

To be considered correctly submitted under 40 CFR 73.50(b), every allowance transfer form submitted pursuant to the procedure set forth in this notice must describe the allowances being transferred by referring to the unit account or accounts to which such allowances have been initially allocated by EPA. Moreover, in accordance with 40 CFR 73.52(a)(2), EPA will record an allowance transfer only if the allowances to be transferred are actually held in the transferor account. Accordingly, to the extent that an allowance transfer form describes allowances being transferred by reference to any account other than the transferor account, EPA will record the transfer only if it has previously recorded a transfer into the transferor account of allowances of the same description.

4. Written Confirmation of Transfer

Pursuant to 40 CFR 73.52(a), EPA will record an eligible transfer by making a written record of the movement of allowances from the transferor account to the transferee account by no later than five business days following receipt of an Allowance Transfer form satisfying the requirements of 40 CFR part 73, subpart D as implemented by this notice. EPA shall notify each party, pursuant to 40 CFR 73.53(a), within five business days after recordation. If EPA declines to record a transfer, it shall notify the parties of that action, pursuant to 40 CFR 73.53(b), no later than five business days following receipt of an allowance transfer request.

EPA considers its recordation of an allowance transfer pursuant to the procedure set forth in this notice to be final and effective under 40 CFR part 73, subpart D and section 403(b) of the Clean Air Act. No further action will be required of the parties to the transfer to complete the recordation.

5. Claim of Error

Within 15 days of receipt of the written confirmation of transfer, the AAR must notify EPA of any claim of error in the recordation of such transfers. Such claim shall be filed and processed in accordance with 40 CFR 73.37.

6. Serialization of Allowances in the Automated ATS

In order to match the allowance descriptions associated with transfers recorded pursuant to the procedure set forth in this notice with the actual serialized allowances, EPA will assign serial numbers to allowances according to a sequence reflecting the initial allocations to unit accounts before any adjustment is made to reflect manually recorded transfers. Serialized allowances will then be moved between ATS accounts in accordance with all transfers previously recorded by EPA pursuant to the procedure set forth in this notice. The assignment of serial numbers is simply an accounting procedure. The allowances will be held in the transferee account as of the date of the recordation of the transfer.

7. Allowance Transfer Confirmation

Within five business days after the completion of the assignment of serial numbers, EPA will provide the AAR for each ATS account involved in a transfer recorded pursuant to the procedure set forth in this notice with a written account statement reflecting all such transfers.

8. Claim of Error

Within 15 days of receipt of the allowance transfer confirmation, the AAR must notify EPA of any claim of error in the recordation of such transfers. Such claim shall be filed and processed in accordance with 40 CFR 73.37.

Until such time as serial numbers for allowances are finalized, transfer forms that identify allowances in the manner discussed above satisfy the requirements of EPA's allowance transfer regulations in 40 CFR 73.50 and 73.52. The description of the allowances by account number, year, and number is a sufficient specification by serial number of each allowance to be transferred to allow EPA to identify the appropriate allowances to transfer in the ATS, when a limited number of transactions are being recorded and when the allowances are allocated but not serialized. Once serial numbers are finalized and made available to account holders, EPA will only accept transfer forms that include serial numbers, except for transfers of a unit's allowances in perpetuity.

Because of the issues described above, all allowance buyers and sellers should ensure that no action is required by EPA to complete future allowance transactions until the automated ATS is operational.

Dated: September 8, 1993.

Brian J. McLean,

Director, Acid Rain Division, Office of Air and Radiation.

[FR Doc. 93–22441 Filed 9–14–93; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Parts 180 and 186

[PP 0E3823 and FAP 0H5592/R2009; FRL–4638–3]

RIN 2070–AB78

Pesticide Tolerance and Feed Additive Regulations for Hexakis (2-Methyl-2-Phenylpropyl)Distannoxane

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a pesticide tolerance for residues of the pesticide hexakis in or on the raw agricultural commodity marigolds and feed additive regulations for the processed feed commodities dried marigolds and marigold extract. The regulations to establish maximum permissible levels for residues of the pesticide in or on the commodities were requested by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: This regulation becomes effective September 15, 1993.

ADDRESSES: Written objections, identified by the document control number, [PP 0E3823 and FAP 0H5592/R2009], 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: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H7505W), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 7, 1993 (58 FR 36366), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition (PP) 0E3823 and feed additive petition (FAP) 0H5592 to EPA on behalf of the Agricultural Experiment Station of California. Pesticide petition 0E3823 requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), amend 40 CFR part 180 by establishing a tolerance for residues of the pesticide hexakis, (2-methyl-2-phenylpropyl)distannoxane, and its organotin metabolites, calculated as hexakis, in or on the raw agricultural commodity marigolds at 4 parts per million (ppm). Feed additive petition 0H5592 requested that the Administrator, pursuant to section 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348), amend 40 CFR part 186 by establishing a feed additive regulation for residues of hexakis and its organotin metabolites in or on the processed feed commodities dry marigolds and marigold extract at 25 parts per million.

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

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rules. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health and use of the pesticide with the feed additive regulation will be safe. Therefore, the tolerance and feed additive regulations are established as set forth below.

Any person adversely affected by these regulations 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 regulations 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 feed additive regulations or raising tolerance levels or feed additive regulations or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 180 and 186

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

Dated: August 25, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

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

PART 180—[AMENDED]

1. In part 180:

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

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

b. In § 180.362, by revising the section heading and amending paragraph (b) in the table therein by adding and alphabetically inserting a tolerance for regional registration for fresh marigolds, to read as follows:

§ 180.362 Hexakis (2-methyl-2-phenylpropyl)distannoxane; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million
Marigolds, fresh	4.0
* * * * *	

PART 186—[AMENDED]

2. In part 186:

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

Authority: 21 U.S.C. 348.

b. By revising § 186.3550, to read as follows:

§ 186.3550 Hexakis (2-methyl-2-phenylpropyl)distannoxane.

(a) Tolerances are established for combined residues of the insecticide hexakis (2-methyl-2-phenylpropyl)distannoxane and its organotin metabolites calculated as hexakis (2-methyl-2-phenylpropyl)distannoxane in the following processed feeds when present therein as a result of application of the insecticide to growing crops:

Commodity	Parts per million
Apple pomace, dried	75.0
Citrus pulp, dried	35.0

Commodity	Parts per million
Grape pomace, dried	100
Raisin waste	20

(b) Tolerances with regional registration, as defined in § 180.1(n) of this chapter, are established for residues of the pesticide hexakis in or on the following feed commodities:

Feed	Parts per million
Marigolds (dried and extract)	25.0

[FR Doc. 93-22114 Filed 9-14-93; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Part 186

[PP 3H5665/R2012; FRL-4640-9]

RIN 2070-AB78

Temporary Feed Additive Tolerance for Pentyl 2-Chloro-4-Fluoro-5-(3,4,5,6-Tetrahydrophthalimido) Phenoxyacetate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a temporary feed additive tolerance for residues of the herbicide pentyl 2-chloro-4-fluoro-5-(3,4,5,6-tetrahydrophthalimido) phenoxyacetate in or on the animal feed soybean hulls at 0.02 part per million (ppm). This regulation was requested by Valent U.S.A. Corp. and would establish the maximum permissible level for residues of the herbicide in or on this animal feed.

EFFECTIVE DATE: This regulation becomes effective September 15, 1993, and expires March 1, 1995.

ADDRESSES: Written objections, identified by the document control number, [PP 3H5565/R2012], 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: Joanne I. Miller, Product Manager (PM) 23, Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-7830.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 22, 1993 (58 FR 39180), EPA issued a proposed rule that gave notice that the Valent U.S.A. Corp., 1333 N. California Blvd., Suite 600, Walnut Creek, CA 95496, had submitted to EPA pursuant to section 409 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 348, feed additive petition (FAP) 3H5665, which proposed to amend 40 CFR part 186 by establishing a temporary feed additive regulation to permit residues of the herbicide pentyl 2-chloro-4-fluoro-5-(3,4,5,6-tetrahydrophthalimido) phenoxyacetate in or on the animal feed soybean hulls at 0.02 part per million (ppm).

On the basis of the information furnished by Valent U.S.A. Corp., an experimental use permit (EUP) has been issued for the pesticide under section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (86 Stat. 983). This permit authorizes the use of 45.95 pounds per year of the herbicide on soybeans for 2 years in the States of Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, Ohio, South Dakota, Tennessee, and Wisconsin.

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 feed additive regulation will protect the public health. Therefore, the feed additive 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 food/feed additive regulations or raising tolerance levels or food/feed additive regulations 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 186

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

Dated: August 27, 1993.

Douglas D. Campt,
Director, Office of Pesticide Programs.

Therefore, 40 CFR part 186 is amended as follows:

PART 180—[AMENDED]

1. In part 180:

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

Authority: 21 U.S.C. 348.

b. By adding new § 180.4725, to read as follows:

§ 186.4725 Pentyl 2-chloro-4-fluoro-5-(3,4,5,6-tetrahydrophthalimido) phenoxyacetate.

(a) A feed additive regulation is established permitting residues of the herbicide pentyl 2-chloro-4-fluoro-5-(3,4,5,6-tetrahydrophthalimido) phenoxyacetate in or on the following feed resulting from application of the herbicide to soybeans in accordance with an experimental program. The conditions set forth in this section shall be met.

Feed	Parts per million	Expiration date
Soybean hulls.	0.02	March 1, 1995.

(b) Residues in the feed not in excess of the established tolerance resulting from the use described in paragraph (a)

of this section remaining after expiration of the experimental program will not be considered to be actionable if the herbicide is applied during the term of and in accordance with the provisions of the experimental use program and feed additive regulation.

(c) The company concerned shall immediately notify the Environmental Protection Agency of any findings from the experimental use that have a bearing on safety. The firm shall also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the Environmental Protection Agency or the Food and Drug Administration.

[FR Doc. 93–22113 Filed 9–14–93; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 493

[HSQ–212–CN]

Medicare, Medicaid and CLIA Programs; Regulations Implementing the Clinical Laboratory Improvement Amendments of 1988

AGENCY: Health Care Financing Administration (HCFA) and Public Health Service (PHS), HHS.

ACTION: Final rule; correction.

SUMMARY: In the January 19, 1993 issue of the **Federal Register** (FR Doc. 93–1169) (58 FR 5215), we updated the rules concerning requirements of the Clinical Laboratory Improvement Amendments of 1988 (CLIA). We have identified an error in the text of the regulations and we are correcting it in this notice.

EFFECTIVE DATE: This correction is effective January 19, 1993.

FOR FURTHER INFORMATION CONTACT: Tracy Mummert, (410) 597–5904.

SUPPLEMENTARY INFORMATION: In **Federal Register** document 93–1169, (58 FR 5215), published on January 19, 1993, we changed the title of the definition of "State-exempt laboratory" to "CLIA-exempt laboratory." Since there was an existing definition of "CLIA-exempt laboratory," this inadvertently resulted in two definitions of "CLIA-exempt laboratory." We are correcting this by removing the original definition of "State-exempt laboratory."

Correction of Publication

Accordingly, the publication on January 19, 1993 of the final regulations, which were the subject of FR Doc. 93–1169, is corrected as follows:

§ 493.2 [Corrected]

On page 5221, beginning in column one, § 493.2, amendment 2.e., "In the definition of *State-exempt laboratory*, 'State-exempt' is revised to read 'CLIA-exempt' and placed in appropriate alphabetical order." Is revised to read, "The definition of *State-exempt laboratory* is removed."

Authority: Sec. 353 of the Public Health Service Act (42 U.S.C. 263a)

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program), Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 7, 1993.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 93–22520 Filed 9–14–93; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 43 and 61

[CC Docket No. 93–36, FCC 93–401]

Tariff Filing Requirements for Nondominant Common Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule [CC Docket No. 93–36, FCC 93–401], which was published Monday, August 23, 1993, [58 FR 44457]. The final rules specified the tariff filing requirements for domestic nondominant Carriers.

EFFECTIVE DATE: August 23, 1993.

FOR FURTHER INFORMATION CONTACT: Donna Lampert (202) 632–6365 or Daniel Gonzalez (202) 632–1299, Common Carrier Bureau, Policy and Program Planning Division.

NEED FOR CORRECTION: As published, the final rules proved to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of August 23, 1993 of the final rules [CC Docket No. 93–36, FCC 93–401] which were the subject of 58 FR 44457, is corrected as follows:

1. On page 44459, in the third column, in § 43.51, (a) introductory text is corrected to read as follows:

§ 43.51 Contracts and concessions.

(a) Any communications common carrier that is engaged in domestic communications and has not been classified as nondominant pursuant to § 61.3 of this chapter engaged in foreign communications, and enters into a contract with another carrier, including an operating agreement with a communications entity in a foreign point for the provision of a common carrier service between the United States and that point; must file with the Commission, within thirty (30) days of execution, a copy of each contract, agreement, concession, license, authorization, operating agreement or other arrangement to which it is a party and amendments thereto with respect to the following:

* * * * *

§ 61.22 Composition of Tariffs [Corrected].

2. On page 44460, in the second column, in section 61.22(b) on line 3 the term "203(c)" is corrected to read "203" and on line 6 the word "ranges" is corrected to read "rates".

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–22471 Filed 9–14–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 92–304; FCC 93–416]

Renewal Reporting Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Through this Report and Order, the Commission modifies FCC Form 303–S to require licensees of commercial AM, FM and TV broadcast stations to disclose, at the time their renewal applications are filed, whether or not their stations are on the air. This new requirement will enhance the ability of the Commission to continue to license broadcast stations in the public interest.

EFFECTIVE DATE: October 15, 1993.

FOR FURTHER INFORMATION CONTACT: David E. Horowitz, Policy and Rules Division, Mass Media Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION: The following is a synopsis of the Commission's Report and Order, in MM Docket No. 92–304, adopted August 20,

1992, and released September 1, 1992. The complete text of this Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, Inc. (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Synopsis of Report and Order

1. On December 30, 1992, the Commission released a Notice of Proposed Rule Making (Notice), 58 FR 3002 (January 7, 1993), which initiated this proceeding to consider whether to require licensees of certain types of broadcast stations to report on their license renewal applications the current status of their operations. In particular, the Commission proposed to modify FCC Form 303–S to require licensees of full power commercial AM, FM and TV stations to report, at the time their license renewal applications are submitted, whether their stations are on the air or have discontinued operations. The Commission has adopted this proposed change to FCC Form 303–S.

2. When the Commission adopted the Notice, it was aware of more than 200 commercial AM and FM stations that had discontinued operations. In the time since the adoption of the Notice, the Commission has seen the number of reported silent AM and FM stations grow to more than 300. Of these stations, a number have gone silent without timely notification to the Commission as required by its Rules. See 47 CFR 73.1740(a)(4). When the Commission is unaware that a station has gone off the air, the lack of information about a station's operations impairs the Commission's ability to properly discharge its responsibility to determine whether grant of the renewal would be in the public interest. For example, failure to provide notice of discontinued operations prevents the Commission from assessing whether the license has complied with its rules for ceasing broadcast service, whether the cessation of service is justified, and whether the licensee has developed an acceptable plan for resuming operations. Such considerations persuade the Commission that adoption of the proposed changes to FCC Form 303–S is warranted. The information gathered will be of substantial benefit to the Commission while imposing, at most, a minor burden on licensees.

3. Currently, Form 303–S contains various instructions and question-by-question guidelines. The general instructions provide basic information that is of use to the applicant, such as where and when the form should be filed and by whom, and who is required to pay a fee. The question-by-question guidelines, on the other hand, provide more detailed information that is intended to aid the applicant in properly completing each of the specific questions on the form. Where a particular question does not apply to certain applicants, the guideline for that question so explains. The Notice explicitly stated that noncommercial broadcast licensees would be excluded from the reporting requirement at issue here, and nothing in the record of this proceeding counsels a different approach. Thus, the Commission continues to believe that the reporting requirement adopted in this Report and Order should apply only to commercial broadcast stations. Consistent with that belief, and consistent with the format of the Form 303–S instructions, the Commission is amending these instructions to clearly state that the new question is limited to licensees of commercial AM, FM and TV broadcast stations. In addition, the Commission has altered the language of the new question from that specified in the *Notice* to make it clear that licensees must, under § 1.65 of the Commission's Rules, report any changes in the station's status during the pendency of their applications. Moreover, the Commission stresses that nothing in this Report and Order is intended to alter the ongoing, independent obligations of commercial and noncommercial licensees to comply with the rules for notifying the Commission or seeking FCC authorization in connection with discontinued operations.

Final Regulatory Flexibility Analysis

4. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

I. Need and purpose of this action: This Report and Order modifies FCC Form 303–S to solicit information as to the status of licensee's broadcast operations.

II. Summary of the issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis: There were no comments submitted in response to the Initial Regulatory Flexibility Analysis.

III. Significant alternatives considered and rejected: None.

5. The Secretary shall cause a copy of the Report and Order, including the Final Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981)

Ordering Clauses

6. Accordingly, it is *ordered, That* pursuant to the authority contained in sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154 and 303, FCC Form 303–S is amended as set forth below.

7. It is further *ordered, That* this Report and Order will become effective October 15, 1993.

List of Subjects in 47 CFR Part 73

Radio broadcasting, Television broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Appendix—Instructions for FCC Form 303–S

1. The instructions for FCC Form 303–S are amended by adding an explanation to question 10, to read as follows:

Instructions for FCC Form 303–S

Application for Renewal of License for Commercial and Noncommercial AM, FM or TV Broadcast Station

* * * * *

Question-by-Question Guidelines

* * * * *

Question 10. This question should be completed only by a commercial radio or television renewal applicant.

2. FCC Form 303–S is amended by adding question 10 to read as follows:

* * * * *

Application for Renewal of License for Commercial and Noncommercial AM, FM or TV Broadcast Station

* * * * *

10. For commercial AM, FM and TV applicants only: Is the station currently on the air? [ ] Yes [ ] No

If No, attach as Exhibit No. ____a statement of explanation, including the steps the applicant intends to take to restore service to the public.

(Approved by the Office of Management and Budget under control number 3060–0110)

[FR Doc. 93–22470 Filed 9–14–93; 8:45 am]

BILLING CODE 5712–01–M

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47 CFR Part 73

[MM Docket No. 93–140, RM–8169]

Radio Broadcasting Services; Miami, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 226C for Channel 226C1 at Miami, Florida, and modifies the license for Station WTMI (FM) to specify operation on Channel 226C, at the request of Marlin Broadcasting, Inc. See 58 FR 32503, June 10, 1993. Channel 226C can be allotted to Miami in compliance with the Commission's minimum distance separation requirements at Station WTMI (FM)'s licensed site. The coordinates for Channel 226C at Miami are North Latitude 25–57–59 and West Longitude 80–12–33. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 22, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–140, adopted August 20, 1993, and released September 7, 1993. The full text of this Commission decisien 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, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., room 246, or 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 226C1 and adding Channel 226C at Miami.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division; Mass Media Bureau.

[FR Doc. 93–22477 Filed 9–14–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–141]

Radio Broadcasting Services; Lebanon, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 265C3 for Channel 265A at Lebanon, Kentucky, and modifies the license for Station WLSK (FM) to specify operation on Channel 265C3, at the request of Lebanon-Springfield Broadcasting Company, Inc. See 58 FR 31687, June 4, 1993. Channel 265C3 can be allotted to Lebanon in compliance with the minimum distance separation requirements of the Commission's Rules with a site restriction of 17.9 kilometers (11.1 miles) southeast. The coordinates for Channel 265C3 at Lebanon are North Latitude 37–26–02 and West Longitude 85–08–43. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 22, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–141, adopted August 20, 1993, and released September 7, 1993. 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, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., room 246, or 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by removing Channel 265A and adding Channel 265C3 at Lebanon.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–22476 Filed 9–14–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket Nos. 89–488; RM–6932; 89–465; RM–6905, RM–7266, RM–7267]

Radio Broadcasting Services; Chenango Bridge, Norwich and Cincinnatus, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 281A to Chenango Bridge, New York, in response to a petition filed by Northeastern Broadcasting, Inc. See Notice of Proposed Rule Making, 54 FR 47688 (November 16, 1989). Additionally, this document also allots Channel 237A to Norwich in response to a petition filed by Craig L. Fox. See Notice of Proposed Rule Making, 54 FR 46634 (October 6, 1989). A proposal to allot Channel 237A to Cincinnatus, New York, is denied. Channel 281A can be allotted to Chenango Bridge in compliance with the Commission's minimum distance requirements at city reference coordinates, North Latitude 42–10–12 and West Longitude 75–52–24. Channel 237A can be allotted to Norwich with a site restriction of 2.5 kilometers (1.5 miles) southwest of the city. The coordinates for Channel 237A are North Latitude 42–31–04 and West Longitude 75–32–28. Canadian concurrence has been received for the allotments. With this action, this proceeding is terminated.

EFFECTIVE DATES: October 22, 1993. The window period for filing applications for Channel 237A at Norwich, New York, and Channel 281A at Chenango Bridge, New York, will open on October 25, 1993, and close on November 24, 1993.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket Nos. 89–465 and 89–488, adopted Aug. 25, 1993, and released Sept. 7, 1993. 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, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW. Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by adding Chenango Bridge, Channel 281A and by adding Norwich, Channel 237A.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–22478 Filed 9–14–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–16; RM–8163, RM–8228]

Radio Broadcasting Services; Remington and Falmouth, VA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Stafford County Broadcasting (RM–8228), allots Channel 283A to Falmouth, Virginia. Channel 283A can be allotted to Falmouth in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.9 kilometers (6.8 miles) northwest. The coordinates for Channel 283A at Falmouth are 38–22–43 and 77–34–29. The proposal filed by Mountain Air Broadcasting (RM–8163), see 58 FR 11205, February 24, 1993, requesting the allotment of Channel 283A to Remington, Virginia, is denied. With this action, this proceeding is terminated.

DATES: Effective October 22, 1993. The window period for filing applications will open on October 25, 1993, and close on November 24, 1993.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–16, adopted August 25, 1993, and released September 7, 1993. 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 contractor, ITS, Inc., (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Virginia, is amended by adding Channel 283A, Falmouth.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–22475 Filed 9–14–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 227

[Docket No. 930782–3182; I.D. 052493B]

Threatened Fish, Wildlife and Plants; Johnson's Seagrass

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

ACTION: Proposed rule.

SUMMARY: Based on a review of the status of the plant, Johnson's seagrass (*Halophila johnsonii*), NMFS believes that this species is threatened and proposed that it be added to the U.S. List of Endangered and Threatened Plants. NMFS used the best available scientific and commercial data to make this proposed determination.

DATES: Comments must be received by December 14, 1993. Requests for a public hearing must be received by November 1, 1993.

ADDRESSES: Send comments and requests for background reports to Dr. William W. Fox, Jr., Director, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Dean Wilkinson, Office of Protected Resources, NMFS, at 301/713–2322.

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.; (ESA)) is administered jointly by the U.S. Fish and Wildlife Service (USFWS), Department of the Interior, and NMFS. NMFS has jurisdiction over most marine species and makes determinations under section 4 of the ESA as to whether the species should be listed as endangered or threatened. The USFWS maintains and publishes the List of Endangered and Threatened Wildlife and Plants in 50 CFR part 17 for all species determined by NMFS or USFWS to be endangered or threatened. Lists of threatened and endangered species under the jurisdiction of NMFS also are contained in 50 CFR 227.4 and 222.23(a), respectively.

Summary of Status Review

When NMFS initiated the status review of Johnson's seagrass, a review of available scientific literature showed significant gaps in knowledge of the species that needed to be addressed before a determination could be made of the species' status. Without information on such parameters as reproduction and life history, determining whether the species warrants listing under the ESA would be problematic. Therefore, NMFS initiated a field research project in 1990 to address these gaps in information.

The status review involved an extensive literature review for all available historical information pertaining to the species; interviews with scientists and resource managers with known expertise on seagrasses, especially *Halophila* species, and the Indian River Lagoon area in Florida in particular; and extensive field work at three sites in the Indian River area during 1990–1992. Data were drawn from this same study in periods 1987–1990 (Kenworthy 1992). The primary study site was located in the central region of the species' geographical distribution at Hobe and Jupiter Sounds, located at the southern end of the Indian River Lagoon in Martin County, FL. Sebastian Inlet, the second study site, is an artificially stabilized inlet connecting the Indian River to the Atlantic Ocean. The inlet has been dredged since 1948 and is permanantly stabilized by jetties. The third study site was located at the Ft. Pierce Inlet, also artificially stabilized, which connects the lagoon to the nearshore shelf. The proposed determination is based on the results of a report developed at the conclusion of the study (Kenworthy 1993).

The report highlights a number of factors leading to the conclusion that Johnson's seagrass should be listed as threatened. The species is rare and has a limited geographic range, within which it is the least common seagrass species. Its range is limited to the east coast of Florida from Biscayne Bay to Sebastian Inlet. Small species such as *Halophila* have rapid turnover rates and limited energy storage; therefore, forms of sexual reproduction which maximize

the number of offspring are critical to the dispersal and survival of such species. Johnson's seagrass appears to reproduce only through asexual branching or apomixis. Thus, the species is particularly vulnerable to human or environmental perturbations because regrowth and reestablishment of populations would be significantly more difficult than for *Halophila* species with a sexual life history. Populations of Johnson's seagrass may be adversely affected by dredging, prop scoring, storm surge, altered water quality, siltation, and other factors. It is doubtful that the species would be capable of repopulation, if extirpated from an area. Copies of the report are available to the public (see **ADDRESSES**).

Eiseman and McMillan (1980) published the first description of Johnson's seagrass (*Halophila johnsonii*), 1 of 12 species of the genus *Halophila*. *Halophila* species are distinguished morphologically from other seagrasses in their possession of either a pair of stalked leaves without scales or a pseudo whorl of leaves. Identifying characteristics of *H. johnsonii* include smooth foliage leaves in pairs 10–20 mm long, a creeping rhizome stem, sessile (attached to their bases) flowers, and longnecked fruits. Most *Halophila* species are reduced in size, more shallow rooted, and have two to three orders of magnitude less biomass per unit area compared to all other seagrasses. Historically, *H. johnsonii* has been misidentified as two other species of the same genus: *H. decipiens* and *H. basillonis*. *H. johnsonii* can be distinguished from other *Halophila* species by ecologically functional morphological differences, depth distribution, basic physiological differences in photosynthetic rates, metabolic rates and responses to salinity, and isozyme differences.

The most outstanding difference between *H. johnsonii* and other species is its distinct differences in sexual reproductive characteristics. *H. decipiens* is a monoecious plant (has both female and male flowers on the same plant) and successfully reproduces and propagates by seed. *H. johnsonii*, in comarison, appears to be dioecious (has flowers of a single sex on the same plant), but the male flower has never been described either in the field or in laboratory culture. The absence of male flowers supports the hypothesis that sexual reproduction is absent in this species, and propagation must be exclusively vegetative. After periods of unfavorable environmental conditions of growth and vegetative branching, the regrowth and reestablishment of surviving populations of *H. johnsonii* would be significantly more difficult than for species with a sexual life history.

The genus *Halophila* is distributed world-wide in tropical and warm temperate waters. Based on published reports and discussions with seagrass experts, the distributional range of *H. johnsonii* is limited to the east coast of Florida from central Biscayne Bay (25° 45′ N. lat.) to Sebastian Inlet (27° 50′ lat.). Most recent surveys have established the northernmost distribution of *H. johnsonii* in the vicinity of Sebastian Inlet in the Indian River, FL. *H. johnsonii* is patchily distributed between St. Lucie and Sebastian Inlets and in relatively low abundance compared to *H. decipiens* and the larger seagrasses *Halodule wrightii, Syringodium filiform*, and *Thalassia testudinum*. Extensive *H. johnsonii* meadows have been documented inside Lake Worth Inlet. The southernmost distribution of *H. johnsonii* is reported to be in the vicinity of Virginia Key in Biscayne Bay (Eiseman and McMillan 1980). There have been no reports of this species outside the currently known southern distribution (Kenworthy and DiPiero 1990). Primarily intertidal, the species often grows with *H. wrightii* Aschers and is also found in pure stands. The species inhabits coarse sand substrates in tidal channels, indicative of its ability to tolerate strong currents and stabilize unconsolidated sand substrates.

H. johnsonii is the least abundant of the seagrass species in the study range and is distributed in patches that range in size from a few centimeters to hundreds of meters. Biomass, patch sizes, and leaf pair densities were always less than those measured in *H. decipiens*. All data from Hobe Sound demonstrated that *H. johnsonii* was the least abundant species in the community. In August 1989, *H. decipiens* coverage averaged 26 percent in the deeper water, exceeding the cover of *H. johnsonii* by a factor of 24, exemplifying *H. johnsonii's* patchy distribution. Demonstrative of its limited abundance, *H. johnsonii* ranked fifth in relative abundance of the six seagrasses in the lagoon, comprising only 2 percent of the total coverage. Similar values were reported for areal biomass at Sebastian Inlet compared to Hobe and Jupiter Sounds. In Jupiter Inlet, female flowers were irregular in distribution, varying in abundance and distribution seasonally from shallow to deep locations. The largest populations generally occur closet to inlets and diminish in abundance in the more interior areas of the lagoons.

Unlike *H. decipiens, H. johnsonii* grows in both the shallow intertidal zone and in the deeper subtidal zone. *Halophila* differs from other seagrasses by the occurrence of species in clear, deep (8–40 m) or shallow, turbid water where other seagrasses are unable to colonize or maintain stable populations for long periods of time.

Summary of Factors Affecting the Species

Section 4(a)(1) of the ESA and the NMFS listing regulations set forth procedures for listing species. The Secretary of Commerce (Secretary) must determine, through the regulatory process, if a species is endangered or threatened based upon any one or a combination of the following factors:

(1) The present or threatened destruction, modification, or curtailment of its habitat or range;

(2) Overutilization for commercial, recreational, scientific, or education purposes;

(3) Disease or predation;

(4) Inadequacy of existing regulatory mechanisms; or

(5) Other natural or human-made factors affecting its continued existence.

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Habitat within the limited range in which *H. johnsonii* exists is at risk to destruction by a number of human and natural pertubations including: (1) Dredging; (2) prop scoring; (3) storm surge; (4) altered water quality; and (5) siltation. Due to fragile nature of *H. johnsonii*'s shallow root system, the plants are vulnerable to human-induced disturbances in addition to major natural disturbances to the sediment, and their potential for recovery may be limited. The resultant destruction of the benthic community due to boating activities, propeller dredging and anchor mooring, was observed at all sites during the NMFS study. Further, this condition is expected to worsen with the predicted increase in boating activity. This severely disrupts the benthic habitat, breaching root systems and severing rhizomes, and significantly reducing the viability of the community. Maintenance dredging further jeopardizes critical habitat by redistributing sediments, burying plants, and destabilizing the bottom structure. By altering benthic topography or burying the plants, they may be removed from the photic zone. Because the most abundant populations are located in close proximity to inlets, they are likely to experience erosional forces and siltation associated with

severe storms. During hurricanes, storm surge may scour and redistribute sediments, thereby eroding and burying existing populations. The perennial nature and slower turnover rate has less of a potential for diminishing the negative effects of unsuitable environmental conditions imposed by dredging, boat traffic, siltation, and storm surge.

Turbidity is a critical factor in the distribution and survival of seagrasses, especially in deeper regions of the lagoon, where reduced photosynthetically active radiation (PAR) limits photosynthesis. Shallow regions are less affected by turbidity unless light is rapidly attenuated. In interior lagoonal areas where salinity is low, highly colored water typically is discharged via drainage systems. Stained waters attenuate shorter wavelengths rapidly, removing important PAR as well as potentially stressing plants due to the low salinity. This is a critical factor, especially in the vicinity of Sebastian and Ft. Pierce Inlets where freshwater reaches the flood tide delta and nearby seagrass meadows via canal systems that discharge into the lagoon.

Trampling due to human disturbance and increased land-use induced siltation can threaten viability of the species. Degradation of water quality due to human impact is also a threat to the welfare of seagrass communities. Nutrient overenrichment caused by inorganic and organic nitrogen and phosphorous loading via urban and agricultural land run-off, can stimulate increased algal growth that may smother the understory of *H. johnsonii*, shade rooted vegetation, and diminish the oxygen content of the water. Such low oxygen conditions have a demonstrated severe negative impact on seagrasses and associated communities. Continued and increased degradation of environmental quality also will have a detrimental effect upon *H. johnsonii* communities.

B. Overutilization for Commercial, Recreation, Scientific or Educational Purposes

There is no evidence that these activities have contributed to the decline of the species.

C. Disease or Predation

There are two known herbivores that occur in the range of *H. johnsonii*—the green sea turtle, *Chelonia mydas*, and the West Indian manatee, *Trichechus manatus*, both of which feed upon the seagrass. Herbivorous fish also feed upon the seagrass community. Predation pressures alone are not likely to be a threat to species existence.

D. Inadequacy of Existing Regulatory Mechanisms

Florida statutes that specifically and comprehensively protect seagrasses are: (1) Florida Statute (F.S.) 380.0552, Florida Keys area; protection and designation as area of special concern; and (2) F.S. 370.12, Marine animals; regulation giving Florida Department of Natural Resources the authority to adopt rules to protect manatee habitat, including seagrass beds, from "destruction by boats or other human activity." The Florida Administrative Code has rules in place that also protect seagrasses. They are: (1) Chapter 16D–2.003 and 16D–2.004, State and Park and Recreational Facilities; (2) Chapter 18–20.001 to 18–20.003: Florida Aquatic Preserves; and (3) Chapter 18–11: Sovereignty Submerged Lands Management. Distribution of *H. johnsonii* between Jupiter Inlet and Sebastian Inlet occurs entirely within Florida Aquatic Preserves. This particular legislation establishes that Aquatic Preserves are created to "preserve, promote and utilize indigenous life forms and habitats" including seagrasses. Distribution of *H. johnsonii* between Jupiter Inlet and Sebastian Inlet occurs entirely within Florida Aquatic Preserves.

Federal regulations which allow protection of seagrasses are issued under section 10 of the River and Harbors Act and section 404 of the Clean Water Act. The National Environmental Policy Act (NEPA) also contributes to seagrass protection by requiring an environmental evaluation for many projects involving wetlands. Recurring instances of the destruction of the diminutive *Halophila* species and associated habitat areas indicate that State and Federal regulatory mechanisms are not adequate to protect *Halophila*.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The existence of the species in a very limited range increases the potential for extinction from stochastic events. Natural disasters such as hurricanes could easily diminish entire populations and a significant percentage of the species. Seagrass beds that are in proximity to inlets are especially vulnerable to storm surge from hurricanes and severe storm events.

Critical Habitat

Section 4(a)(3) of the ESA, as amended, requires that, to the maximum extent prudent and determinable, the Secretary shall designate any habitat considered critical to the survival of a species that is listed as endangered or threatened concurrently with such a listing. Because the analyses required for proposing critical habitat differ from those of a listing proposal, the additional analyses could delay a listing. Therefore, NMFS has decided to proceed with the listing proposal now and will proceed with the designation of critical habitat in a separate proposed rule.

NMFS believes that this action is consistent with the intent of the 1982 amendments to the ESA: "The committee feels strongly, however, that, where the biology relating to the status of the species is clear, it should not be denied the protection of the Act because of the inability of the Secretary to complete the work necessary to designate critical habitat." H. Rep. No. 567, 97th Cong. 2d sess. 19 (1982).

Proposed Determination

NMFS believes that the available data support the proposed threatened classification for Johnson's seagrass. NMFS has determined that it is likely that this condition is caused by a number of factors specified under section 4(1)(a) of the ESA.

Classification

The 1982 Amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus*, 675 F. 2d 829 (6th cir., 1981), NMFS has categorically excluded all ESA listing actions from environmental assessment requirements of NEPA (48 FR 4413; February 6, 1984).

As noted in the Conference report on the 1982 amendments to the ESA, economic considerations have no relevance to determinations regarding the status of the species. Therefore, the economic analysis requirements of E.O. 12291 and the Regulatory Flexibility Act are not applicable to the listing process. Similarly, listing actions are not subject to the requirements of E.O. 12612.

This proposed rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

References

Eiseman, N.J. and C. McMillan. 1980. A new species of seagrass, *Halophila johnsonii*, from the Atlantic coast of Florida. Aquat. Bot. 9:15–19.

Kenworthy, W.J. and S. Dipiero. 1990. The distribution, abundance and ecology of *Halophila johnsonii*, *Halophila decipiens* and other seagrasses in the lower Indian

River, Florida. Annual report for FY 90 to the Office of Protected Resources. NMFS. Silver Spring, MD.

Kenworthy, W.J. 1992. Protecting fish and wildlife habitat through an understanding of the minimum light requirements of subtropical-tropical seagrasses of the Southeastern United States and Caribbean Basis. Ph.D. dissertation, N.C. State University, Raleigh. 258 pp.

Kenworthy, W.J. 1993. The Distribution, Abundance, and Ecology of *Halophila johnsonii* Eiseman in the Lower Indian River, Florida. Final Report to the Office of Protected Resources. NMFS. Silver Spring, MD.

List of Subjects

50 CFR Part 222

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine Mammals, Transportation.

Dated: September 9, 1993.

Gary Matlock,

Acting Deputy Assistant Administrator for Fisheries.

For the reasons set forth in the preamble, 50 CFR parts 222 and 227 are proposed to be amended as follows:

PART 222—ENDANGERED SPECIES

1. The authority citation for part 222 is revised to read as follows:

Authority: 16 U.S.C. 1531 et seq.

2. The heading for part 222 is revised to read as set forth above.

§§ 222.51–222.59 (Subpart F) [Reserved]

3. Part 222 is amended by adding a new subpart F, *Endangered Marine Plants*, consisting of reserved §§ 222.51–222.59.

PART 227—THREATENED SPECIES

4. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 et seq.

5. The heading for part 227 is revised to read as set forth above.

6. Section 227.4 is amended by adding paragraph (i) to read as follows:

§ 227.4 Enumeration of threatened species.

* * * * *

(i) Johnson's seagrass (*Halophila johnsonii*).

7. Part 227 is amended by adding a new subpart E to read as follows:

* * * * *

Subpart E—Threatened Marine Plants

Sec.

227.81 Prohibitions.
227.82 Exceptions.

Subpart E—Threatened Marine Plants

§ 227.81 Prohibitions.

Except as provided in § 227.82, the prohibitions of section 9(a)(2) of the Act (16 U.S.C. 1538) relating to endangered plants apply to any species of plant enumerated in § 227.4.

§ 227.82 Exceptions.

The exceptions of section 10 of the Act (16 U.S.C. 1539) and other exceptions under the Act relating to endangered species, and the provisions of regulations issued under the Act relating to endangered species (such as 50 CFR part 22, subpart C—Endangered Fish or Wildlife Permits), also apply to threatened species of plants enumerated in § 227.4 of this part. This section supersedes other restrictions on the applicability of 50 CFR part 222, including, but not limited to, the restrictions specified in §§ 222.2(a) and 222.22(a). Any general provisions that may be issued for the protection of marine plants under part 222, subpart F shall apply to plants enumerated in § 227.4 of this part.

[FR Doc. 93–22508 Filed 9–14–93; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 58, No. 177
Wednesday, September 15, 1993

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

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1944

RIN 0575–AB47

Farm Labor Housing Loan and Grant Policies, Procedures, and Authorizations

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its Farm Labor Housing (LH) Loan and Grant Regulations. The proposed rule changes the basic rules of the Labor Housing Regulations concerning packaging fees. These revisions are proposed to initiate the use of loan and grant funds to defray costs in packaging the development of an application for a nonprofit group or a public body.

DATES: Comments must be submitted on or before November 15, 1993.

ADDRESSES: Submit written comments in duplicate to the Chief, Regulation Analysis and Control Branch, Farmers Home Administration, U.S. Department of Agriculture, room 6348, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC 20250. All written comments made pursuant to this publication will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mary Fox, Loan Specialist, Special Authorities Branch, Multi-Family Housing Processing Division, Farmers Home Administration, USDA, room 5337—South Agriculture Building, Washington, DC 20250, telephone (202) 720–1606.

SUPPLEMENTARY INFORMATION:

Classification

This proposed rulemaking action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291 and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost of prices for consumers, individual industries, Federal, State or local Government agencies, or geographic regions. Furthermore, there will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States enterprises to compete with foreign based enterprises in domestic or import markets. This action is not expected to substantially affect budget outlay or affect more than one Agency or be controversial. The net result is to provide better service to rural communities and foster eligible applicant's greater use of the LH program.

Paperwork Reduction Act

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0575–0045 in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). This proposed rule does not revise or impose any new information collection requirement from those approved by OMB.

Civil Justice Reform

The proposed regulation has been reviewed in light of Executive Order 12778 and meets the applicable standards provided in sections 2(a) and 2(b)(2) of that Order.

Provisions within this part which are inconsistent with state law are controlling. All administrative remedies pursuant to 7 CFR part 1900 subpart B must be exhausted prior to filing suit.

Background

The Housing and Community Development Act of 1987 amended Section 501 of the Housing Act of 1949 to allow the Secretary to require that packaging fees for public and private nonprofit applicant organizations be included as an authorized development cost.

This rule change clarifies the use and amount of loan/grant funds for the payment of packaging assistance. The assistance is limited to reimbursement of packaging services provided by in-house personnel or by another nonprofit organization with experience in housing or community development.

Consistent with sound business practices, payments for assistance from the proceeds of loan/grant funds will be limited and documented in a services contract. If the services are performed by in-house personnel, there should be an FmHA approved plan for their assistance and documentation of when that assistance was performed.

It should be noted that these fees are paid only when the labor housing application is funded and the loan and/or grant agreement executed.

Environmental Impact Statement

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

Intergovernmental Review

This program/activity is listed in the Catalog of Federal Domestic Assistance under Number 10.405, Farm Labor Housing Loans and Grants, and as provided for in 7 CFR, part 1940 subpart J, is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program.

List of Subjects in 7 CFR Part 1944

Farm labor housing, Grant programs—Housing and community development, Loan programs—Housing and community development, Migrant labor, Nonprofit organizations, Public housing, Rent subsidies, and Rural housing.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is proposed to be amended as follows:

PART 1944—HOUSING

1. The authority citation for part 1944 continues to read as follows:

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

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures and Authorizations

2. Section 1944.158 is amended by revising paragraph (i) to read as follows:

§ 1944.158 Loan and grant purposes.

* * * * *

(i) Provide loan/grant funds to enable a nonprofit group or public body to pay fees for technical assistance received from a nonprofit organization, with housing and/or community development experience, to assist the nonprofit applicant entity in the formation or incorporation and development and packaging of its loan/grant docket and project, as well as any legal, architectural, engineering, technical, and professional fees incurred in the formation or incorporation of the nonprofit applicant entity.

(1) Fees can also be provided to pay the nonprofit applicant entity for packaging of its own loan/grant docket and project, but not to include the formation and incorporation of the entity.

(2) The amount to be paid for packaging the docket and project should not exceed 1% of the FmHA total loan and/or grant or whatever is reasonable and typical for the area.

(3) Related project costs as listed in § 1944.169 of this subpart are not included as a part of the fee for packaging of the loan/grant docket and project.

* * * * *

Dated: June 30, 1993.

Bob Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 93–22496 Filed 9–14–93; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–AGL–13]

Proposed Alteration of Jet Route J–34

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would change the description of Jet Route J–34 located between the Badger, WI, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC), the Grand Rapids, MI, Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME), and the Carleton, MI, VORTAC. The proposed change to the description would remove the reference to the radials from the navigational aids (NAVAIDS) and allow aircraft to navigate direct. This proposed rule would not affect the current alignment of the jet route. This action would improve navigation and simplify routings.

DATES: Comments must be received on or before November 8, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AGL–500, Docket No. 93–AGL–13, Federal Aviation Administration, O'Hare Lake Office Center, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, 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) 267–9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–AGL–13." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the description of J–34 by removing the reference to the radials from the NAVAIDS and allow aircraft to navigate direct. Amending the description of J–34 would improve navigation by designating the Grand Rapids, MI, (GRR) VOR/DME as the turning point for aircraft transiting over the Badger, WI, (BAE) VORTAC to deviate south to the Carleton, MI, (CRL) VORTAC. This action would simplify the routings along that segment of the jet route. This proposed rule would not alter the current alignment of the jet route. Jet routes are published in paragraph 2004 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 as of September 16, 1993 (58 FR 36298; July 6, 1993). The jet route listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed 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, when promulgated, 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

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 in effect as of September 16, 1993, 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 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–34 [Revised]

From Hoquiam, WA, via Olympia, WA; Moses Lake, WA; Helena, MT; Billings, MT; Dupree, SD; Redwood Falls, MN; Nodine, MN; Dells, WI; Badger, WI; Grand Rapids, MI; Carleton, MI; Dryer, OH; Bellaire, OH; INT Bellaire 133° and Kessel, WV, 276° radials; Kessel; to INT Kessel 097° and Armel, VA, 292° radials.

* * * * *

Issued in Washington, DC, on September 7, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–22547 Filed 9–14–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM93–4–000]

Standards for Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations

September 9, 1993.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of informal conference.

SUMMARY: The Federal Energy Regulatory Commission (Commission) will be holding an informal conference pursuant to the Notice of Informal Conferences issued on March 10, 1993 (58 FR 14530, March 18, 1993). The purpose of the conference is to receive a briefing from Working Group 5 on its progress toward a consensus approach to common transaction point codes.

DATES: Thursday, September 23, 1993, beginning at 1:30 p.m.

ADDRESSES: Federal Energy Regulatory Commission, Hearing Room 1, 810 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–1283.

Brooks Carter, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–0666.

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 3104, 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 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this notice 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 copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

Take notice that Commission staff will convene an informal conference on Thursday, September 23, 1993. The purpose of the conference is to receive a briefing from Working Group 5 on its progress toward a consensus approach to common transaction point codes.

The conference will begin at 1:30 p.m. on September 23, 1993. It will be held at: Federal Energy Regulatory Commission, Hearing Room 1, 810 First Street, NE., Washington, DC 20426.

All interested persons are invited to attend. For additional information contact Marvin Rosenberg at (202) 208–1283 or Brooks Carter at (202) 208–0666.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22484 Filed 9–14–93; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 840, 842, and 843

Availability of Petition To Initiate Rulemaking; Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; State Inspection and Enforcement Authority, Federal Inspection and Enforcement Authority

AGENCY: Office of Surface Mining Reclamation and Enforcement, Department of the Interior.

ACTION: Extension of public comment period.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior is extending until October 18, 1993, the public comment period on a petition for rulemaking submitted by the Interstate Mining Compact Commission. This will provide more time for all interested parties to analyze the complex and significant issues presented in this petition and better provide meaningful comments.

DATES: *Written Comments:* OSM will accept written comments on the petition until 5 p.m. Eastern Standard Time on October 18, 1993.

ADDRESSES: *Written Comments:* Hand deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 660, 800 North Capitol St., Washington, DC; or mail to the Office of Surface Mining

Reclamation and Enforcement, Administrative Record, 1951 Constitution Avenue, NW., room 660 NC, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Daniel Stocker, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240: Telephone: 202–208–2550.

SUPPLEMENTARY INFORMATION: On August 17, 1993 (58 FR 43494), OSM published in the Federal Register a petition for rulemaking submitted by the Interstate Mining Compact Commission requesting that Federal regulations at 30 CFR parts 840, 842 and 843 be amended to address the oversight role of OSM in States where a regulatory program approved by the Secretary of the Interior is in effect. The petition focuses on the treatment of citizen complaints alleging violations at surface coal mining and reclamation operations and on citizen complaints alleging that a State permitting decision does not conform to applicable regulatory program requirements.

The comment period for the petition was originally scheduled to close on September 16, 1993. However, an extension was requested in order to provide more time in which to comment on the petition. That extension request has been granted for an additional 30 days. Comments will not be accepted until 5 p.m. Eastern Standard Time on October 18, 1993.

Dated: September 10, 1993.

Brent Wahlquist,

Assistant Director, Reclamation and Regulatory Policy.

[FR Doc. 93–22518 Filed 9–14–93; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Parts 913, 917, and 935

Illinois, Kentucky, and Ohio Permanent Regulatory Programs; Revegetation Responsibility Period; Augmentative Practices

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of comment period on proposed amendments; proposed clarification of OSM policy.

SUMMARY: In the past, OSM has either disapproved or taken no action on proposed State program amendment provisions that would have specified that areas reclaimed following the removal of siltation structures and associated diversions and roads are not subject to a revegetation responsibility period and bond liability period separate from that of the permit area or increment thereof served by such facilities. However, in response to State program amendments recently proposed by Illinois, Kentucky, and Ohio, and concerns raised by other parties, OSM is announcing its intention to revise its policy so as to allow the approval of State program amendments of this nature. OSM is now seeking comment on this proposed policy clarification and, more specifically, whether the three State program amendment proposals now under consideration may be approved as being consistent with the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) and its implementing regulations.

This document sets forth the times and locations that the proposed amendments are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding a public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on October 15, 1993. If requested, a public hearing on the proposed amendment will be held at 10 a.m. on October 12, 1993 at a location to be determined after evaluation of the requests received. Requests to present oral testimony at the hearing must be received on or before 4 p.m. local time on September 27, 1993.

ADDRESSES: Written comments and requests for a hearing should be mailed or hand-delivered to one of the OSM Field Offices listed below or to W. Hord Tipton, Acting Director, Office of Surface Mining Reclamation and Enforcement, room 258, 1951 Constitution Avenue, NW., Washington, DC 20240.

Copies of the State programs, the proposed amendments, and all written comments received in response to this document will be available for review at the following addresses, Monday through Friday, 9 a.m. to 4 p.m. local time, excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendments by contacting the appropriate OSM Field Office(s) listed below.

Illinois

Office of Surface Mining Reclamation and Enforcement, Springfield Field Office, 511 West Capitol Avenue, Suite 202, Springfield, Illinois 62704, Telephone: 217–492–4495

Illinois Department of Mines and Minerals, 300 West Jefferson Street, Suite 300, Springfield, Illinois 62791, Telephone: 217–782–4970

Kentucky

Office of Surface Mining Reclamation and Enforcement, Lexington Field Office, 2675 Regency Road, Lexington, Kentucky 40503–2922, Telephone: 606–233–2894

Kentucky Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: 502–564–6940

Ohio

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232, Telephone: 614–866–0578

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H–3, Columbus, Ohio 43224, Telephone: 614–265–6675

FOR FURTHER INFORMATION CONTACT: Dennis Rice, Branch of State Programs, 202–208–2829.

SUPPLEMENTARY INFORMATION:

I. Background on State Programs
II. Discussion of Proposed Amendments
III. Discussion of Proposed OSM Policy
IV. Public Comment Procedures
V. Procedural Determinations

I. Background on State Programs

A. Illinois

The Secretary of the Interior conditionally approved the Illinois program on June 1, 1982. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the June 1, 1982, Federal Register (47 FR 23883). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 913.11, 913.15, 913.16, and 913.17.

B. Kentucky

The Secretary of the Interior conditionally approved the Kentucky regulatory program effective May 18, 1982. Background information on the permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the May 18, 1982, Federal Register (47 FR 21404). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 917.11, 917.13, 917.15, 917.16, and 917.17.

C. Ohio

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of Proposed Amendments

A. Illinois

By letter dated June 22, 1992 (Administrative Record No. IL–1192), Illinois submitted a proposed program amendment consisting of revisions to a number of its approved regulations. OSM announced receipt of the proposed amendment in the August 18, 1992, **Federal Register** (57 FR 37127), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on September 17, 1992. Since no one requested an opportunity to testify at a public hearing, the hearing scheduled for September 14, 1992, was cancelled.

By letter dated April 27, 1993 (Administrative Record No. IL–1207), Illinois submitted revisions to its proposed amendment in response to concerns raised by OSM in letters dated September 2, 1992, and October 2, 1992 (Administrative Record Nos. IL–1204 and IL–1205, respectively), and in response to comments received from other governmental agencies and individuals. OSM announced receipt of the revised amendment in the May 17, 1993, **Federal Register** (58 FR 28804), and, in the same notice, reopened the public comment period and again provided an opportunity for a public hearing. The public comment period closed on June 16, 1993. As with the previous submittal, no one requested an opportunity to testify at a public hearing; therefore, the hearing scheduled for June 11, 1993, was cancelled.

The proposed amendment includes revisions to §§ 1816.116(a)(2)(C) and 1816.116(a)(2)(C) of title 62 of the Illinois Administrative Code (IAC) to further define normal husbandry practices and other activities that will not restart the revegetation responsibility period. The amendment also includes a document explaining how the State intends to interpret and implement these rules. This policy document specifies that Illinois will consider the reseeding of areas from which temporary features such as sedimentation ponds, roads, and diversions have been removed after vegetation is established on the surrounding area to be nonaugmentative. In this notice, OSM is reopening the comment period only on this provision of the proposed policy document with regard to removal of sedimentation ponds and associated structures such as roads and diversions.

B. Kentucky

This amendment consists of proposed revisions to section 1(7) of the Kentucky Administrative Regulations (KAR) at 405 KAR 16:200 and 18:200. By letter dated June 28, 1991 (Administrative Record No. KY–1059), Kentucky submitted these revisions as part of a larger rulemaking. OSM announced receipt of the proposed amendment in the July 22, 1991, **Federal Register** (56 FR 33398), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on August 21, 1991. Since no one requested an opportunity to testify at a public hearing, no hearing was held.

By letter dated January 22, 1992 (Administrative Record No. KY–1107), Kentucky revised the proposed amendment in response to changes made during its promulgation process. OSM announced receipt of the revised amendment in the April 13, 1992, **Federal Register** (57 FR 12775), and, in the same notice, reopened the public comment period and again provided an opportunity for a public hearing. The public comment period closed on May 13, 1992. As with the previous submittal, no one requested an opportunity to testify at a public hearing; therefore, no hearing was held.

OSM subsequently announced its decision on most provisions of the proposed amendment in the June 9, 1993 **Federal Register** (58 FR 32283). However, in the same notice, OSM stated at 58 FR 32285 that it was deferring a decision on section 1(7)(b) of 405 KAR 16:200 and 18:200 until additional opportunity for public comment was provided in a separate **Federal Register** notice. The document being published today satisfies this commitment.

Like the corresponding Federal regulations at 30 CFR 816/817.116 (c)(1) and (c)(2), proposed section 1(7) of 405 KAR 16:200 and 18:200 requires that the revegetation responsibility period begin after the last augmented seeking, fertilizing, irrigating or other work and continue for a minimum of 5 years. However, proposed subsection 1(7)(b) would exempt haul roads, areas from which sedimentation ponds and associated diversions have been removed, and disposal areas for accumulated sediment and sedimentation pond embankment material from the full revegetation responsibility period, provided vegetation established on all these areas has been in place at least 2 years before final bond release.

In this notice, OSM is reopening the comment period only for the provisions discussed above; i.e., 405 KAR 16:200 section 1(7)(b) and 18:200 section 1(7)(b) with regard to areas from which sedimentation ponds and associated areas have been removed.

C. Ohio

By letter dated February 11, 1993 (Administrative Record No. OH–1831), Ohio submitted proposed Program Amendment Number 61 concerning augmentative practices. OSM announced receipt of this amendment in the April 1, 1993, **Federal Register** (58 FR 17173) and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on May 3, 1993. Since no one requested an opportunity to provide testimony at a public hearing, the scheduled hearing was cancelled.

By letter dated June 11, 1993 (Administrative Record No. OH–1888), Ohio submitted additional revisions to this proposed amendment. OSM announced receipt of the revised amendment in the July 6, 1993, **Federal Register** (58 FR 36177), and, in the same notice, reopened the public comment period and again provided an opportunity for a public hearing. The public comment period closed on July 21, 1993.

In this amendment, Ohio proposes to revise section 1501:13–9–15(F) of the Ohio Administrative Code (OAC) to clarify when replanting will not be considered an augmentative practice and will not restart the revegetation responsibility period. In paragraph (F)(6), Ohio is proposing to exempt areas reseeded following the removal of sedimentation control structures and areas disturbed to facilitate removal of these structures. Paragraph (F)(7) would require that permanent vegetation on all areas initially planted under paragraph (F)(6) be seeded a minimum of 12 months prior to submission of a request for phase III bond release.

In this notice, OSM is reopening the comment period only for the provisions discussed above; i.e., OAC 1501:13–9–15(F) (6) and (7) as originally submitted on February 11, 1993, and revised on June 11, 1993 with regard to removal of sedimentation ponds and associated areas.

III. Discussion of Proposed OSM Policy

On May 8, 1984 (finding 3.b., 49 FR 19472–73), OSM disapproved a proposed Missouri amendment somewhat similar to the Illinois, Kentucky, and Ohio amendments now under consideration. The proposed Missouri amendment would have clarified that roads, sediment ponds, diversions and small stockpiles of soil and overburden associated with such areas where reclamation was delayed would not be subject to a revegetation responsibility period distinct from that applicable to the permit area as a whole. In the finding disapproving this amendment, OSM stated that the Federal rules on reclamation of roads and siltation structures require that the areas occupied by such structures be reclaimed in accordance with 30 CFR 816.111 through 816.116, and that these rules provide no exceptions for small areas. "Thus, it would be inconsistent with the Act to allow areas as discrete as sediment ponds and roads to be considered part of larger areas for purposes of the liability period although the initial seeding, fertilization and irrigation of those areas will be delayed as much as three years." 49 FR 19473.

OSM seeks comment on whether this finding represents the best interpretation of the Act and regulations. Specifically, OSM is interested in whether Congress, in enacting section 515(b)(20) of SMCRA, intended to restart the revegetation responsibility period every time a small portion of the permit area requires reseeding or replanting. Section 515(b)(2) provides that the revegetation responsibility period for surface coal mining and reclamation operations shall commence "after the last year of augmented seeding, fertilizing, irrigation, or other work" needed to assure revegetation success. In the absence of any indication of Congressional intent in the legislative history, the Director is considering interpreting this requirement as applying to the increment or permit area as a whole, not individually to those lands within that area upon which revegetation is delayed solely because of their use in support of the reclamation effort of the planted area. Such an interpretation would not be entirely new. As implied in the preamble discussion of 30 CFR 816.46(b)(5), which prohibits the removal of ponds or other siltation structures until two years after the last augmented seeding, planting of the sites from which such structures are removed need not itself be considered an augmented seeding necessitating an extended or separate liability period (48 FR 44036–39, September 26, 1983).

One primary purpose of the revegetation responsibility period is to ensure that the mined area has been reclaimed to a condition capable of supporting the desired permanent vegetation. Achievement of this purpose will not be adversely affected by the proposed amendments since, in almost all cases, OSM expects that the lands involved will be relatively small in size and either widely dispersed or narrowly linear in distribution. Also, the delay in establishing revegetation on many of these sites is due not to reclamation deficiencies or the facilitation of mining, but rather to the regulatory requirement that ponds and diversions be retained and maintained to control runoff from the planted area until the revegetation is sufficiently established to render such structures unnecessary for the protection of water quality.

In addition, the areas affected likely would be no larger than those which could be reseeded (without restarting the revegetation responsibility period) in the course of performing normal husbandry practices, as that term is defined in 30 CFR 816.116(c)(4) and 817.116(c)(4) and explained in the preambles to those rules (53 FR 34636, 34641; September 7, 1988; 52 FR 28012, 28016; July 27, 1987). Areas this small would have a negligible impact on any evaluation of the permit area as a whole. Most importantly, the proposed interpretation is unlikely to adversely affect the regulatory authority's ability to make a statistically valid determination as to whether a diverse, effective permanent vegetative cover has been successfully established in accordance with the appropriate revegetation success standards. From a practical standpoint, it is usually difficult to identify precisely where such areas are located in the field once revegetation is established in accordance with the approved reclamation plan.

However, nothing in this interpretation of section 515(b)(20) of SMCRA should be construed as exempting such lands from meeting the revegetation requirements of section 515(b)(19) of SMCRA prior to final bond release. As required by 30 CFR 816.46(b)(6) and 816.150(f)(6), when situation structures and roads are removed, the land on which they were located must be regraded and revegetated in accordance with the reclamation plan and the requirements of 30 CFR 816.111 through 816.116.

The State program amendments now under consideration for OSM approval under this policy change would allow the revegetation responsibility period for areas initially planted following the removal of sedimentation ponds and associated structures and facilities which have been retained for a portion of the revegetation responsibility period to support reclamation of and/or provide access to an otherwise revegetated site to coincide with the revegetation responsibility period for the remainder of the increment or permit area.

OSM is now seeking comment on whether State program amendment provisions, which would specify that areas reclaimed following the removal of situation structures and associated diversions and roads are not subject to a revegetation responsibility period and bond liability period separate from that of the permit area or increment thereof served by such facilities, can be approved through the State program amendment process as being no less stringent then SMCRA and no less effective than the Federal regulations, or whether national rulemaking is necessary. Commenters are encouraged to address each category (sedimentation ponds, roads, and diversions) separately, provide input on any other classes of disturbances, structures or facilities which may be treated similarly, and indicate whether OSM should place limits on the extent to which these categories may be treated in this fashion or whether such determinations should be left to the discretion of the regulatory authority in keeping with section 101(f) of SMCRA, which vests the States with the primary governmental responsibility for developing, authorizing, issuing, and enforcing regulations for surface coal mining and reclamation operations.

IV. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comment on whether the identified provisions of the amendments proposed by Illinois, Kentucky, and Ohio, as discussed in Parts II and III above, satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the pertinent State programs. OSM is also seeking comment on the proposed policy change discussed in Part III above. Commenters should be specific as to whether their

comments pertain to the general policy change or a particular State program amendment.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the OSM offices listed under **ADDRESSES** will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing.

Persons wishing to comment at a public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. on September 27, 1993. If no one requests an opportunity to comment at a public hearing, the hearing will not be held. Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

If a public hearing is held, it will continue until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM offices listed under **ADDRESSES** by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or the appropriate Field Office Director. All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the administrative record.

V. Procedural Determinations

Executive Order No. 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the review required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this proposed rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this proposed rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This proposed rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 et seq.

Regulatory Flexibility Act

The Department of the Interior has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The State submittals which are the subject of this proposed rule are based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this proposed rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this proposed rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Parts 913, 917, and 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 9, 1993

W. Hord Tipton

Acting Director.

[FR Doc. 93–22519 Filed 9–14–93; 8:45 am]

BILLING CODE 4310–05–M

National Park Service

36 CFR Part 7

RIN 1024–AB82

Commercial Traffic on U.S. Highway 191 Through Yellowstone National Park

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rulemaking is intended to clearly define the management and regulation of commercial traffic on U.S. Highway 191 through Yellowstone National Park. U.S. Highway 191 has historically been accorded treatment different from other roads in the park, and as a federally funded highway it is maintained within Yellowstone by the State of Montana under the provisions of a Special Use Permit. The proposed rulemaking will, in part, exempt the section of U.S. Highway 191 within Yellowstone National Park from the general prohibition on the use of the National Park System roads by commercial vehicles. It will delete the special regulation establishing the speed limit on U.S. Highway 191 within Yellowstone, which is no longer necessary since the authority of the Superintendent to designate speed limits upon all park roads is currently established in general regulation 36 CFR 4.21(b). The designated speed limit on U.S. Highway 191 will continue to be 55 m.p.h. unless further information develops in the future that strongly indicates that a lower speed limit is in the best interest of public safety. The special regulation establishing the current fee schedule for commercial traffic within Yellowstone will be eliminated and the Superintendent will be provided the discretion to require

permits for commercial vehicles traveling within or through the park, to establish terms and conditions of such permits, and to establish and adjust fees for such use annually based on current administrative costs. Under existing conditions, there is no intention to require a permit for routine commercial traffic traveling on U.S. Highway 191 through the park. The proposed rule will prohibit the transportation of hazardous materials on park roads, including U.S. Highway 191 within Yellowstone, except in limited circumstances.

DATES: Written comments, suggestions, or objections will be accepted until November 15, 1993.

ADDRESSES: Comments should be directed to: Superintendent, Yellowstone National Park, P.O. Box 168, Yellowstone National Park, Wyoming 82190.

FOR FURTHER INFORMATION CONTACT: Dan R. Sholly, Chief Ranger, P.O. Box 168, Yellowstone National Park, Wyoming 82190, Telephone: 307–344–2101.

SUPPLEMENTARY INFORMATION:

Background

These regulations are proposed by the National Park Service to define the management and regulation of commercial traffic on U.S. Highway 191 within Yellowstone National Park. U.S. Highway 191 passes through the northwest corner of Yellowstone National Park for approximately twenty-two miles. It is a federally funded highway and is maintained within Yellowstone by the State of Montana under the provisions of a Special Use Permit issued by the National Park Service (Yellowstone National Park).

The wagon road which eventually became U.S. Highway 191 was constructed through Yellowstone in 1910 with the approval of the Secretary of the Interior at the sole expense of Gallatin County, Montana. The road was constructed to facilitate travel and commerce between residents in the southern portion of Gallatin County and the county seat located in Bozeman, Montana. Park records indicate that on its completion, the seventeen miles of road within the park were excluded from the existing prohibition against automobile travel within the park. Although automobile travel was not allowed within the park until 1915, the following memorandum of May 31, 1913, states:

> Automobiles will be allowed to travel over the wagon road between Gallatin Station, Yellowstone National Park, and the town of Yellowstone [West Yellowstone], Montana, of which seventeen miles lie wholly within the park.

The Superintendent's annual report for 1913 and 1914 states, in part:

> This is the only road in the park on which motor propelled vehicles are allowed and it is not a part of the regular tourist route.

This distinction between U.S. Highway 191 and the remainder of the park roads was further clarified in the early regulations governing automobile traffic in the park, which first appeared in 1916 and contained the following reference to travel on U.S. 191:

> 2. These regulations and schedules do not apply to automobiles passing over the county road in the northwest corner of the park en route to the town of Yellowstone [West Yellowstone], Montana.

The intent to exempt U.S. Highway 191 from the general regulations related to commercial vehicles which govern other park roads is indicated in § 5.4 of title 36 of the Code of Federal Regulations chapter 1 (1992) which states that the commercial transportation of passengers by motor vehicles except as authorized under a contract or permit from the Secretary or his authorized representative is prohibited in * * * Yellowstone (prohibition does not apply to non-scheduled tours as defined in § 7.13 of this chapter, nor to that portion of U.S. Highway 191 traversing the northwest corner of the park) * * *

The use of U.S. Highway 191 has since expanded to include interstate travel, both private and commercial, between Montana and Idaho, and it serves as a link between major east/west and north/south interstate highway systems. However, local traffic, both commercial and non-commercial, remains the predominate use of U.S. Highway 191.

From its inception, the purpose, historical use, and management of U.S. Highway 191 indicate that the highway was constructed, regulated, and maintained as a connecting route between Bozeman and West Yellowstone, Montana, for the principal purposes of commerce and convenience and only incidentally for access to Yellowstone National Park. A small portion of the commercial vehicle traffic between Bozeman and West Yellowstone, Montana, involves the transportation of hazardous materials, primarily gasoline. It is the intent of the National Park Service to continue to allow such transportation when it is necessary for access to lands within or adjacent to the park including West Yellowstone, or in emergency situations as determined by the park Superintendent.

Under the proposed regulation, the transportation of hazardous materials on park roads, including U.S. Highway 191 within the park boundary, will be prohibited. However, the National Park Service may continue to allow such transportation on park roads when it is necessary to provide access to otherwise inaccessible lands within or contiguous to the park, or in emergency situations as determined by the park Superintendent.

In response to significant public interest in the management and regulation of commercial traffic on U.S. Highway 191 within Yellowstone National Park, the park conducted three public meetings, as follows:

September 4, 1987—Big Sky, Montana
September 29, 1987—West Yellowstone, Montana
September 30, 1987—Bozeman, Montana

Following the public meetings, the record was left open for written comments until October 15, 1987. Public input was also received during review of two environmental assessments prepared for regulation of commercial traffic. Those reviews occurred in March, 1990 and in October and November, 1991. Input received during the public meetings, comments received thereafter, and continued National Park Service review of the issues are reflected in this proposed rule.

Existing Conditions

All commercial traffic is currently allowed on U.S. Highway 191 within Yellowstone National Park.

According to statistics provided by the Montana Department of Highways, the average daily traffic (ADT) count by section on U.S. Highway 191 at Milemarker 31, the northern boundary of Yellowstone National Park, has increased from 995 vehicles in 1981 to 2060 vehicles in 1991. During this eleven year period, the ADT count for commercial traffic at the same location has increased from 165 vehicles in 1981 to 407 vehicles in 1991. During the eleven year period, commercial traffic has comprised 17% of total traffic on U.S. Highway 191 through the park.

By comparison, statistics provided by the National Park Service indicate that annual park visitation has increased from 2.54 million visitors in 1981 to 3.19 million visitors in 1991. The parkwide ADT count on all park roads combined, excluding U.S. Highway 191, has increased from 2256 vehicles in 1981 to 2765 vehicles in 1991. Non-recreational traffic, with includes trades people, delivery trucks, and non-NPS

government officials having business in the park, and Cooke City, Montana residents and related commercial vehicles that have "pass-through" status, has comprised 4% of the total traffic during this same period.

Two studies (Anderson and Anderson, 1986; and National Park Service, 1988) indicate that "hazardous cargos" (U.S. Department of Transportation definition) comprise 7–14% of the commercial traffic, or 1–2% of the total traffic, on U.S. Highway 191 within Yellowstone National Park. The majority of this traffic consists of fuel deliveries between Bozeman, Montana, and Idaho Falls, Idaho.

Conclusion

Based on recent available data, the impact of commercial traffic on U.S. Highway 191 within Yellowstone National Park is not sufficient to compel the National Park Service to preclude commercial traffic on U.S. Highway 191. The National Park Service recognizes the potential hazard posed by the transportation of hazardous materials through the park and will take actions to prohibit such cargoes. The proposed regulation would ban all commercial vehicles carrying hazardous materials that require placarding or marine pollutants that require marking according to U.S. Department of Transportation regulations from traveling U.S. Highway 191 through Yellowstone National Park unless such transportation is necessary for access to lands within or adjacent to the park, where access is not otherwise available, or in emergency situations as determined by the park Superintendent.

Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding this proposed regulation to the address noted at the beginning of this rulemaking.

Drafting Information

The principal authors of this proposed rulemaking are Assistant Chief Ranger Michael B. Murray, and West District Ranger Robert Seibert, Yellowstone National Park.

Paperwork Reduction Act

The collections of information contained in this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024–0026. The information will be used to document and authorize special uses of public land that are otherwise restricted. Permits are necessary to determine whether a proposed activity is authorized by law and to evaluate the potential effects on park resources. Response is required to obtain a benefit in accordance with 36 CFR 7.13.

Public reporting burden for this information is estimated to average one-half hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Information Collection Officer, National Park Service, 800 N. Capitol Street, Washington, DC 20002; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Compliance With Other Laws

The National Park Service prepared two environmental assessments for regulation of commercial traffic on U.S. Highway 191. The first was released for public review in 1990. Since that assessment did not fully analyze alternative routes, impacts to commodity distribution, and other economic factors, a revised environmental assessment was prepared. The latter assessment was made available for public review October 16, 1991 through December 1, 1991. On July 31, 1992, the National Park Service signed a Finding of No Significant Impact (FONSI) for the proposal, which would allow commercial traffic on U.S. Highway 191, but prohibit the transportation of hazardous materials requiring placarding through Yellowstone National Park. Copies of these Environmental Assessments are available from the Chief Ranger's Office at the above address.

The Service has determined that this rulemaking is not a "major rule" within the meaning of Executive Order 12291 (46 FR 13193; February 19, 1981).

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601*et seq.*) which became effective January 1, 1981, the Service has determined that these proposed regulations will not have a significant economic effect on a substantial number of small entities, nor will they require the preparation of a regulatory analysis. The proposed regulations would impose no significant costs on any class or group of small entities. This conclusion is based on the fact that no existing uses are being curtailed, except for the proposed prohibition on a very small percentage of vehicles which are carrying hazardous materials.

The Department of the Interior has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778.

List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, it is proposed to amend 36 CFR chapter I as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

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

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. Section 7.13 is amended revising paragraph (a), removing and reserving paragraph (c), and revising the heading of paragraph (f) to read as follows:

§ 7.13 Yellowstone National Park.

(a) *Commercial vehicles.* (1) Notwithstanding the prohibition of commercial vehicles set forth in § 5.6 of this chapter, commercial vehicles are allowed to operate on U.S. Highway 191 in accordance with the provisions of this section.

(2) The Superintendent may require a permit and establish terms and conditions in accordance with § 1.6 of this Chapter for the operation of a commercial vehicle on a park road. The Superintendent may charge a fee for permits in accordance with a fee schedule established annually.

(3) The transporting on park roads, including U.S. Highway 191, of any substance or combination of substances, including any hazardous substance, hazardous material, or hazardous waste that requires placarding or any marine pollutant that requires marking, as defined in 49 CFR subtitle B, is prohibited; provided, however, that the Superintendent may issue permits for the transportation of such substance or combination of substances, including hazardous waste, in emergencies, and shall issue permits when such transportation is necessary for access to lands within or adjacent to the park area to which access is otherwise not available.

(4) The operator of a motor vehicle transporting any hazardous substance,

hazardous material, hazardous waste, or marine pollutant in accordance with a permit issued under this section is not relieved in any manner from complying with all applicable regulations in 49 CFR subtitle B, or with any other State or Federal laws and regulations applicable to the transportation of any hazardous substance, hazardous material, hazardous waste, or marine pollutant.

(5) Operating without, or violating a term or condition of, a permit issued in accordance with this section is prohibited. In addition, violating a term or condition of a permit may result in the suspension or revocation of the permit.

* * * * *

(c) [Removed and Reserved]

* * * * *

(f) *Commercial passenger-carrying vehicles.* * * *

Dated: July 27, 1993.

Herbert S. Cables, Jr.,

Acting Director, National Park Service.

[FR Doc. 93–22480 Filed 9–14–93; 8:45 am]

BILLING CODE 4310–70–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MT9–1–5490 & MT13–1–5693; FRL–4729–9]

Clean Air Act Approval and Promulgation of PM_{10} Implementation Plan for Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes full approval of the State implementation plan (SIP) submitted by the State of Montana to achieve attainment of the national ambient air quality (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}). The SIP was submitted by Montana to satisfy certain federal requirements for an approvable nonattainment area PM_{10} SIP for Missoula. EPA is also proposing approval of the Missoula City-County Air Pollution Control Program, except several rules regarding emergency procedures, permitting, open burning, wood-waste burners, new source performance standards, hazardous air pollutant standards, and variances. EPA will propose separate action on these rules when the State fulfills its commitments. If the State fails to fulfill its commitments, EPA will take appropriate action. Further, EPA is declining to take action on Missoula's odor provisions.

DATES: Comments on this proposed action must be received in writing by October 15, 1993.

ADDRESSES: Comments should be addressed to Amy Platt, 8ART–AP, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado.

Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations: Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2405; and Montana Department of Health and Environmental Sciences, Air Quality Bureau, Cogswell Building, Helena, Montana 59620–0901.

FOR FURTHER INFORMATION CONTACT: Amy Platt at (303) 293–1769.

SUPPLEMENTARY INFORMATION:

I. Background

The Missoula, Montana area was designated nonattainment for PM_{10} and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act, upon enactment of the Clean Air Act Amendments of 1990.[1] See 56 FR 56694 (Nov. 6, 1991); 40 CFR 81.327 (Missoula and vicinity). The air quality planning requirements for moderate PM_{10} nonattainment areas are set out in subparts 1 and 4 of part D, title I of the Act.[2] The EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under Title I of the Act, including those State submittals containing moderate PM_{10} nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of title I advanced in this proposal and the supporting rationale. In this rulemaking action on the Montana moderate PM_{10} SIP for the Missoula nonattainment area, EPA is proposing to apply its interpretations considering the specific factual issues presented. Thus, EPA will consider any timely submitted comments before taking final action on this proposal.

Those States containing initial moderate PM_{10} nonattainment areas were required to submit, among other things, the following provisions by November 15, 1991:

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modelling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

4. Provisions to assure that the control requirements applicable to major stationary sources of PM_{10} also apply to major stationary sources of PM_{10} precursors except where the Administrator determines that such sources do not contribute significantly to PM_{10} levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the Act.

Some provisions are due at a later date. States with initial moderate PM_{10} nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM_{10} by June 30, 1992 (see section 189(a)). Such States also must submit contingency measures by November 15, 1993 that become effective without further action by the State or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM_{10} NAAQS by the applicable statutory deadline. See section 172(c)(9) and 57 FR 13543–44.

II. Today's Action

The Governor of Montana submitted the Missoula PM_{10} SIP on June 4, 1992, and requested that EPA take action on the June 4, 1992 submittal, together with the August 20, 1991 submittal (described below) as the entire Missoula PM_{10} SIP. Except as noted below, EPA is proposing approval of the Missoula City-County Air Pollution Control Program as adopted by the State of

[1] The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Pub. L. 101–549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended ("the Act"). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. 7401, *et seq.*

[2] Subpart 1 contains provisions applicable to nonattainment areas generally and subpart 4 contains provisions specifically applicable to PM_{10} nonattainment areas. At times, subpart 1 and subpart 4 overlap or conflict. EPA has attempted to clarify the relationship among these provisions in the "General Preamble" and, as appropriate, in today's notice and supporting information.

Montana on June 28, 1991 and submitted to EPA by Montana's Governor on August 20, 1991, with amendments submitted by the Governor in the Missoula PM_{10} SIP on June 4, 1992. EPA is proposing approval of the Missoula City-County Air Pollution Control Program regulations except the following provisions (as explained below): Chapter IX—Subchapter 4, Emergency Procedures; Subchapter 11, Permit, Construction & Operation of Air Contaminant Sources; Subchapter 13, Open Burning; Subchapter 14, Rule 1407, Wood-Waste Burners, Rule 1423, Standard of Performance for New Stationary Sources (NSPS), and Rule 1424, Emission Standards for Hazardous Air Pollutants (NESHAPs); and Chapter X, Variances.

To address deficiencies (except the variances issue) identified by EPA, the State took commitments through the public hearing process on November 23, 1992, and submitted the commitments to EPA as additional tasks to be completed to correct the deficiencies in the Missoula and statewide SIP (a more detailed discussion of these commitments can be found in the Technical Support Document (TSD) for this notice). None of the rules associated with these commitments has an impact on the attainment demonstration, credited control strategies in the Missoula PM_{10} SIP, or other federal Clean Air Act SIP requirements for the Missoula moderate PM_{10} nonattainment area due to EPA on November 15, 1991. Therefore, EPA will take separate action on these identified deficient subchapters of Chapter IX of the Missoula City-County Air Pollution Control Program when these commitments are fulfilled, and also will address the variances chapter at that time. If the State fails to fulfill its commitments, EPA will take appropriate action.

Further, EPA is declining to take action on Chapter IX, Subchapter 14: Rule 1427, Control of Odors in Ambient Air. These odor provisions do not have a reasonable connection to the NAAQS-related air quality goals of the Clean Air Act.

The remaining rules of the program are being proposed for approval in today's action as part of the PM_{10} SIP.

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565–66). In today's action, EPA is proposing to grant approval of those elements of the Missoula PM_{10} plan that were due on November 15, 1991, and submitted by the State on June 4, 1992. EPA believes that the Missoula plan meets those applicable requirements of the Act.

Since the Missoula PM_{10} SIP was not submitted by November 15, 1991, as required, EPA made a finding of failure to submit pursuant to section 179 of the Act and notified the Governor in a letter dated December 16, 1991. See 57 FR 19906 (May 8, 1992). After the Missoula PM_{10} SIP was submitted on June 4, 1992, EPA found the submittal complete pursuant to section 110(k)(1) of the Act and notified the Governor accordingly in a letter dated December 11, 1992. This completeness determination corrected the State's failure and turned off the sanctions clock under section 179 of the Act.

A. Analysis of State Submission

1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[3] Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see Section 110(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V (1992). The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA six months after receipt of the submission.

To entertain public comment on the implementation plan for Missoula, the State of Montana, after providing adequate notice, held a public hearing on June 28, 1991, for the local air pollution control program, and hearings were held on January 24, March 20, and November 23, 1992, to address the Missoula PM_{10} SIP. Following the public hearings, the local air pollution control plan and the Missoula PM_{10} SIP were adopted by the State. The submittal for the local air pollution control program was signed by the Governor on August 20, 1991, and received by EPA on August 26, 1991 as a proposed revision to the SIP. In a letter to the State dated December 4, 1991, EPA identified deficiencies with the local program. Some of these deficiencies were addressed with the Missoula PM_{10} SIP, which was submitted by the Governor to EPA on June 4, 1992. Commitments to correct outstanding deficiencies were signed by the Governor on November 30, 1992, and received by EPA on December 7, 1992. EPA believes it is appropriate to propose approval of this SIP even though deficiencies are still outstanding because the deficiencies do not affect the attainment demonstration, any of the control strategies adopted by the State, or other federal Clean Air Act SIP requirements for the Missoula moderate PM_{10} nonattainment area due to EPA on November 15, 1991. EPA will continue to track the State's progress in correcting the deficiencies to assure that they are completed. A detailed description of the Missoula City-County regulations and the deficiencies that EPA identified is contained in the TSD for this action.

The SIP revisions were reviewed by EPA to determine completeness in accordance with the completeness criteria set out at 40 CFR part 51, appendix V. The submittals were found to be complete and letters dated December 4, 1991 and December 11, 1992 were forwarded to the Governor indicating the completeness of the submittals and the next steps to be taken in the review process. EPA proposes to approve the Montana PM_{10} SIP submittals for Missoula, as dated August 20, 1991 and June 4, 1992, and invites public comment on the action.

2. Accurate Emission Inventory

Section 172(c)(3) of the Act requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. The emission inventory also should include a comprehensive, accurate, and current inventory of allowable emissions in the area. Because the submission of such inventories is necessary to an area's attainment demonstration (or demonstration that the area cannot practicably attain), the emission inventories must be received with the demonstration submission (see 57 FR 13539).

Missoula's base year emission inventory was developed for November 1986 through March 1987. This winter-spring time period was chosen because these months are traditionally when Missoula experiences the highest PM_{10} levels and exceedances of the 24-hour standard. The results were segregated into winter and spring emissions. For the winter period, area sources

[3] Also section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

accounted for 91.6% of the PM_{10} emissions in the inventory area, with re-entrained road dust contributing 47.3% and residential wood burning contributing 44.3%. Louisiana-Pacific Corporation's particle board manufacturing facility, the largest point source located in the grid area, contributed 4.9%. For the spring period, re-entrained road dust accounted for 81.5% of the total emissions, residential wood burning contributed 15.5%, and the Louisiana-Pacific source contributed only 1.7%.

Although Stone Container Corporation is located outside the nonattainment area, the chemical mass balance study identified its recovery boilers as PM_{10} sources. The emission inventory indicated that Stone Container emits 4332.1 lbs. of PM_{10} per day.

EPA is proposing to approve the emission inventory because it is accurate and comprehensive, and provides a sufficient basis for determining the adequacy of the attainment demonstration for this area consistent with the requirements of sections 172(c)(3) and 110(a)(2)(K) of the Act.[4] For further details see the TSD.

3. RACM (Including RACT)

As noted, the initial moderate PM_{10} nonattainment areas must submit provisions to assure that RACM (including RACT) are implemented no later than December 10, 1993 (see sections 172(c)(1) and 189(a)(1)(C)). The General Preamble contains a detailed discussion of EPA's interpretation of the RACM (including RACT) requirement (see 57 FR 13539–45 and 13560–61).

Five sources/source categories were identified as contributing to the PM_{10} nonattainment problem in Missoula. In the following table, an outline is presented on these sources/source categories, their control measures and associated emissions reduction credit in the 24-hour attainment and maintenance demonstrations, and effective dates.

Source	Control	PM_{10} emissions reduction	Effective
Re-entrained road dust.	Missoula County Rule 1401 (7):		6/28/91.
	Sanding & chip sealing standards and	36%	
	Street sweeping and flushing requirements	34%	
	Missoula County Rule 1401 (9)		3/20/92.
	Liquid de-icer requirements	85%	
	Combined controls	62% or 17,962 lbs/day	
Residential wood combustion.	Missoula County Rule 1428: Regulation for solid fuel burning devices.	(no credit taken)	6/28/91 with amendments effective 3/20/92.
Prescribed burning	Missoula County Rule 1310 (3): Regulation for prescribed wildland open burning	(no credit taken)	6/28/91.
Industry	Permit modifications:		
	Reduced allowable PM_{10} emissions from Stone Container recovery boiler #5.	9% or 50.8 tpy fewer allowable PM_{10} emissions.	1/23/92.
	Reduced allowable PM_{10} emissions from Louisiana-Pacific particle board dryers.	72% or 274.4 tpy fewer allowable PM_{10} emissions.	1/23/92.
Motor vehicle exhaust	Federal tailpipe standards	10.9% (1988 through 1994 time period)	Ongoing due to fleet turnover.
		1.0% (1995 through 1997 time period)	

A more detailed discussion of the individual source contributions, their associated control measures (including available control technology) and an explanation of why certain available control measures were not implemented, can be found in the TSD. EPA has reviewed the State's documentation and concluded that it adequately justifies the control measures to be implemented. The implementation of Montana's PM_{10} nonattainment plan for Missoula will result in the attainment of the PM_{10} NAAQS by December 31, 1994. By this notice EPA is proposing to approve the Missoula PM_{10} plan's control strategies as satisfying the RACM, including RACT, requirement.

[4] EPA issued guidance on PM_{10} emissions inventories prior to the enactment of the Clean Air Act Amendments in the form of the 1987 PM_{10} SIP Development Guideline. The guidance provided in this document appears to be consistent with the revised Act.

4. Demonstration

As noted, the initial moderate PM_{10} nonattainment areas must submit a demonstration (including air quality modelling) showing that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or the State must show that attainment by December 31, 1994 is impracticable (see section 189(a)(1)(B) of the Act). The General Preamble sets out EPA's guidance on the use of modelling for PM_{10} moderate area attainment demonstrations (see 57 FR 13539). Montana conducted an attainment demonstration using receptor modelling (CμB) and rollback modelling analysis for Missoula. The 24-hour PM_{10} NAAQS is 150 micrograms/cubic meter (μg/m³), and the standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 μg/m³ is equal to or less than one (see 40 CFR 50.6). The annual PM_{10} NAAQS is 50 μg/m³, and the standard is attained when the expected annual arithmetic mean concentration is less than or equal to 50 μg/m³ (lid.)

The demonstration for Missoula indicates that the 24-hour PM_{10} NAAQS will be attained by 1995[5] at 142.1 μg/m³, and it is maintained in future years. Although the design concentration for the annual standard is below the NAAQS and an attainment demonstration was not necessary (i.e., Missoula is in attainment for the annual standard), the State never the less performed an attainment demonstration for the annual NAAQS. The

[5] The Clean Air Act calls for attainment by December 31, 1994. Section 188(c)(1). EPA interprets the State's demonstration as providing for attainment by January 1, 1995. EPA is proposing to approve the State's demonstration on the basis of the de minimis differential between the two dates. The State should promptly inform EPA if EPA has in any manner misinterpreted the date by which the State has demonstrated attainment in the Missoula nonattainment area.

demonstration indicated that the annual concentration is 45.3 μg/m³ by 1995, showing continued attainment of the annual PM_{10} NAAQS. The demonstration also showed that the PM_{10} NAAQS will be maintained in future years by predicting a 24-hour design concentration of 145.2 μg/m³, and an annual design concentration of 46.2 μg/m³ by 1998. The control strategies used to achieve these design concentrations are summarized in the section titled "RACM (including RACT)." For a more detailed description of the attainment demonstration and the control strategies used, see the TSD for this notice.

5. PM_{10} Precursors

The control requirements that are applicable to major stationary sources of PM_{10} also apply to major stationary sources of PM_{10} precursors, unless EPA determines such sources do not contribute significantly to PM_{10} levels over the NAAQS in that area (see section 189(e) of the Act). The General Preamble contains guidance addressing how EPA intends to implement section 189(e) (see 57 FR 13539–40 and 13541–42). An analysis of air quality and emissions data for the Missoula nonattainment area indicates that exceedances of the NAAQS are attributable chiefly to direct particulate emissions from re-entrained road dust and residential wood burning (i.e., area sources). Neither the emission inventory nor the CMB analysis for Missoula revealed any major stationary sources of PM_{10} precursors. Consequently, EPA is proposing to find that major sources of precursors of PM_{10} do not contribute significantly to PM_{10} levels in excess of the NAAQS. The consequences of this proposed finding are to exclude these sources from the applicability of PM_{10} nonattainment area control requirements. Further discussion of the analyses and supporting rationale for EPA's proposed finding are contained in the TSD accompanying this notice. Note that while EPA is proposing to make a general finding for this area, today's proposed finding is based on the current character of the area including, for example, the existing mix of sources in the area. It is possible, therefore, that future growth could change the significance of precursors in the area. The EPA intends to issue future guidance addressing such potential changes in the significance of precursor emissions in an area.

6. Quantitative Milestones and Reasonable Further Progress

The PM_{10} nonattainment area plan revisions demonstrating attainment must contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate RFP, as defined in section 171(1), toward attainment by December 31, 1994 (see section 189(c) of the Act). The State of Montana's PM_{10} SIP indicates that the Montana Department of Health and Environmental Sciences (MDHES) and the Missoula City-County Health Department (MCCHD) will submit to EPA a milestone report consistent with federal guidelines by this date. For the initial PM_{10} moderate nonattainment areas, the emissions reduction progress made between the SIP submittal (due date of November 15, 1991) and the attainment date of December 31, 1994 (46 days beyond the November 15, 1994 milestone date) will satisfy the first quantitative milestone. The de minimis timing differential makes it administratively impracticable to require separate milestone and attainment demonstrations. See generally 57 FR 13539.

To monitor the progress of the road dust control rules, a report will be completed on the type and amount of de-icing and sanding material applied, the number of applications of de-icing and sanding materials, the dates of application of each material, and where and when the street sweeping and flushing occurred during the winter season. The sanding material test results for the percent silt and durability also will be submitted.

All exceedances of the PM_{10} standard will be evaluated and a determination made as to the source of the exceedance. Changes in the air quality program to prevent further exceedances and a timetable for implementation will be developed. Any other EPA requirements for RFP reports will be incorporated as necessary.

7. Enforceability Issues

All measures and other elements in the SIP must be enforceable by the State and EPA (see sections 172(c)(6), 110(a)(2)(A) and 57 FR 13556). The EPA criteria addressing the enforceability of SIPs and SIP revisions were stated in a September 23, 1987 memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, et al. (see 57 FR 13541). Nonattainment area plan provisions also must contain a program to provide for enforcement of control measures and other elements in the SIP (see section 110(a)(2)(C)).

The specific control measures contained in the SIP are addressed above in Section 3, "RACM (including RACT)." The Missoula air pollution control regulations, as included in the SIP, are legally enforceable by MCCHD. There are civil penalties, which increase with each violation, for noncompliance with the solid fuel burning device regulation. Violation of any other provision, regulation or rule enforced under the program results in a criminal offense punishable by a fine.

The Missoula City-County Air Pollution Control Program and the associated local regulations are also enforceable by the MDHES, if the MCCHD fails to administer the program. Since the program has been approved by the Montana Board of Health and Environmental Sciences (MBHES) in accordance with Section 75–2–301 of the Montana Clean Air Act and effectuated by a MBHES order, and since the MDHES can enforce MBHES orders, the MDHES has independent enforcement powers. Enforcement provisions are found in the Clean Air Act of Montana, Sections 75–2–401–429, Montana Code Annotated.

The emission limits for Louisiana-Pacific are enforceable by the MDHES through air quality permit #2303–M with a final modification date of March 20, 1992. Stone Container's emission limits are enforceable by the MDHES through air quality permit #2589–M with a final modification date of November 25, 1992. Section 75–2–401 of the Montana Clean Air Act allows the MDHES to seek civil penalties for a violation of a permit limitation. Administrative Rules of Montana (ARM) 16.8.1112 allows the MDHES to revoke a permit for a violation of a permit limitation. These regulations are contained in the ARM 16.8.101 through 16.8.1602 and violations of these rules are punishable by civil penalties in an amount up to $10,000 per day and criminal penalties in an amount up to $1,000 per day.

If a State relies on a local government for the implementation of any plan provision, then, according to section 110(a)(2)(E)(iii) of the Act, the State must provide necessary assurances that the State has responsibility for ensuring adequate implementation of such plan provision. A State would have responsibility to ensure adequate implementation when, for example, the State has the authority and resources to implement the provision and the local entity has failed to do so.

The Missoula City-County Air Pollution Control Program was established in accordance with the requirements of Section 75–2–301 of the Montana Clean Air Act, as amended (1991). A revised version of the air pollution control regulations was approved by the Missoula City-County

Air Pollution Control Board on April 24, 1991, and on June 28, 1991 the MBHES issued a board order approving these regulations. A stipulation between the MDHES and the Missoula City-County Air Pollution Control Board that delineates responsibilities and authorities between the MDHES and the local authorities was signed April 29, 1991. The regulations, board order, and stipulation were submitted to EPA as a modification to the Montana SIP.

The State also submitted a State Attorney General's opinion interpreting the authority of the MDHES to enforce any state and local air quality provisions if a local air quality program fails to do so. In practice, the MBHES issues a board order when it approves a local program or amendments to a program. Since the Montana Clean Air Act authorizes the MDHES to enforce board orders issued by the MBHES, the MDHES has the authority to assume jurisdiction over, and implement, a local program so approved. However, the Montana Clean Air Act also requires a hearing before the MBHES before such an assumption of jurisdiction and authority can be taken.

The Missoula City-County rules are in effect now, as are the State's permit modifications for Stone Container and Louisiana-Pacific. The State of Montana has a program that will ensure that the measures contained in the Missoula PM_{10} SIP are adequately enforced. EPA believes that the State's and Missoula's existing air enforcement program will be adequate. The TSD for this notice contains further information on enforceability requirements, responsibilities, and a discussion of the personnel and funding intended to support effective implementation of the control measures.

8. Contingency Measures

As provided in section 172(c)(9) of the Act, all moderate nonattainment area SIPs that demonstrate attainment must include contingency measures. See generally 57 FR 13510–12 and 57 FR 13543–44. These measures must be submitted by November 15, 1993 for the initial moderate nonattainment areas. Contingency measures should consist of other available measures that are not part of the area's control strategy. These measures must take effect without further action by the State or EPA, upon EPA's determination that the area has failed to make RFP or attain the PM_{10} NAAQS by the applicable statutory deadline. The Missoula nonattainment area SIP contains steps to be taken if attainment of the PM_{10} standard is not achieved; however, for the reasons described below, these steps do not constitute a satisfaction of the contingency measures requirement.

The SIP calls for another CMB source apportionment study to be conducted to determine the significant source contribution causing nonattainment. It is assumed that the most significant contributor would be one of the following: Residential wood combustion, re-entrained road dust, industrial sources, or forestry slash burning. For each source, several control strategies are suggested for further evaluation.

Since the SIP does not provide for any of these measures to take effect without further action should EPA determine that Missoula has failed to achieve RFP or to attain the PM^{10} standard by December 31, 1994, EPA is taking no action at this time on the Missoula contingency measures. The State has until November 15, 1993 to submit its contingency measures.

III. Implications of Today's Action

EPA is proposing to approve the PM_{10} SIP submitted to EPA on June 4, 1992 for the Missoula, Montana nonattainment area. Among other things, the State of Montana has demonstrated that the Missoula moderate PM_{10} nonattainment area will attain the PM_{10} NAAQS by December 31, 1994.

EPA is also proposing to approve the Missoula City-County Air Pollution Control Program, as submitted on August 20, 1991 and June 4, 1992, except the following sections: Chapter IX: Subchapter 4, Emergency Procedures; Subchapter 11, Permit, Construction & Operation of Air Contaminant sources; Subchapter 13, Open Burning; Subchapter 14, Rule 1407, Wood-Waste Burners, Rule 1423, Standard of Performance for New Stationary Sources, and Rule 1424, Emission Standards for Hazardous Air Pollutants; and Chapter X: Variances. EPA will propose separate action on these sections when the State fulfills its commitments. If the State fails to fulfill its commitments, EPA will take appropriate action. Further, EPA is declining to take action on Subchapter 14: Rule 1427, Control of Odors in Ambient Air. These odor provisions do not have a reasonable connection to the NAAQS-related air quality goals of the Clean Air Act.

As noted, additional submittals for the initial moderate PM_{10} nonattainment areas (i.e., nonattainment New Source Review program requirements and contingency measures) are due independently of the submittal addressed in today's action. EPA will determine the adequacy of any such submittal as appropriate.

IV. Request for Public Comments

The EPA is requesting comments on all aspects of today's proposal. As indicated at the outset of this notice, EPA will consider any comments received by October 15, 1993.

V. Executive Order (EO) 12291

Under Executive Order 12291, this action is not "Major." OMB has exempted this rule from the requirements of section 3 of E.O. 12291.

VI. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600, *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the federal-state relationship under the Clean Air Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 12, 1993.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 93–22570 Filed 9–14–93; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[NM–16–2–5957; FRL–4729–1]

Conditional Approval and Promulgation of Implementation Plan; State of New Mexico Inspection and Maintenance (I/M) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: This action proposes to conditionally approve a revision to the New Mexico State Implementation Plan (SIP) for the attainment of National Ambient Air Quality Standard for carbon monoxide (CO) in the Albuquerque area. This revision provides for the adoption and implementation of a vehicle Inspection and Maintenance (I/M) program meeting all requirements of the EPA regulations, published in the Federal Register on November 5, 1992, concerning vehicle I/M programs. EPA is conditionally approving this SIP revision under the Clean Air Act (CAA), as amended in 1990. The proposed conditional approval is based on a commitment by the Governor to the timely adoption and implementation of an I/M program meeting all requirements of the I/M regulation, and upon submission of a schedule of implementation. A full SIP revision including legal authority to implement the program is required by November 15, 1993. This action also proposes in the alternative certain actions EPA will take if a full SIP revision is not submitted by November 15, 1993.

DATES: Comments must be received in writing on this proposed action on or before October 15, 1993.

ADDRESSEES: Comments should be submitted to the EPA at the address indicated below. Copies of the State's submittal and other relevant information are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day by contacting Chief, Planning Section (6T-AP), Air Programs Branch, Air, Pesticides, & Toxics Division, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone (214) 655–7214; or Environmental Health Department, Vehicle Pollution Management Division, 1500 Broadway, NE., Albuquerque, New Mexico 87102, Telephone (505) 764–1770.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P. E.; Air Programs Branch, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, telephone (214) 655–7247.

SUPPLEMENTARY INFORMATION:

Background

The Clean Air Act Amendments of 1990 require States to make changes to improve existing I/M programs or implement new programs. Section 182(a)(2)(B) required any marginal or worse ozone nonattainment area with an existing I/M program that was part of a SIP, or any area that was required previously by the CAA to have an I/M program, to immediately submit a SIP revision to bring the program up to the level of past EPA guidance or to what had been committed to previously in the SIP, whichever was more stringent. All carbon monoxide (CO) nonattainment areas were also subject to this requirement to improve existing or previously required programs to this level. In addition, under section 182(b)(4) all moderate and above ozone nonattainment areas must implement a basic I/M program, regardless of previous requirements.

In addition, EPA was directed to publish updated guidance for State I/M programs, taking into consideration findings of the Administrator's audits and investigations of these programs. All areas required by the CAA to have an I/M program were to incorporate this guidance into the SIP. Serious and worse ozone areas with populations of above 200,000 and CO nonattainment areas with design classifications above 12.7 ppm and populations of 200,000 or more, in addition to metropolitan statistical areas with populations of 100,000 or more in the northeast ozone transport region, were required to meet the EPA guidance for "enhanced" I/M programs. These areas were required to submit a SIP revision to incorporate an enhanced I/M program by November 15, 1992. The State of New Mexico and the Albuquerque/Bernalillo County Air Quality Control Board are required to implement a basic I/M program in Albuquerque.

Basis for Conditional Approval

EPA believes conditional approvals are appropriate in this case because the State could not be expected to begin developing an I/M program meeting the requirements of the CAA and the I/M regulation until the I/M regulation was adopted as a final rule, which occurred on November 5, 1992. EPA does believe that States can adopt revised I/M program plans within one year of the EPA's final rule.

As a condition of the EPA's proposed conditional approval, the I/M regulation requires that by November 15, 1993, a complete SIP revision be submitted which contains all of the elements in the implementation schedule, including authorizing legislation and implementing regulations. The proposed conditional approval in this action should not be interpreted as an approval of the program design features. In order to be considered complete and fully approvable, the 1993 submittal must include an analysis of the program using the most current EPA mobile source emission model demonstrating that the program meets the applicable performance standard, among other features.

I/M Regulation Requirements

Requirements for I/M programs were published in the Federal Register on November 5, 1992, under 40 CFR part 51, subpart S, (I/M Regulation). The I/M Regulation required each State that must implement an I/M program to submit by November 15, 1992, a SIP revision including two elements: a commitment from the Governor or his designee to the timely adoption and implementation of an I/M program meeting all requirements of the I/M regulation, and a schedule of implementation.

State Submittal

The State Governor submitted a committal SIP to EPA on November 5, 1992, for the Albuquerque nonattainment area in New Mexico. The Albuquerque/Bernalillo County Air Quality Control Board is authorized by the New Mexico State laws to plan, implement, and enforce all air quality provisions of the State and Federal statutes, and the Board adopted the committal SIP prior to the Governor's submittal. EPA designated Albuquerque as a moderate nonattainment area for CO with a design value of 11.2 ppm below 12.7 ppm. The State of New Mexico and the Board are required to implement a program meeting, at a minimum, the basic I/M program requirements in Albuquerque. A public hearing on this submittal was held by the Board on September 9, 1992, and October 7, 1992, and subsequently the Board adopted the committal SIP on October 7, 1992. The submittal includes a commitment to the timely adoption and implementation of a basic I/M program in the area meeting all requirements of the I/M regulations and the CAA, and a schedule of implementation which includes submission of a final full scale I/M program SIP revision by November 15, 1993.

Proposed Action

EPA is proposing to conditionally approve the New Mexico (Albuquerque) I/M committal SIP under section 110(k)(4) for the Albuquerque area. This proposed conditional approval is based on review and evaluation of the Governor's submissions of November 5, 1992, as commitments that the Board and State of New Mexico will submit a full I/M SIP revision including the legal authority to EPA no later than November 15, 1993. As indicated at the outset of this document, EPA will consider any comments from all parties received by October 15, 1993.

This proposal is also intended to clarify provisions of the CAA under sections 179(a), (b), and 110(c). EPA is required to take certain actions concerning deficient SIPs, nonsubmittals, and failure to comply with the schedule provided in the committal SIPs. If the State fails to adopt and submit the required regulations and legislative authority for the full SIP submittal which is due on November 15, 1993, EPA proposes in alternative to disapprove the commitment as failing to comply with section 110(k)(4). If the State fails to adopt or meet other applicable milestones in the commitment SIP schedule prior to EPA's final action on this proposal, EPA may disapprove the committal SIP as failing to comply with section 110(k)(4). This is because EPA believes New Mexico could not meet the November 15, 1993, submission date if it fails to meet the milestones included in the schedule.

If EPA takes final conditional approval on the commitment, the State must meet its commitment to adopt full I/M rules by November 15, 1993, and submit these rules to EPA within the time specified in its schedule. Once EPA has conditionally approved this commitment, if the State fails to adopt or submit the enabling authority and required rules to EPA by November 15, 1993, this approval will become a disapproval upon EPA notification of the State by a letter. At this time, this commitment will no longer be part of the approved Albuquerque nonattainment area SIP. EPA subsequently will notify the State and publish a notice in the notice section of the **Federal Register**, indicating that the committal SIP has been disapproved and removed from the SIP. If the State adopts and submits the required legislation and rules to EPA within the applicable time frame, the conditionally approved commitment will remain a part of the SIP until EPA takes final action approving or disapproving the new submittal. If EPA approves the subsequent submittal those newly approved rules will become a part of the SIP.

In addition, if after considering comments on the proposal, EPA issues a final disapproval for any reason cited above, or if the conditional approval is converted to a disapproval, the sanctions clock under section 179(a) will begin. This clock will begin at the time EPA issues a final disapproval or notifies the State by letter that a conditional approval has been converted to a disapproval. If the State does not submit a SIP, and EPA does not approve the SIP on which the disapproval was based within 18 months of the disapproval, EPA must impose one of the sanctions under section 179(b)—highway funding restrictions or the offset sanction. Also, the final disapproval triggers the Federal implementation plan requirement under section 110(c). Finally, pursuant to section 110(m), EPA has discretionary authority to impose sanctions at any time after a final disapproval.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et. seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Conditional approvals of SIP submittals under section 110 and 301 subpart I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing or has committed to impose in the future. Therefore, because the Federal SIP approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

If conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing State requirements applicable to small entities. Federal disapproval of the State submittal does not affect its State-enforceability. Moreover, the EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, the EPA certifies that such a disapproval will not have a significant impact on a substantial number of small entities because it does not remove existing State requirements nor does it substitute a new Federal requirement.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

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

Dated: August 30, 1993.

Joe D. Winkle,

Acting Regional Administator.

Title 40, part 52, of the Code of Federal Regulations is proposed to be amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart GG—New Mexico

2. A new § 52.1619 is added to read as follows:

§ 52.1619 Identification of plan–conditional approval.

(a) Revisions to the plan identified in § 52.1620 were submitted as specified in paragraph (a)(1) of this section.

(1) Revisions to the New Mexico State Implementation Plan (SIP) for motor vehicle inspection and maintenance Committal SIP as adopted by the Albuquerque-Bernalillo County Air Quality Control Board on October 7, 1992, were submitted by the Governor on November 5, 1992.

(i) Incorporation by reference.

(A) Board adoption/approval of October 7, 1992.

(ii) Additional material.

(A) A committal letter from the Governor dated November 5, 1992.

[FR Doc. 93–22571 Filed 9–14–93; 8:45 am]
BILLING CODE 6560–50–F

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40 CFR Part 721

[OPPTS–50582I; FRL–4570–2]

2,5-Dimercapto-1,3,4-thiadiazole, Alkyl Polycarboxylate; Proposed Revocation of a Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for a chemical substance based on receipt of new data. The data indicate that the substance will not present an unreasonable risk to health.

DATES: Written comments must be received by EPA by October 15, 1993.

ADDRESSES: All comments must be sent in triplicate to: TSCA Document Receipt Office (TS–790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-G99 401 M St., SW., Washington, DC 20460. Comments that are confidential must be clearly marked confidential business information (CBI). If CBI is claimed, three additional sanitized copies must also be submitted. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Comments should include the docket control number. The docket control number for the chemical substance in this SNUR is OPPTS–50582I. Unit III. of this preamble contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543A, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In the Federal Register of August 15, 1990 (55 FR 33296), EPA issued a SNUR establishing significant new uses for 2,5-dimercapto-1,3,4-thiadiazole, alkyl polycarboxylate. Because of additional data EPA has received for this substance, EPA is proposing to revoke this SNUR.

I. Proposed Revocation

EPA is proposing to revoke the significant new use and recordkeeping requirements for the following chemical substance under 40 CFR part 721 subpart E. In this unit, EPA provides a brief description for the substance, including its PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned), basis for the revocation of the section 5(e) consent order for the substance, and the CFR citation removed in the regulatory text section of this proposed rule. Further background information for the substance is contained in the rulemaking record referenced below in Unit IV.

PMN Number P–88–1460

Chemical name: (generic) 2,5-Dimercapto-1,3,4-thiadiazole, alkyl polycarboxylate.
CAS number: Not available.
Effective date of revocation of section 5(e) consent order: January 4, 1993.
Basis for revocation of section 5(e) consent order: The order was revoked based on test data submitted under the terms of the consent order. Based on the Agency's analysis of the submitted data, EPA found for purposes of TSCA section 5 that this substance will not present an unreasonable risk of injury to human health and concludes that further regulation under section 5 is not warranted at this time.
Toxicity testing results: An Ames study and micronucleus test were both negative. The oral LD50 is greater than 5 g/kg. The no-observed adverse effect level in the 28–day repeated dose oral study in rats is 50 mg/kg/day. At higher doses (250 and 1,000 mg/kg/day) there were mild effects to the liver and kidney, specifically hypertrophy and microscopic lesions.
CFR citation: 40 CFR 721.2460.

II. Background and Rationale of Proposed Revocation of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this proposed revocation, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health effects of the substance, and EPA identified the tests considered necessary to evaluate the risks of the substance. The basis for such findings is referenced in Unit I. of this preamble. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated.

EPA reviewed testing conducted by the PMN submitter for the substance and determined that the information available was sufficient to make a reasoned evaluation of the health effects of the substance. EPA concluded that, for the purposes of TSCA section 5, the substance will not present an unreasonable risk and subsequently revoked the section 5(e) consent order. The proposed revocation of SNUR provisions for this substance designated herein is consistent with the revocation of the section 5(e) order.

In light of the above EPA is proposing a revocation of SNUR provisions for this chemical substance. When this revocation becomes final, EPA will no longer require notice of any company's intent to manufacture, import, or process this substance.

III. Comments Containing Confidential Business Information

Any person who submits comments claimed as confidential business information must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a public version of the comments that EPA can place in the public file.

IV. Rulemaking Record

The record for the rule which EPA is proposing to revoke was established at OPPTS–50582 (P–88–1460). This record includes information considered by the Agency in developing this proposed rule and includes the test data that form the basis for this proposal.

V. Regulatory Assessment Requirements

EPA is proposing to revoke the requirements of § 721.2460. Any costs or burdens associated with this rule will be eliminated when the rule is revoked. Therefore, EPA finds that no costs or burdens must be assessed under Executive Order 12291, the Regulatory Flexibility Act (5 U.S.C. 605(b)), or the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: September 7, 1993

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 will continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.2460 [Removed]

2. By removing § 721.2460.

[FR Doc. 93–22565 Filed 9–14–93; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 721

[OPPTS–50589A; FRL–4570–5]

Ethane, 1,1-Dichloro-1-fluoro- ; Proposed Modification of Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to modify a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for a chemical substance based on a request to modify the SNUR and EPA's previous response to comments for a similar situation in a proposed SNUR.

DATES: Written comments must be received by EPA by October 15, 1993.

ADDRESSES: All comments must be sent in triplicate to: TSCA Document Receipt Office (TS–790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–G99, 401 M St., SW., Washington, DC 20460. Comments that are confidential must be clearly marked confidential business information (CBI). If CBI is claimed, three additional sanitized copies must also be submitted. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Comments should include the docket control number. The docket control number for the chemical substance in this SNUR is OPPTS–50589A. Unit IV. of this preamble contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543A, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 17, 1991 (56 FR 15784), EPA issued a SNUR establishing significant new uses for ethane, 1,1-dichloro-1-fluoro- (P–88–1303, P–88–2177, and P–90–212). Based on a request to modify the SNUR and EPA's previous response to comments for a similar situation in a proposed SNUR, EPA is proposing to modify this SNUR.

I. Background

EPA is proposing to modify the significant new use and recordkeeping requirements for the following chemical substance under 40 CFR part 721 subpart E. Further background information for the substance is contained in the rulemaking record.

PMN Numbers P–88–1303, P–88–2177, and P–90–212

Chemical name: Ethane, 1,1-dichloro-1-fluoro-.

CAS number: 1717–00–6.

Basis for modification to SNUR: EPA received a petition to modify the SNUR for this substance from a group of insulation board manufacturers and suppliers. EPA was asked to clarify if producers of rigid foam insulation made from this substance could be considered processors and subject to the recordkeeping requirements of § 721.125(c). Based on the fact that, in producing rigid foam insulation, this substance becomes encapsulated in the polyisocyanurate foam but does not undergo a chemical reaction, producers and distributors of such foam could be considered processors of the substance. Section 721.125(c) states: "Records documenting the names and addresses (including shipment destination address, if different) of all persons outside of the site of manufacture, importation, or processing to whom the manufacturer, importer, or processor directly sells or transfers the substance; the date of each sale of transfer; and the quantity of the substance sold or transferred on such date." EPA concurs with the modification request that such recordkeeping is overly broad and burdensome for purposes of this SNUR which is based on an exposure-based finding. EPA will eliminate the recordkeeping requirement of § 721.125(c) in the modified SNUR. In the **Federal Register** of February 6, 1992 (57 FR 4576), EPA reached the same conclusion in response to comments for the final rule for sulfurized alkylphenol. Consult that preamble for further explanation on EPA's rationale concerning recordkeeping requirements for § 721.125(c) for SNURs based on the exposure based finding.

CFR citation: 40 CFR 721.3200.

II. Objectives and Rationale of Proposing Modification of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this proposed modification, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health or environmental effects of the substance, and EPA identified recordkeeping requirements necessary to enforce this rule. The basis for such findings is discussed in the rulemaking record for this SNUR. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated. In light of the petition to modify the SNUR and EPA's response to a similar situation, EPA has determined that the recordkeeping requirement of § 721.125(c) is unnecessary to enforce the rule. The proposed modification of SNUR provisions for this substance designated herein is consistent with that determination.

III. Rulemaking Record

The record for the rule which EPA is proposing to modify was established at OPPTS–50589. This record includes information considered by the Agency in developing this proposed rule.

IV. Comments Containing Confidential Business Information

Any person who submits comments claimed as confidential business information must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a nonconfidential version of the comments that EPA can place in the public file.

V. Regulatory Assessment Requirements

EPA is proposing to modify the requirements of § 721.3200 by eliminating one of the recordkeeping requirements. Any costs or burdens associated with this rule will be reduced when the rule is modified. Therefore, EPA finds that no additional assessments of costs or burdens are necessary under Executive Order 12291,

the Regulatory Flexibility Act (5 U.S.C. 605(b)), or the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: September 8, 1993.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

The authority citation for part 721 will continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2635(c).

2. In § 721.3200 by revising paragraph (b)(1) to read as follows:

§ 721.3200 Ethane, 1,1-dichloro-1-fluoro-.

* * * * *

(b) * * *

(1) *Recordkeeping requirements:* The recordkeeping requirements as specified in § 721.125(a), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

* * * * *

[FR Doc. 93–22566 Filed 9–14–93; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 721

[OPPTS–50591D; FRL–4570–6]

Methane, Bromodifluoro-; Proposed Modification of Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to modify a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for a chemical substance based on a modification to the TSCA section 5(e) consent order regulating that substance.

DATES: Written comments must be received by EPA by October 15, 1993.

ADDRESSES: All comments must be sent in triplicate to: TSCA Document Receipt Office (TS–790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–G99, 401 M St., SW., Washington, DC 20460. Comments that are confidential must be clearly marked confidential business information (CBI). If CBI is claimed, three additional sanitized copies must also be submitted. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Comments should include the docket control number. The docket control number for the chemical substance in this SNUR is OPPTS–50591D. Unit III. of this preamble contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543A 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 25, 1991 (56 FR 19228), EPA issued a SNUR establishing significant new uses for methane, bromodifluoro- (P–89–1093). Because of the modification to the consent order for this substance, EPA is proposing to modify this SNUR.

I. Proposed Modification

EPA is proposing to modify the significant new use and recordkeeping requirements for the following chemical substance under 40 CFR part 721 subpart E. Further background information for the substance is contained in the rulemaking record referenced below in Unit IV.

PMN Number P–89–1093

Chemical name: Methane, bromodifluoro-.
CAS number: Not available.
Effective date of section 5(a) SNUR: September 28, 1990.
Basis for modification to SNUR: After the section 5(e) consent order and the SNUR were issued, EPA received a developmental toxicity study in rats and rabbits, a 28–day repeated exposure inhalation toxicity study in rats, and a cardiac sensitization study in dogs for the substance. Based on the results of these tests, the PMN submitter petitioned the Agency to remove additional testing requirements and to modify the use restrictions contained in the order. EPA recognizes that a modification to the existing use restrictions contained in the order are consistent with the Agency's policy of promoting the use of substitutes believed to present low risks to human health as well as reduced stratospheric ozone depletion potential relative to the halons being phased out.

Nonetheless, the Agency believes that the ozone depletion potential and hazard concerns presently associated with the PMN substance, although reduced relative to the halons for which it is intended to substitute, warrant certain use restrictions and required hazard communication language associated with the substance when distributed in commerce. As a result, EPA has allowed additional uses in the 5(e) consent order modification and is proposing to allow those additional uses in paragraphs (a)(2)(i) and (ii) of the SNUR.

EPA also notified the PMN submitter that, based on the results of the above mentioned data submitted on the PMN substance, and on chronic and neurotoxic data on structurally analogous fluorocarbons reviewed by the Agency subsequent to the effective date of the 5(e) consent order, the 90–day study with functional observational battery, motor activity, and neuropathology specified in the testing section of the 5(e) consent order was no longer required. There are no longer any hazard communication requirements in the SNUR or the corresponding 5(e) consent order for neurotoxicity. A 2–year two-species oral bioassay is still recommended to characterize potential carcinogenicity.
CFR citation: 40 CFR 721.4820.

II. Background and Rationale for Proposed Modification of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this proposed modification, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health and environmental effects of the substance, and EPA identified the tests considered necessary to evaluate the risks of the substance. The basis for such findings is referenced in Unit IV. of this preamble. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated.

In light of data received for the substance and data received for an analogous substance, which indicate that a 90–day study with functional observational battery, motor activity, and neuropathology is no longer necessary, the submitter petitioned, and EPA determined, that the test trigger requirement and use restriction was no longer appropriate and hence, was unnecessary to protect human health. The section 5(e) order modification eliminated the testing requirement and allowed additional uses. The proposed modification of SNUR provisions for this substance designated herein is consistent with the modification of the section 5(e) order.

III. Comments Containing Confidential Business Information

Any person who submits comments claimed as confidential business information must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a nonconfidential version of the comments that EPA can place in the public file.

IV. Rulemaking Record

The record for the rule which EPA is proposing to modify was established at OPPTS–50591. This record includes information considered by the Agency in developing the rule and includes the modification to the consent order that forms the basis for this proposal.

V. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this proposed rule will not be a "major" rule because it will not have an effect on the economy of $100 million or more, and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with the rule, EPA estimates that the cost for submitting a significant new use notice would be between $7,198 and $8,170, including a $2,500 user fee payable to EPA to offset EPA costs in processing the notice. In addition, EPA estimates that the cost of recordkeeping requirements for ongoing uses is $583 per year. EPA believes that, because of the nature of the rule and the substances involved, there will be few SNUR notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact will be limited because such factors are unlikely to discourage an innovation that has high potential value.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this proposed rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by the rule would likely be small businesses. However, EPA expects to receive few SNUR notices for the substances. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial, even if all of the SNUR notice submitters were small firms.

C. Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been approved by OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and have been assigned OMB control number 2070–0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Office of Management and Budget, Paperwork Reduction Project (2070–0012), Washington, DC 20503.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: September 8, 1993.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 will continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2635(c).

2. In § 721.4820 by revising paragraph (a)(2)(i) and (a)(2) (ii) to read as follows:

§ 721.4820 Methane, bromodifluoro-.

(a) * * *

(2) * * *

(i) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iv), (g)(1)(v), (g)(1)(vi), (g)(1)(vii), (g)(1)(ix), (g)(2)(ii), (g)(2)(iii), and (g)(5). In addition, the following statements shall appear on the label and MSDS: This substance may cause cardiotoxicity. Evacuate area before the concentration of this substance in the area reaches 1 percent. Residential use is prohibited due to cardiotoxic dangers. General consumer use is prohibited, with the exception of outdoor automotive use and outdoor marine use. Following discharge and evacuation, use protective gear (self-contained breathing apparatus) before reentering an area in which the airborne concentration of this substance exceeds 1 percent.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (Use in portable fire extinguishers intended for consumer use except for outdoor automotive use and outdoor marine use; use in fire extinguisher units with an Underwriters Laboratory (UL) rating of less than 5BC; use in other than rechargeable fire extinguisher units; use in occupied areas from which personnel cannot be evacuated before the concentration of the substance exceeds 1 percent or egress cannot occur within 30 seconds; or use without protective gear (self-contained breathing apparatus) being made available in the event that, following discharge of the substance and evacuation of the area, personnel must reenter an area in which the airborne concentration of the substance exceeds 1 percent.)

* * * * *

[FR Doc. 93–22567 Filed 9–14–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[GC Docket No. 92–52; DA 93–1064]

Reexamination of the Policy Statement on Comparative Broadcast Hearings

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Commission previously adopted a further notice of proposed rulemaking proposing to amend its regulations concerning procedures on transfer and assignment applications to require that successful applicants in comparative broadcast hearings hold

their stations for at least three years, instead of the current one-year requirement. By order of the Acting General Counsel the comment and reply dates have been extended one month. The intended effect of this action is to give members of the public additional time to comment on the Commission's proposals.

DATES: Comments must be filed on or before October 13, 1993; reply comments must be filed on or before October 28, 1993.

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

FOR FURTHER INFORMATION CONTACT: David S. Senzel, Office of General Counsel (202) 632–7220.

SUPPLEMENTARY INFORMATION:

Order

RM–7739; RM–7740; RM–7741

Adopted: August 31, 1993
Released: September 1, 1993

1. Before the Commission for consideration is a Request for Extension of Time, filed August 19, 1993, by Media Access Project (MAP).

2. On August 12, 1993, the Commission issued a further notice of proposed rulemaking in this proceeding. Reexamination of the Policy Statement on Comparative Broadcast Hearings, 58 FR 44484 (Aug. 23, 1993). The Commission proposed to amend 47 CFR 73.3597(a)(1) to require that successful applicants in comparative proceedings operate their stations for three years before they would become eligible to transfer them. The further notice established a comment date of September 13, 1993, and a reply date of September 28, 1993. MAP requests that the deadline for filing comments and reply comments in this proceeding be extended one month.

3. MAP asserts that the brief filing period specified in this proceeding coincides with strict statutory deadlines mandated by the 1992 Cable Act for other rulemakings. MAP contends that this conflict places an undue burden on interested groups such as MAP at a time of year when personnel shortages tend to occur. The public interest would be served by granting the requested extension.

4. Accordingly, *it is ordered*, Pursuant to the authority delegated under 47 CFR 0.251(b), that good cause having been shown, the Request for Extension on Time, filed August 19, 1993, by Media Access Project is granted.

4. *It is further ordered*, That the Comment Date in this proceeding is extended to October 13, 1993; and the Reply Date is extended to October 28, 1993.

Federal Communications Commission.

Renée Licht,

Acting General Counsel.

[FR Doc. 93–22469 Filed 9–14–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 572

[Docket No. 88–07; Notice 6]

RIN 2127–AD73

Anthropomorphic Test Dummy; Side Impact Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Termination of rulemaking proceeding.

SUMMARY: This notice terminates rulemaking regarding the possible specification of alternative test dummies in Standard No. 214, *Side Impact Protection*. Information available to NHTSA indicates the need for a substantially broader technical base to justify further rulemaking. While NHTSA is continuing its biomechanical research, this rulemaking is being terminated because it does not appear that sufficient data will be available in the near future.

FOR FURTHER INFORMATION CONTACT: Mr. Stan Backaitis, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–4912.

SUPPLEMENTARY INFORMATION: In October 1990, NHTSA amended Standard No. 214 *Side Impact Protection*, to add performance requirements and procedures for dynamically testing passenger cars. Under the new requirements and procedures, the ability of a passenger car to provide the desired improved protection is determined by measuring the crash forces experienced by the thoracic and pelvic regions of a specified side impact dummy (SID) in a full-scale crash test. NHTSA indicated at the time of the October 1990 final rule that if ongoing studies demonstrated that two alternative dummies, BioSID and/or EuroSID, compared satisfactorily to SID, the agency would consider proposing those dummies as alternative devices in the future.

On December 27, 1991, the agency published an Advance Notice of Proposed Rulemaking (ANPRM) to request comments on the desirability and need for specifying alternative dummies in Standard No. 214, and to obtain relevant technical data which could be used to support development of a possible Notice of Proposed Rulemaking (NPRM). NHTSA received 14 comments in response to the ANPRM. Comments were summarized by the agency and are available in Docket No. 88–07, Notice 4.

Commenters generally agreed that an improved dummy other than the SID is needed for improved side impact protection evaluation and certification. However, there was a great divergence of opinion as to the most appropriate eventual successor dummy to the SID. The majority of U.S. and Japanese respondents supported the development and use for certification of a single improved side impact dummy, but not its use as an alternative to the SID. Most commenters urged the consolidation of existing side impact dummies and the development of a single world-wide dummy most representative of humans. Commenters stated that such a dummy should reflect the latest biomechanical knowledge and promote international harmonization for common use in world markets. Commenters also believed that use of more than one dummy would permit selective manipulation of test results and would not be in the interests of occupant safety.

Most European respondents supported the use of alternative dummies, favoring the use of the EuroSID over the BioSID, with which they have not had any experience. According to Transport and Road Research Laboratory, the EuroSID–1 will become mandatory in the European side impact regulation as of October 1, 1995. Only Volkswagen advocated the use of the SID and EuroSID–1 as reciprocal alternatives being equally acceptable for certification in Europe and the U.S.

Commenters also raised issues relating to equivalency between the dummies. Commenters generally agreed that equivalence for TTI(d) might be difficult to establish between various dummy types. Commenters also stated that the dummies have different impact sensitivities, and that it is doubtful the differences can be successfully resolved. Advocates for Auto and Highway Safety stated that it would support approximate equivalence, as long as an alternative dummy had greater biofidelity and could monitor more injury potentials than the SID.

There was general agreement among the commenters that EuroSID–1 and the BioSID have higher levels of biofidelity than the SID. However, there was also

concern that certain other limitations would diminish the benefits of using a dummy with a higher level of biofidelity. NHTSA was urged to define biofidelity and the methods to evaluate it.

All respondents agree that the capability of a dummy to make measurements that would permit the detection of additional potential injuries was desirable. However, there was no consensus, beyond the measurement of chest compression, on which measurements were really needed and which were merely desirable.

In limited testing, as reported by several commenters, the repeatability, reproducibility, and durability of the two alternative dummies appear to be adequate under the test conditions evaluated. However, commenters stated that further testing was needed to assure that comparable repeatability is demonstrated under all impact conditions. Most respondents urged NHTSA to initiate an extensive test program to resolve these issues.

The need for harmonization was supported or implied by most commenters. However, there was no agreement on how harmonization should be accomplished. A single, internationally developed dummy appeared to be the preference of the majority.

After reviewing these comments, NHTSA has decided to terminate rulemaking on the use of alternative dummies in side impact compliance testing. The comments and available evidence indicate that available technical data are not sufficient to resolve the many outstanding issues regarding the suitability of the EuroSID or BioSID for side impact certification. Further research is needed on equivalency, biofidelity, repeatability, and the need for measurement of additional injury criteria.

In addition, the comments indicate support for abandoning the idea of using multiple dummies in favor of developing a single, best dummy selected on the basis of well-defined biomechanical response and acceptable performance criteria. When EuroSID becomes mandatory in Europe on October 1, 1995, the desire for harmonization would favor a decision to adopt the EuroSID–1 either as a sole dummy or as an alternative to the SID. Therefore, NHTSA has decided that a more extensive evaluation of the EuroSID–1 should be conducted to evaluate its suitability as an advanced test device, and its limitations, if any. If the EuroSID–1 proves suitable, it could become a viable candidate for harmonization. If rejected, the research could help establish the need for a single new dummy, based on the best features of the EuroSID–1 and the BioSID, or on a new concept developed from the biomechanical research findings and matching analytical tools.

NHTSA notes that the ANPRM was considered a "significant" rulemaking action under the Department of Transportation's regulatory policies and procedures, since it concerned a matter in which there is substantial public interest. However, the agency does not believe that there will be substantial public interest in this particular notice. Based upon the public comments, NHTSA believes that there is widespread agreement that further research is needed before issuing any proposal for an alternative side impact dummy.

While NHTSA is terminating this rulemaking, it emphasizes that it is continuing its biomechanical research. After the agency completes its evaluation of the existing dummies, a decision will be made as to whether the advanced dummy should be an entirely new dummy or a revision of one of the existing dummies. A candidate prototype dummy could then be developed and evaluated.

The agency encourages the industry and other interested organizations to participate and conduct their own evaluation and assessment of the available side impact dummies to establish their suitability for side impact assessment, for meeting the needs of design optimization, and for promoting international harmonization.

Issued on September 9, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–22501 Filed 9–14–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB91

Endangered and Threatened Wildlife and Plants; Determining Critical Habitat for the Colorado River Endangered Fishes: Razorback Sucker, Colorado Squawfish, Humpback Chub, and Bonytail Chub; Document Availability and Reopening of Public Comment Period

AGENCY: Fish and Wildlife Serve, Interior.

ACTION: Notice of document availability and reopening of public comment period.

SUMMARY: The Fish and Wildlife Service (Service) published a proposed rule on Friday, January 29, 1993 (58 FR 6578), to designate critical habitat for four species of endangered fishes: Razorback sucker (*Xyrauchen texanus*), Colorado squawfish (*Ptychocheilus lucius*), humpback chub (*Gila cypha*), and bonytail chub (*Gila elegans*). In addition, the Service recently completed a biological analysis of this proposed critical habitat desgination and prepared a Biological Support Document. The Service will provide a copy of this document to interested parties upon request. The public comment period has been reopened to receive comments on the Biological Support Document and will remain open until further notice.

DATES: The original comment period extended from January 29 through April 15, 1993. The comment period is now reopened until further notice.

ADDRESSES: Requests for copies of the Service's Biological Support Document that designates critical habitat for the four species of fishes and comments concerning the content of the document should be sent to the State Supervisor, U.S. Fish and Wildlife Service, 2060 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104–5110. Comments and material received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert D. Williams, Utah State Supervisor, at the above address, telephone (801) 975–3630.

SUPPLEMENTARY INFORMATION:

Background

On January 29, 1993, the Fish and Wildlife Service (Service) published a proposed rule (58 FR 6578) to designate critical habitat for four Colorado River fishes that are currently listed as endangered species under the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*): *Razorback sucker (Xyrauchen texanus)*, Colorado squawfish (*Ptychocheilus lucius*), humpback chub (*Gila cypha*), and bonytail chub (*Gila elegans*). The rule proposed amendment of 50 CFR 17.95, the section of the regulations that delineates critical habitat, and included maps and descriptions of the areas proposed as critical habitat for each of the four species. As part of the critical habitat designation process, the Service has held public hearings, received written oral comments on the proposed

designation, and now has prepared a Biological Support Document that details the biological analysis that the Service used in its proposal to determine critical habitat. The Service announces the availability of the Biological Support Document, notifying the public that it will furnish a copy of the document to all persons upon request.

The Service hereby reopens the public comment period on the critical habitat designation in order to receive comments pertaining to the Biological Support Document. Comments and other materials, as appropriate, may be sent to the above address.

The Service also is conducting an economic analysis of the critical habitat designation and will prepare an economic report. The biological and economic analyses will be summarized and the findings discussed in an overview document that also is in preparation. The economic report and overview document will be available to interested parties in about 60 days from the present.

After the economic analysis and overview document is completed, the Service will schedule eight public hearings. At least one of these hearings will be held in the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming to receive comments on biological and economic analyses. An additional notice will be published in the Federal Register in about 60 days announcing the dates and locations of the public hearings and the availability of the economic and overview documents. At that time, the Service also will announce that the public comment period will remain open an additional 60 days after the notice is published in the Federal Register to receive comments on the economic and overview documents.

Author

The author of this notice is Harold M. Tyus, U.S. Fish and Wildlife Service, Denver Regional Office, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225, telephone (303) 236–7398.

Authority

Authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: September 9, 1993.

Ralph O. Morgenweck,

Regional Director.

[FR Doc. 93–22511 Filed 9–14–93; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 58, No. 177
Wednesday, September 15, 1993

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

Forms Under Review by Office of Management and Budget

September 10, 1993.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

National Agricultural Statistics Service

Floriculture Survey

Annually

Farms; Businesses or other for-profit; 17,250 responses; 9,625 hours

Larry Gambrell (202) 720–5778

Larry K. Roberson,

Deputy Department Clearance Officer.

[FR Doc. 93–22493 Filed 9–14–93; 8:45 am]

BILLING CODE 3410–01–M

Special Provisions for Fresh Fruit and Vegetable Imports Under the U.S.-Canada Free-Trade Agreement

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of determination of existence of conditions necessary for imposition of temporary duty on cauliflower from Canada.

SUMMARY: As required by section 301(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988 ("FTA Implementation Act"), this is a notification that the necessary conditions exist with respect to United States acreage and import price criteria for cauliflower classifiable to heading 0704.10 of the Harmonized Tariff Schedule of the United States (HTS) imported from Canada to permit the Secretary of Agriculture to consider recommending to the President the imposition of a temporary duty ("snapback duty") by the United States pursuant to section 301(a) of the FTA Implementation Act, implementing Article 702 of the United States-Canada Free-Trade Agreement (FTA), Special Provisions for Fresh Fruits and Vegetables.

FOR FURTHER INFORMATION CONTACT: Howard Wetzel, Horticultural & Tropical Products Division, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, DC 20250–1000 or telephone at (202) 720–3423.

SUPPLEMENTARY INFORMATION: The FTA Implementation Act, in accordance with the FTA, authorizes the imposition of a temporary duty ("snapback duty") for a limited group of fresh fruits and vegetables when certain conditions exist. Cauliflower, classified under heading 0704.10 of the HTS is a good subject to the snapback duty provision.

Under section 301(a) of the FTA Implementation Act, two conditions must exist before imposition by the United States of a snapback duty can be considered. First, the import price of a covered Canadian fresh fruit or vegetable, for each of five consecutive working days, must be less than ninety percent of the corresponding five-year average monthly import price. This price for a particular day is the average import price of a Canadian fresh fruit or vegetable imported into the United States from Canada, for the calendar month in which that day occurs, in each of the 5 preceding years, excluding the years with the highest and lowest monthly averages.

Second, the planted acreage in the United States for the fresh fruit or vegetable must be no higher than the average planted acreage over the preceding five years, excluding the years with the highest and lowest acreage.

From July 16, to July 22, 1993, the price conditions with respect to cauliflower were met.

The most recent revision of planted acreage for cauliflower shows that this year's planted acreage is below the planted acreage over the preceding five years, excluding the years with the highest and lowest planted acreages.

Issued at Washington, DC, the 8th day September, 1993.

Philip Mackie,

Acting Under Secretary, International Affairs and Commodity Programs.

[FR Doc. 93–22545 Filed 9–14–93; 8:45 am]

BILLING CODE 3410–10–M

Commodity Credit Corporation

Upland Cotton User Marketing Certificate Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice requesting comments; extension of comment period.

SUMMARY: This document announces a 10-day extension of the public comment period for the notice requesting comments published in the **Federal Register** on August 20, 1993 (58 FR 44320) regarding the upland cotton user marketing certificate program.

DATES: Comments on the notice requesting comments must be received on or before September 30, 1993, in order to be assured of consideration.

ADDRESSES: Submit comments to: Director, Fibers and Rice Analysis Division (FRAD), Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), room 3754–S, PO Box 2415, Washington, DC 20013–2415.

FOR FURTHER INFORMATION CONTACT: Wayne Bjorlie, FRAD, ASCS, USDA, room 3754–S, PO Box 2415, Washington, DC 20013–2415 or call 202–720–7954.

SUPPLEMENTARY INFORMATION:

Background

On August 20, 1993, a notice requesting comments on the upland cotton user marketing certificate program was published in the Federal Register. The notice specified that comments had to be received by September 20, 1993, in order to be assured of consideration. An interested party has submitted a request for an extension of the comment period. Based upon a review of that request, it has been determined that an additional 10 days will be allowed for comment.

Notice

Notice is hereby given that the public comment period on the notice requesting comments published on August 20, 1993 (58 FR 44320), is extended to September 30, 1993.

Signed at Washington, DC, on September 7, 1993.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 93–22546 Filed 9–14–93; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Endangered Species; Permits

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

ACTION: Notice of receipt of an application for a second modification to scientific research permit No. 825 (P513).

Notice is hereby given that the Columbia River Inter-tribal Fish Commission (CRITFC) has applied in due form for a second modification to Scientific Research Permit No. 825 to take listed species as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–222).

Permit No. 825 was issued on March 23, 1993 (58 FR 16524), amended on June 9, 1993 (58 FR 33434), and modified on August 3, 1993 as authorized by the ESA. The permit authorizes CRITFC to take listed adult and juvenile Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) for scientific research through December 31, 1997.

CRITFC is requesting authorization to tag, with Passive Integrated Transponder (PIT) tags, 3,000 listed juvenile Snake River spring/summer chinook salmon which were previously authorized to be captured and handled. This take could result in the indirect mortality of 30 additional fish. CRITFC requests half of this take for fall of 1993, and the entire take annually for the duration of the permit, through December 31, 1997.

CRITFC is also requesting authorization to capture and handle an additional 20 listed adult Snake River spring/summer chinook salmon for cryopreservation of male gametes, which could result in the indirect mortality of four of these fish. Sampling methods and times remain the same as currently authorized. CRITFC requests this take beginning 1994, and annually for the duration of the permit, through December 31, 1997.

Written data or views, or requests for a public hearing on this modification application should be submitted to the Director, Office of Protected Resources, NMFS, 1335 East-West Highway, room 8268, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification application would be appropriate. The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this modification application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Documents submitted in connection with the above modification application are available for review by interested persons in the following offices:

Office of Protected Resources, NOAA, NMFS, 1335 East-West Highway, room 8268, Silver Spring, MD 20910 (301/713–2289); and

Environmental and Technical Services Division, NMFS, 911 North East 11th Ave., room 620, Portland, OR 97232 (503/230–5400).

Dated: September 8, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources.

[FR Doc. 93–22509 Filed 9–14–93; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Availability of Change 2 to DoD 5025.1–I, "DoD Directives System Annual Index"

AGENCY: Office of the Secretary, DoD.

ACTION: Notice.

SUMMARY: This document is to inform the public and Government Agencies of the availability of Change 2 to DoD 5025.1–I, "DoD Directives System Annual Index." dated January 1993. It is available, at cost, from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, telephone (703) 487–4650. The NTIS accession number for Change 2 to the Index is PB93–959540.

FOR FURTHER INFORMATION CONTACT: Ms. P. Toppings, Directives Division, Correspondence and Directives Directorate, Washington Headquarters Services, Washington, DC 20301–1155, telephone (703) 697–4111.

Dated: September 10, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–22524 Filed 9–14–93; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

USAF Scientific Advisory Board Meeting

The USAF Scientific Advisory Board (SAB) Fall General Board Meeting meet from 8 a.m. to 5 p.m. on 19–21 October 1993 at Fort Lesley J. McNair, Washington, DC.

The purpose of this meeting is to provide attendees the opportunity to hear results of important SAB studies and enable members and senior Air Force leaders to become better acquainted. Additionally, the attendees will begin planning for future studies. The meeting will be closed to the public in accordance with section 552b(c) of Title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR DOC. 93–22579 Filed 9–14–93; 8:45 am]

BILLING CODE 3910–01–W

USAF Scientific Advisory Board Meeting

The USAF Scientific Advisory Board (SAB) Ad Hoc Committee on Technology Strategy will meet from 8 a.m. to 5 p.m. on 24–25 September 1993 at the National Academy of Sciences Woods Hole Center, Woods Hole, MA.

The purpose of this meeting is to discuss and formulate a plan for the TSP to make it an effective and useful forum for cross-flow of information to senior Air Force leaders. The meeting will be closed to the public in accordance with

section 552b(c) of Title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–22581 Filed 9–14–93; 8:45 am]

BILLING CODE 3910–01–W

USAF Scientific Advisory Board Meeting

The USAF Scientific Advisory Board (SAB) Ad Hoc Committee on Science and Technology will meet from 8 a.m. to 5 p.m. on 23–24 September 1993 at Rome Laboratory, Griffiss Air Force Base, New York.

The purpose of this meeting is to review and evaluate the Rome Laboratory C3I program(s). The meeting will be closed to the public in accordance with section 552b(c) of Title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–22583 Filed 9–14–93; 8:45 am]

BILLING CODE 3910–01

USAF Scientific Advisory Board Meeting

The USAF Scientific Advisory Board (SAB) Ad Hoc Committee on Science and Technology will meet from 8 a.m. to 5 p.m. on 6–7 October 1993 at Wright-Patterson Air Force Base, Ohio.

The purpose of this meeting is to review and evaluate the Avionics Directorate programs. The meeting will be closed to the public in accordance with section 552b(c) of Title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–22578 Filed 9–14–93; 8:45 am]

BILLING CODE 3910–01–W

USAF Scientific Advisory Board Meeting

The USAF Scientific Advisory Board (SAB) Ad Hoc Committee on Science and Technology will meet from 8 a.m. to 5 p.m. on 21–22 September 1993 at Wright-Patterson Air Force Base, Ohio.

The purpose of this meeting is to review and evaluate the Materials Laboratory programs. The meeting will be closed to the public in accordance with section 552b(c) of Title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–22582 Filed 9–14–93; 8:45 am]

BILLING CODE 3910–01–W

USAF Scientific Advisory Board Meeting

The USAF Scientific Advisory Board (SAB) Ad Hoc Committee on Science and Technology will meet from 8 a.m. to 5 p.m. on 27–28 October 1993 at Wright-Patterson Air Force Base, Ohio.

The purpose of this meeting is to review and evaluate the Manufacturing Technology programs. The meeting will be closed to the public in accordance with section 552b(c) of Title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–22580 Filed 9–14–93; 8:45 am]

BILLING CODE 3910–01–W

Department of the Navy

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel will meet September 22–23, 1993, from 8 a.m. to 5 p.m., at 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purpose of this meeting is to review maritime issues as they impact national security policy and requirements. The entire agenda of the meeting will consist of discussions of key issues regarding task force deliberations, intelligence, implications of national security affairs for naval force planning, and considerations for innovation in technology and surveillance. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact: J. Kevin Mattonen, Executive Secretary Panel; 4401 Ford Avenue, suite 601, Alexandria, VA 22302–0268, Telephone (703) 756–1205.

Dated: September 8, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–22059 Filed 9–14–93; 8:45 am]

BILLING CODE 3810–AE–P

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel National Security Task Force will meet September 20, 1993, from 11 a.m. to 12:30 p.m., at the Pentagon, room 4E630. This session will be closed to the public.

The purpose of this meeting is evaluate U.S. Navy requirements for National Security. The entire agenda for the meeting will consist of discussions of key issues related to global trends, future security environment, national objectives, possible contingencies and naval policies to support U.S. national interests. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and, are in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Ttle 5, United States Code.

For further information concerning this meeting, contact: J. Kevin Mattonen, Executive Secretary to the Executive Panel, 4401 Ford Avenue, Suite 601, Alexandria, Virginia 22302–0268, Phone (703) 756–1205.

Dated: September 8, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–22058 Filed 9–14–93; 8:45 am]

BILLING CODE 3810–AE–P

CNO Executive Panel; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations

(CNO) Executive Panel Domestic Issues Task Force Outbrief will meet September 27, 1993, from 11 a.m. to 12 p.m. at the Pentagon.

The purpose of this meeting is to do the final outbrief for the Task Force on Domestic Issues. Matters to be considered will consist of forecasting emerging demographic and sociological trends and their effect on the Navy of the future.

For further information concerning this meeting, contact: J. Kevin Mattonen, Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, room 601, Alexandria, Virginia 22302–0268, Phone (703) 756–1205.

Dated: September 7, 1993.

Michael P. Rummel,

Lieutenant Commander, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–22539 Filed 9–14–93; 8:45 am]

BILLING CODE 3810–AE–M

Board of Visitors to the United States Naval Academy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Board of Visitors to the United States Naval Academy will meet 27 September 1993, at the U.S. Naval Academy, Annapolis, Maryland. The session, which is open to the public, will commence at 8:30 a.m. and end at 3 p.m., 27 September 1993, in the Bo Coppedge Dining Room of Alumni Hall.

The purpose of the meeting is to make such inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy.

For further information concerning this meeting contact: Commander Craig M. Diffie, U.S. Navy, Secretary to the Board of Visitors, Office of the Superintendent, United States Naval Academy, Annapolis, MD 21402–5000, (410) 267–2402.

Dated: September 7, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–22540 Filed 9–14–93; 8:45 am]

BILLING CODE 3810–AE–M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, September 22, 1993. The hearing will be part of the Commission's business meeting which is open to the public and scheduled to begin at 1 p.m. in the Ballroom of the University of Delaware's Goodstay Center, 2700 Pennsylvania Avenue, Wilmington, Delaware.

An informal conference among the Commissioners and staff will be open for public observation at 10:30 a.m. at the same location and will include discussions of Basinwide hydrologic conditions; Roamingwood Sewer and Water Association docket water conservation condition and a status report on the Upper Delaware ice jam project.

The subjects of the hearing will be as follows:

A Proposal To Adopt the 1993 Water Resources Program

A proposal that the 1993 Water Resources Program and the activities, programs, initiatives, concerns, projections and proposals identified and set forth therein be accepted and adopted, in accordance with the requirements of Section 13.2 of the Delaware River Basin Compact.

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact

1. Holdover Project: New Jersey-American Water Company D–92–77 CP

A proposed new surface water intake to withdraw 40 million gallons per day (mgd) (based on design year 2020 projected average annual demand) from the Delaware River. The water will be treated at a proposed water filtration plant to be located just off Taylor Lane in Delran, Burlington County, New Jersey. Finished water will be conveyed via new water main construction and interconnections to other purveyors, townships, boroughs and cities located in the regional tri-county area of Burlington, Camden and Gloucester Counties, New Jersey. The proposed raw water intake will be located in Cinnaminson Township, Burlington County, approximately 4000 feet downstream of the Rancocas Creek confluence with the Delaware River and almost directly across the river from the City of Philadelphia's intake for the Baxter Water Treatment Plant at Torresdale. The intake will consist of a series of six wedge-wire type screens and two 54-inch diameter pipelines located approximately 850 feet offshore and 300 feet outside of the river's deep navigation channel. This hearing continues that of August 4, 1993.

2. U.S. Department of Justice D–83–7 CP RENEWAL–2

An application for the renewal of a ground water withdrawal project to supply up to 9.3 million gallons (mg)/30 days of water to the applicant's Otisville Federal Correctional Institution from Well Nos. PW–1, PW–2 and ES–1. Commission approval on March 23, 1988 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 9.3 mg/30 days. The project is located in the Town of Deerpark, Orange County, New York.

3. Borough of Pennington D–84–33 CP RENEWAL

An application for the renewal of a ground water withdrawal project to supply up to 6.48 mg/30 days of water to the applicant's distribution system from Well No. 7. Commission approval on August 3, 1988 was limited to five years. The applicant requests that the total withdrawal from all wells located within the Delaware River Basin remain limited to 6.48 mg/30 days. The project is located in Pennington Borough, Mercer County, New Jersey.

4. Sun Company, Inc. D–88–40 RENEWAL

An application for the renewal of a ground water withdrawal project of up to 10.11 mg/30 days of water as part of the applicant's ground water decontamination program from Well No. RW–1. Commission approval on August 3, 1988 was limited to five years. The applicant requests that the total withdrawal from the well remain limited to 10.11 mg/30 days. The project is located in the City of Philadelphia, Pennsylvania.

5. Borough of Leesport D–90–13 CP RENEWAL

An application for the renewal of a ground water withdrawal project to supply up to 6 mg/30 days of water to the applicant's distribution system from Well No. 4. Commission approval on April 25, 1990 was limited to five years. The applicant requests that the total withdrawal from all wells be increased from 6 mg/30 days to 13.5 mg/30 days. The project is located in Leesport Borough, Berks County, Pennsylvania.

6. Uwchlan Township D–91–80 CP

A project to expand the applicant's Eagleview sewage treatment plant (STP) from an average monthly flow of 0.05 mgd to 0.15 mgd, continue to serve a portion of Uwchlan Township, and discharge to Shamona Creek. The expanded STP will continue to provide advanced secondary treatment and

tertiary filtration, and will include a wetlands discharge area to further polish the treated effluent. The STP is located approximately 3,500 feet south of the intersection of U.S. Route 76 and Pennsylvania Route 100 in Uwchlan Township, Chester County, Pennsylvania.

7. Borough of Quakertown D–92–79 CP

An application for approval of a ground water withdrawal project to supply up to 10.8 mg/30 days of water to the applicant's distribution system from new Well No. 19, and to retain the existing withdrawal limit from all wells of 51.1 mg/30 days. The project is located in Quakertown Borough, Bucks County, in the Southeastern Pennsylvania Ground Water Protected Area.

8. Milford-Trumbauersville Area Sewer Authority D–93–18 CP

A project to expand the applicant's existing 0.5 mgd sewage treatment plant (STP) to treat an average monthly flow of 0.8 mgd. The STP will continue to provide tertiary treatment facilities and serve Trumbauersville Borough and portions of Milford Township in Bucks County, Pennsylvania. The STP is located just east of the Northeast Extension of the Pennsylvania Turnpike in Milford Township, and the treated effluent will continue to discharge to Unami Creek, a tributary of Perkiomen Creek.

9. Leidy's Inc. D–93–21

An application for approval of a ground water withdrawal project to supply up to 2.0 mg/30 days of water to the applicant's pork product processing plant from new Well No. PW–3, and to limit withdrawal from all wells to 3.45 mg/30 days. The project is located in Franconia Township, Montgomery County, in the Southeastern Pennsylvania Ground Water Protected Area.

10. AMETEK, U.S. Gauge Division D–93–25 CP (D) P.A.

A ground water remediation project consisting of the proposed treatment of up to 0.13 mgd of ground water to be withdrawn via three existing wells at the applicant's industrial facility (Plant #2) located in Sellersville Borough, Bucks County, within the Southeastern Pennsylvania Ground Water Protected Area. The treatment facilities will consist of an air stripper, particulate filter, and carbon adsorption system to remove metals and volatile organic compounds. The treated effluent will be discharged to an unnamed tributary to the East Branch Perkiomen Creek in Sellersville Borough.

11. CARAC, Inc. D–93–27

An application for approval of a ground water withdrawal project to supply up to 9.5 mg/30 days of water to the Tilden Industrial Park from new Well No. 5, and to retain the existing withdrawal limit from all wells of 10.8 mg/30 days. The project is located in Tilden Township, Berks County, Pennsylvania.

12. Township of Worcester D–93–31 CP

A proposed sewage treatment plant (STP) project designed to treat an average of 60,000 gallons per day (gpd) (40,500 gpd NPDES permit limit) to serve the Berwick Place residential development and a portion of Worcester Township, Montgomery County, Pennsylvania. The plant is designed to provide advanced secondary treatment and tertiary chemical addition for nutrient removal. The STP will discharge to an unnamed tributary of Skippack Creek, a tributary of the Perkiomen Creek, via a new outfall.

13. Borough of Weatherly D–93–43 CP

A project to expand the Borough of Weatherly's existing 0.3 mgd sewage treatment (STP) plant to 0.6 mgd. The existing STP will be kept in operation while a new 0.6 mgd capacity secondary level extended aeration plant is constructed adjacent to it. The STP will continue to serve only Weatherly Borough and discharge to Black Creek, a tributary of the Lehigh River, in the Borough of Weatherly, Carbon County, Pennsylvania.

14. Connaught Laboratories, Inc. D–93–45

A project to upgrade the applicant's existing 0.15 mgd industrial wastewater treatment plant which will continue to serve both Connaught Laboratories and the Salk Institute. The project plant is located adjacent to Swiftwater Creek, to which it will continue to discharge at 0.15 mgd, in Pocono Township, Monroe County, Pennsylvania. Swiftwater Creek is a tributary in the drainage area above Special Protection Waters.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Dated: September 7, 1993.

Susan W. Weisman,

Secretary.

[FR Doc. 93–22554 Filed 9–14–93; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Resource Contingency Program; Notice of Intent to Prepare an Environmental Impact Statement and Notice of Scoping Meetings

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice.

SUMMARY: BPA plans to prepare an environmental impact statement (EIS) on its proposal to acquire power produced by three proposed gas-fired, combined-cycle combustion turbines. The EIS will be prepared in accordance with the National Environmental Policy Act (NEPA), the Council on Environmental Quality NEPA Regulations (40 CFR parts 1500–1508), and the Department's procedures for implementing NEPA (10 CFR part 1021). The projects include the Satsop Combustion Turbine Project located near Satsop, Washington, the CRSS Chehalis Project located near Chehalis, Washington, and the Hermiston Power Project located near Hermiston, Oregon. BPA is awarding these projects energy option agreements under the Resource Contingency Program (RCP).

Under these agreements, during an approximate two-year period, sponsors are conducting environmental studies, obtaining permits, and doing design work. BPA is preparing an EIS to assess the environmental effects of acquiring the output of the energy projects. The decision to purchase power from one or more of these projects will be made during a five year "hold period" which follows this EIS process. Energy options allow BPA to defer energy purchase decisions until more is known about resource needs. These preconstruction activities are relatively inexpensive, but time consuming. Completing these tasks will reduce the lead times of acquiring these new energy resources. If the energy is needed during the five year "hold period" the sponsors of these resources will construct, own, and operate the projects.

DATES: Interested persons are invited to participate in the scoping process for the draft EIS. A letter and a fact sheet will be sent out to interested parties on a project mailing list. This information will explain the project and how to get

additional information. The scoping meetings are planned to be open house style where project material will be available for study and BPA staff will answer questions and accept oral and written comments. In addition, there will be a formal project presentation given by the project developers. The scoping meetings will be held at the following locations on the following dates:

Elma, Washington, October 6, 1993, 6–9 p.m., Elma High School, 30 Elma-Monte Road, Elma, WA.
Hermiston, Oregon, October 12, 1993, 6:30–9 p.m., Hermiston High School, 600 South 1st, Hermison, OR.
Chehalis, Washington, October 14, 1993, 6–9 p.m., Peace Lutheran Church, 2701 Bishop, Chehalis, WA.

The meetings will be publicized by general announcement as well as by written invitation to known interested parties. Written comments are invited as well, and should be submitted by October 26, 1993, to the Public Involvement Manager at the address below. Comments received after the date will be considered to the extent practicable. Both written and oral comments will be given equal weight in the scoping process.

ADDRESSES: To have your name placed on the mailing list for this project, to submit comment letters, or to receive a copy of the Draft EIS when it becomes available, write to the Public Involvement Manager, Bonneville Power Administration—ALP, Post Office Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Mr. Rob Diffely, EIS Manager at 503–230–3796 or Mr. Charles Alton, Environmental Coordinator at 503–230–5878. You may also contact the Public Involvement Office at 503–230–3478, or toll-free 1–800–622–4519. Information may also be obtained from:

Mr. George Bell, Lower Columbia Area Manager, suite 243, 1500 N.E. Irving Street, Portland, OR 97232, 503–230–4558;
Mr. Robert N. Laffel, Eugene District Manager, room 206, 211 East Seventh Avenue, Eugene, OR 97401, 503–465–6958;
Mr. Wayne R. Lee, Upper Columbia Area Manager, room 561, 920 West Riverside Avenue, Spokane, WA 99201, 509–353–3279;
Mr. George E. Eskridge, Montana District Manager, room 307, 800 Kensington, Missoula, MT 59801, 406–329–3060;
Mr. Ronald K. Rodewald, Wenatchee District Manager, room 307, 301 Yakima Street, Wenatchee, WA 98801, 509–662–4377, extension 379;
Mr. Terence G. Esvelt, Puget Sound Area Manager, suite 400, 201 Queen Anne Avenue North, Seattle, WA 98109–1030, 206–553–4130;
Mr. Thomas V. Wagenhoffer, Snake River Area Manager, 1520 Kelley Place, Walla Walla, WA 99362, 509–522–6225;
Ms. C. Clark Leone, Idaho Falls District Manager, 1527 Hollipark Drive, Idaho Falls, ID 83401, 208–523–2706;
Mr. James Normandeau, Boise District Manager, room 450, 304 North Eighth Street, Boise, ID 83702, 208–334–9137.

FOR INFORMATION ON DOE NEPA PROCEDURES OR THE STATUS OF A NEPA REVIEW CONTACT: Carol M. Borgstrom, Director, Office of NEPA Oversight, EH–25, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–4600 or 1–800–472–2756.

SUPPLEMENTARY INFORMATION: BPA is a Federal power marketing agency with statutory responsibilities to supply requested electrical power to its utility, industrial, and Federal customers in the Pacific Northwest. The 1992 Resource Program, medium load forecast (updated January 1993) projects by the year 2000 a deficit of 2,693 aMW. Because future load growth is uncertain, the 1990 and 1992 Resource Program and the Resource Programs EIS recommended that BPA acquire options on 1,050 aMW that could be called on to meet energy needs. The Resource Contingency Program (RCP) was designed to competitively acquire these energy options. The underlying need for these projects is to match actual load growth with new energy resources and keep the load/resource balance near zero.

Guided by these recommendations, BPA is awarding three energy option agreements under the RCP. Under the terms of these agreements, BPA will pay the resource developers to conduct studies, design and permit these gas-fired combustion turbines, but not to build and operate. These preconstruction activities are time-consuming but relatively inexpensive. Completing them can shorten lead times by as much as one-half and reduce the risks associated with resource development. If, at a later date, BPA determines that there is a need for power from these energy options, they can be constructed.

BPA issued a RCP solicitation in May 1992, for energy option proposals. In response to BPA's request for energy options, 64 proposals were submitted totaling 7,842 aMW.

Through an analysis of system cost, project viability, preliminary environmental evaluation and discussion with the developers, BPA proposes to sign energy options with three developers that could potentially supply BPA up to 1,081 aMW of energy. The Satsop Project is capable of providing 205 aMW, the CRSS project is capable of providing 228 aMW or 456 aMW, and the Hermiston project can provide either 205 aMW or 420 aMW. The EIS will include, at a minimum, an analysis of acquiring all 1,081 aMW of power as well as the no action alternative.

These combined-cycle, combustion turbine energy options are consistent with the resource choices in the preferred alternative of BPA's Resource Program EIS (DOE/EIS–0162); therefore, the decision whether or not BPA acquires any of these option resources would not foreclose future considerations of other potential energy resources that are identified in the preferred alternative.

Identification of Environmental Issues

All projects would be based upon combined-cycle technology and use natural gas as the primary fuel. This power plant design maximizes efficiency and minimizes air pollution emissions. Air pollution emissions would be reduced further through the combination of steam and ammonia injection systems and/or advanced combustion-turbine design technology. All option projects will meet Federal and state emission standards.

All three projects would be located on sites designated for industrial development. The Satsop project is zoned for general development and is located on the construction laydown area for Washington Nuclear Project #3. The CRSS Chehalis project is located in the Chehalis Industrial Park, and the Ida-West project is located adjacent to the J.R. Simplot potato processing plant on land zoned "heavy-industrial."

All three projects have land use issues associated with gas and electric interconnections. The Satsop project would require less than 1.6 kilometers of 230-kilovolt (kV) transmission line and a 19 kilometer gas pipeline spur. The CRSS project would require less than 1.6 kilometers of 500-kV transmission line and less than a 3 kilometer gas pipeline spur. The Hermiston project would require less than a 20 kilometer, 230-kV transmission line primarily within an existing right-of-way and less than a 6 kilometer gas pipeline spur.

All three projects have water use and discharge issues. The Satsop project proposes to use well water with discharge into the Chehalis River through an existing discharge structure. The CRSS project proposes to use primarily grey water from the city waste treatment plant. During the summer months, less than 20 percent of the water would come from either well

water or the Chehalis River. The project would discharge waste water directly back into the sewage treatment facility. The Hermiston project proposes to use water from a regional water supply project that would be piped to the site. The waste water would be discharged into the effluent waste stream from the potato processing plant and would be applied to irrigated farmland.

Issued in Portland, Oregon, on August 30, 1993.

Randall Hardy,

Administrator.

[FR Doc. 93–22555 Filed 9–14–93; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket Nos. ER93–923–000, et al.]

Florida Power Corp., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

September 8, 1993.

Take notice that the following filings have been made with the Commission:

1. Florida Power Corporation

[Docket No. ER93–923–000]

Take notice that on September 1, 1993, Florida Power Corporation (Florida Power or the Company) tendered for filing under section 205 of the Federal Power Act three amendments to the Agreement for Supplemental Resale Service (the Agreement) between itself and Kissimmee Utility Authority (Kissimmee) and designated as FERC Rate Schedule No. 120. The amendments (a) shorten the period over which Kissimmee is required to forecast a breakdown of its requirements for base, intermediate and peaking supplemental service; (b) allow Kissimmee to reduce or eliminate the contract demand if Florida Power receives a specified rate increase, and (c) changes Kissimmee's percentage kW allocation among base, intermediate and peaking. The Company requests that the amendments be allowed to become effective on January 1, 1994.

Comment date: September 22, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Southern California Edison Company

[Docket No. ER92–778–000]

Take notice that on August 30, 1993, Southern California Edison Company (Edison) tendered for filing the Letter Agreement for Services to Replace Two 230 kV circuit Breakers at T.M. Goodrich Receiving Station Between City of Pasadena and Southern California Edison Company.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: September 22, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Public Service Company of Oklahoma

[Docket No. ER93–746–000]

Take notice that on August 30, 1993, Public Service Company of Oklahoma (PSO) submitted for filing a supplement to the Transmission Service Agreement between PSO and Southwestern Public Service Company (SPS) originally filed in Docket No. ER93–746–000 on June 30, 1993. The Agreement provides for PSO to deliver power and energy that SPS will sell to The Empire District Company (EDE).

A copy of the filing was served on SPS, EDE and the Oklahoma Corporation Commission.

Comment date: September 22, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Northeast Utilities Service Company

[Docket No. ER93–94–000]

Take notice that on August 19, 1993, Northeast Utilities Service Company (NU) tendered for filing an amendment in the above-referenced docket.

Comment date: September 22, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Entergy Services, Inc.

[Docket No. ER93–912–000]

Take notice that on August 30, 1993, Entergy Services, Inc. (Entergy Services) filed the Interchange Agreement between Municipal Electric Authority of Georgia and Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company, New Orleans Public Service Inc., and Entergy Services, Inc. (collectively, "Entergy"), dated as of August 1, 1993 ("Interchange Agreement"). Entergy Services states that in accordance with the Interchange Agreement, the parties will provide each other with various mutual support services, including Economy Energy, Replacement Energy, and Limited Firm Capacity and Energy. Entergy Services requests that the Interchange Agreement be made effective on October 1, 1993.

Comment date: September 22, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Great Bay Power Corporation

[Docket No. ER93–924–000]

Take notice that on September 1, 1993, Great Bay Power Corporation (Great Bay) tendered for filing a Tariff for Short-Term Sales, under which it will sell capacity and energy from its ownership interest in Seabrook Unit No. 1 and/or purchased power. Also filed was a list of potential customers for service under the Tariff and unexecuted Forms of Service Agreement for the Provision of Short Term Power for those customers. Great Bay requests an effective date of November 1, 1993 for the Tariff.

Great Bay states copies of the filing were served on the potential customers listed in the Tariff and on their associated state public utility commissions.

Comment date: September 22, 1993, in accordance with Standard Paragraph E end of this notice.

7. New York State Electric & Gas Corporation

[Docket No. ER93–926–000]

Take notice that New York State Electric & Gas Corporation (NYSEG) on September 2, 1993, tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35.12 (1993), as an Initial Rate Schedule, an agreement with Vermont Public Power Supply Authority (VPPSA). The agreement provides for the sale of 2 MW of electric generating capacity and associated energy by NYSEG to VPPSA. Service under this agreement is schedule to commence on November 1, 1993.

NYSEG served copies of the filing upon the New York State Public Service Commission, the Vermont Public Service Board, VPPSA, the Town of Hardwick Electric Department, the Village of Hyde Park Electric Department, the Village of Ludlow Electric Light Department and the Village of Stowe Water and Light Department.

Comment date: September 22, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Southern California Edison Company

[Docket No. ER93–910–000]

Take notice that on August 30, 1993, Southern California Edison Company (Edison) tendered for filing the Letter Agreement for Services to Replace Two 230 kV circuit Breakers at T.M. Goodrich Receiving Station Between City of Pasadena and Southern California Edison Company.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: September 22, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. Consumers Power Company

[Docket No. ER93–911–000]

Take notice that on August 30, 1993, Consumers Power Company (Consumers Power) tendered for filing Amendment No. 1 to its Wholesale for Resale Electric Service Agreement dated January 1, 1990 for service to Alpena Power Company (Alpena). Amendment No. 1 provides for a second delivery point and for a new monthly charge to recover Consumers Power's costs related to adding that second delivery point for Alpena.

Copies of the filing were served upon Alpena and the Michigan Public Service Commission.

Comment date: September 22, 1993, in accordance with Standard Paragraph E at the end of this notice.

10. The Montana Power Company

[Docket No. ER93–596–000]

Take notice that on August 31, 1993, The Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.11 an amendment to its original filing of a Firm Capacity and Energy Sales Agreement Between The Montana Power Company and Sierra Pacific Power Company; and a Firm Capacity and Energy Sales Agreement Between The Montana Power Company and PacifiCorp. This amended filing provides a change in the energy rate ceiling specified within the Agreements.

Copies of the filing were served upon Sierra Pacific Power Company and PacifiCorp.

Comment date: September 22, 1993, in accordance with Standard Paragraph E at the end of this notice.

11. Consolidated Edison Company of New York, Inc.

[Docket No. ER93–568–000]

Take notice that on August 31, 1993, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Rate Schedule constituting an agreement for the delivery of energy between JFK Cogeneration Project and JFK International Airport.

Con Edison states that a copy of this filing has been served by mail upon KIAC Partners.

Comment date: September 22, 1993, in accordance with Standard Paragraph E at the end of this notice.

12. New England Power Company

[Docket No. ER93–925–000]

Take notice that on September 2, 1993, New England Power Company (NEP) submitted for filing a proposed sales contract with The Town of Shrewsbury Electric Light Plant. NEP states that the proposed contract provides for the sale of system power for the period of November 1, 1993 through October 31, 2004. The amount of capacity under the contract is initially 12 megawatts, increasing to 19 megawatts over the term of the contract. The price under the contract will not exceed NEP's full cost of service. NEP requests that the proposed tariff be made effective November 1, 1993.

Comment date: September 22, 1993, in accordance with Standard Paragraph E at the end of this notice.

13. Kansas Gas and Electric Company

[Docket No. ER93–653–000]

Take notice that on September 2, 1993, Kansas Gas and Electric Company (KG&E) tendered for filing an amendment to its July 9, 1993 filing in this docket concerning a change to its Federal Energy Regulatory Commission Electric Rate Schedule No. 182. KG&E states that the amendment is to reflect a change in the pricing provisions of Service Schedule SPP. The change is proposed to become effective June 1, 1993.

Copies of the filing were served upon the City of Girard, Kansas and the Kansas Corporation Commission.

Comment date: September 22, 1993, in accordance with Standard Paragraph E at the end of this notice.

14. Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)

[Docket No. ER93–551–000]

Take notice that on August 31, 1993, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (hereafter jointly NSP) tendered for filing a Second Amendment to NSP's initial filing in Docket No. ER93–551–000. The amendment provides certain additional information requested by Commission Staff regarding purchase for resale provisions for Supplemental Energy sales service to Wisconsin Electric Power Company.

NSP again requests that its filing, as amended, be accepted for filing effective June 1, 1993, and requests waiver of the Commission's notice requirements in order for the rate to be accepted for filing on the date requested.

Comment date: September 22, 1993, in accordance with Standard Paragraph E at the end of the this notice.

15. Wisconsin Electric Power Company

[Docket No. ER93–649–000]

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on September 2, 1993, tendered for filing an amendment of its initial submittal in this docket. The amendment contains revised pages G–3 through G–7 relating to the Negotiated Capacity service schedule. Wisconsin Electric also responded to a request from Staff to explain the relative priorities among the various service schedules.

Wisconsin Electric renews its requested effective date of July 16, 1993, sixty days after its original tender date.

Copies of the filing have been served on Wisconsin Public Service Corporation, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: September 22, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22485 Filed 9–14–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF87–552–002]

Thermo Cogeneration Partnership, L.P.; Amendment to Filing

September 9, 1993.

On August 31, 1993, Thermo Cogeneration Partnership, L.P. tendered for filing a supplement to its filing in this docket. The supplement pertains to the ownership and management structure, a net present value analysis of

CSW Ft. Lupton, Inc., an explanation of a minimum gain-chargeback provision, and other technical aspects of the qualifying facility and the steam host. No determination has been made that the submittal constitutes a complete filing.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed by September 29, 1993, and must be served on the Applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestors party to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22486 Filed 9–14–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–14379T New Mexico–54]

United States Department of the Interior, Bureau of Land Management; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

September 9, 1993.

Take notice that on September 3, 1993, the United States Department of the Interior's Bureau of Land Management (BLM) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Dakota Formation underlying certain lands in the East Basin Area of the Basin Dakota Pool located in Rio Arriba and San Juan Counties, New Mexico, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application covers approximately 401,672 acres, more or less, consisting of 13.4% Fee, 6.5% state, 62.1% Federal and 18.0% Indian Lands. The recommended area is more fully described on the attached appendix.

The notice of determination also contains BLM's and the State of New Mexico's findings that the referenced portion of the Dakota Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

Appendix

The recommended area encompasses 401,672 acres, more or less, consisting of 13.4% Fee, 6.5% State, 62.1% Federal and 18.0% Indian Lands described as follows:

Township 25 North, Range 4 West

Sections 1–12: All

Township 25 North, Range 5 West

Sections 1–12: All
Sections 15–20: All
Sections 21–22: N/2
Sections 29–30: All

Township 25 North, Range 6 West

Sections 1–36: All

Township 25 North, Range 7 West

Sections 1–4: All
Sections 9–16: All
Sections 21–28: All
Sections 33–36: All

Township 26 North, Range 4 West

Township 26 North, Range 5 West

Sections 1–36: All

Township 26 North, Range 6 West

Sections 1–5: All
Sections 7–36: All

Township 26 North, Range 7 West

Sections 3–10: All
Sections 13–36: All

Township 26 North, Range 8 West

Sections 1–36: All

Township 26 North, Range 9 West

Sections 1–4: All
Sections 10–14: All
Sections 24–25: All
Sections 36: All

Township 27 North, Range 4 West

Township 27 North, Range 5 West

Sections 1–36: All

Township 27 North, Range 6 West

Sections 1–15: All
Sections 24–25: All
Sections 33–36: All

Township 27 North, Range 9 West

Sections 1–30: All
Sections 32–36: All

Township 28 North, Range 4 West

Township 28 North, Range 5 West

Township 28 North, Range 6 West

Sections 7–36: All
(These are irregular Townships)

Township 29 North, Range 4 West

Township 29 North, Range 5 West

Township 29 North, Range 6 West

Township 29 North, Range 7 West

Sections 1–36: All

[FR Doc. 93–22487 Filed 9–14–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR93–14–000]

Humble Gas Pipeline Co.; Petition for Rate Approval

September 9, 1993.

Take notice that on September 1, 1993, Humble Gas Pipeline Company (Humble) filed a petition for rate approval pursuant to § 284.123(b)(2) of the Commission's regulations. Humble requests that the Commission approve as fair and equitable a rate of $0.72 per MMBtu plus 1.0% retainage for fuel for transportation service performed under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Humble affirms that it is a newly formed intrastate pipeline within the meaning of section 2(16) of the NGPA. It owns and operates an intrastate pipeline system which is comprised of what was formerly a part of Exxon Gas System, Inc., and a leased 20" line all in the State of Texas. Humble proposes an effective date of September 1, 1993.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rates 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 services. 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 Procedures. All motions must be filed with the Secretary of the Commission on or before September 24, 1993. The petition for rate approval is on file with

the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22488 Filed 9–14–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–235–004]

Koch Gateway Pipeline Co., Filing of Revised Tariff Sheets

September 9, 1993.

Take notice than on September 3, 1993, Koch Gateway Pipeline Company (KGPL)[1] tendered for filing the following tariff sheet to be effective August 1, 1993:

Third Revised Volume No. 1
Fifth Revised Sheet No. 4C

KGPL states that the above referenced tariff sheet reflects a corresponding change in a publication used to calculate the Gas Commodity Index which is a part of the PL, DG and G Rate Schedules.

KGPL also states that the tariff sheet is being mailed to all interested parties listed on the official service list compiled by the Secretary in this 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 § 385.211 of the Commission's regulations. All such protests should be filed on or before September 16, 1993. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22489 Filed 9–14–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TC93–7–000]

Northern Natural Gas Co.; Request for Waiver of Settlement Provision

September 9, 1993.

Take notice that Northern Natural Gas Company (Northern) filed Petition for waiver of settlement provision to allow Northern additional time to file its updated Index of Large Volume Consumer Classifications (Index).

On July 31, 1979, Northern filed a Stipulation and Agreement in Docket Nos. RP76–52, *et al*, which was approved by the Commission on November 30, 1979 (Settlement). The Settlement involved Northern's curtailment plan and the priority of service categories for large volume consumers as contained in the Index. The Settlement provided that the Data Verification Committee would update the Index on August 27 of each year, with an effective date of September 27. Northern requests a waiver of the provision and an extension of time until November 15, 1993, to file the updated Index.

Any person desiring to be heard or to make a protest with reference to said tariff sheet filing should, on or before September 16, 1993, file with the Federal Energy Regulatory Commission (825 North Capitol Street, NE., Washington, DC 20426) a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 or 385.211. 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. 93–22490 Filed 9–14–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–192–000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 9, 1993.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on September 3, 1993 tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed on Appendix A of the filing.

Texas Eastern states that it proposes to provide open-access transportation service on the Viosca Knoll Lateral pursuant to 18 CFR part 284, subpart G under discrete Rate Schedules Viosca Knoll Firm Transportation (VKFT) and Viosca Knoll Interruptible Transportation (VKIT). Texas Eastern states it has patterned Rate Schedules VKFT and VKIT after currently effective Rate Schedules FT–1 and IT–1 which were approved by the Commission in Texas Eastern's restructuring proceeding, Docket No. RS92–11–000. Original Sheet Nos. 253E through 253H and 253I through 253K set forth, respectively, the provisions of new Rate Schedules VKFT and VKIT. The Rate Schedule VKFT and VKIT Form of Service Agreements are set forth on Original Sheet Nos. 766I through 766P and Original Sheet Nos. 766Q through 766U, respectively.

Texas Eastern states that the Commission on June 4, 1991, in Docket Nos. CP88–570–000 *et al.*, (Mobile Bay Pipeline Projects) issued its "Order Accepting in Part and Modifying in Part Offers of Settlement and Issuing Certificates" which authorized the construction and operation of the Viosca Knoll 203 facilities as described in the application, as amended, in Docket No. CP88–474–000. Texas Eastern states that completion of construction of the Viosca Knoll Lateral and the in-service date is contemplated to occur in September 1993. Costs of the Viosca Knoll Lateral are not currently reflected in Texas Eastern's rates.

Texas Eastern states that it is also proposing other revisions to its FERC Gas Tariff, Sixth Revised Volume No. 1 necessary to reflect the addition of Rate Schedules VKFT and VKIT. Second Revised Sheet Nos. 200, 211, 235 and 244 and Third Revised Sheet No. 223 revise Section 1 AVAILABILITY of Rate Schedules CDS, FT–1, PTI, IT–1 and SCT, respectively, to state that service under Rate Schedules CDS, FT–1, PTI, IT–1 and SCT is not available from capacity subject to Rate Schedules VKFT and VKIT. Second Revised Sheet No. 434 reflects a revision to Section 1.26 to include Rate Schedules VKFT and VKIT in the term "Open-access Rate Schedules." Second Revised Sheet Nos. 451, 463, 471 and 596 of Sections 3.2, 3.14, 3.14(J) and 11, respectively, have been revised to incorporate either Rate Schedule VKFT or both Rate Schedules VKFT and VKIT where necessary.

Texas Eastern states that section 15.4(B) on First Revised Sheet No. 631 has been revised to update the rate sheets listing applicable to the GRI Surcharge Provision. Revisions to section 15.5(C) and 15.6(A) on Second Revised Sheet No. 633 update the rate sheets listing applicable to the ACA Clause and reflect the addition of Rate Schedules VKFT and VKIT to the ASA, respectively.

Texas Eastern states that Second Revised Sheet Nos. 936, 937, 938 and 939 have been revised to incorporate Rate Schedule VKFT where necessary into the Form of Service Agreement for the Capacity Release Umbrella Agreement. First Revised Sheet Nos.

[1] Formerly United Gas Pipe Line Company. While Koch Gateway Pipeline Company is the new name effective August 24, 1993. KGPL is filing under United's tariff the following tariff sheets. KGPL intends to submit a Fifth Revised Volume No. 1 for implementation of Order No. 636 services and will also contain complete name changes throughout at that time.

946, 947, 948 and 949 incorporate Rate Schedule VKFT into a specific Addendum to the Form of Service Agreement under the Capacity Release Umbrella Agreement.

Texas Eastern states that the rates which it proposes to charge are set forth on Original Sheet No. 42B. Workpapers showing the derivation of these rates are included herein as Appendix B. Texas Eastern states that these rates are based upon the estimated cost of the certificated Viosca Knoll Lateral facilities, as shown on Appendix C. Texas Eastern has utilized its settlement cost of service factors including depreciation and rate of return approved by the Commission in its "Order on Settlement" dated April 15, 1992, in Docket No. RP90–119 *et al.* Second Revised Sheet No. 130 includes the Applicable Shrinkage Percentage for Rate Schedules VKFT and VKIT.

Texas Eastern states that rates for Rate Schedule VKFT include a convertible Reservation Charge, whereby a maximum of $0.1139 per Dth may be charged when the Usage-1 Charge is $0.0000 and a maximum Reservation Charge of $0.0000 may be charged when the Usage-1 Charge is $0.1139. All combinations of Reservation and Usage-1 Charges will total to $0.1139 per Dth.

Texas Eastern states that use of the proposed convertible Reservation Charge concept permits Texas Eastern and its Rate Schedule VKFT customers to negotiate the level of the Reservation Charge.

Texas Eastern states that it does not propose to charge pursuant to either Rate Schedule VKFT or VKIT surcharges to recover transition costs since the gas quantities will be delivered into Texas Eastern's existing system for transportation under Texas Eastern's other rate schedules and will be charged appropriate transition costs at that time.

Texas Eastern states that in light of Order No. 636 regulations and the accompanying changes occurring in the Natural Gas industry, the proposed incremental rate treatment and incremental open-access rate schedules applicable to service on the Viosca Knoll Lateral are appropriate in the circumstances.

The proposed effective date of the tariff sheets listed on Appendix A of the filing is October 3, 1993.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions. Copies of this filing were also served on Santa Fe Energy and Murphy Oil.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 16, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22491 Filed 9–14–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG93–80–000]

John J. Wheeling and Service Systems Energy; Application for Commission Determination of Exempt Wholesale Generator Status

September 9, 1993.

On September 2, 1993, John J. Wheeling, of 8204 Camelia Drive, Riverside, California 92504, and Service Systems Energy (Service Systems), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Mr. Wheeling and Service Systems propose to operate a 250MW wind-powered facility on an Indian reservation in the San Gorgonio area near Palm Springs, California. According to Mr. Wheeling, the electric energy generated by this facility will be sold exclusively at wholesale within the United States.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before September 27, 1993 and must be served on Mr. Wheeling. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22492 Filed 9–14–93; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4729–8]

Radiation Cleanup Regulation Subcommittee of the National Advisory Council for Environmental Policy and Technology; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, PL92563, EPA gives notice of a two-day meeting, open to the public, of the Radiation Cleanup Regulation Subcommittee of the National Advisory Council for Environmental Policy and Technology's (NACEPT) Environmental Information and Assessments (EIA) Committee. Members of the public will be afforded the opportunity to submit written comments to the subcommittee and to make oral statements during a limited time set aside for that purpose. This will be the first meeting of the Radiation Cleanup Regulation Subcommittee whose mission is to provide advice to the EPA regarding the development of regulations to be applied to sites contaminated with radioactive material subject to the Atomic Energy Act and to sites covered under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The CERCLA sites include, but are not limited to federal facilities.

Discussions at the meeting will include the effects of technical feasibility and cost considerations on cleanup levels: interaction of the regulation with other statutes and ordinances, particularly those addressing land use; and methods for involving local communities in cleanup decisions at specific sites.

DATES: The public meeting will take place October 18 and 19, 1993, and will be held at the National Governors' Association Board Room, 444 North Capitol Street, Washington, DC 20001. On October 18th, the meeting will begin at 9 a.m. and end at 5 p.m. and will resume the following day, October 19, at 9 a.m. and end at 2:30 p.m.

ADDRESSES: Members of the public wishing to submit comments on the

issues discussed by the subcommittee should submit them in writing to: USEPA, Office of Radiation and Indoor Air, Criteria and Standards Division, Mailcode 6603J, 401 M Street, SW., Washington, DC 20460, ATTN: Pamela Russell. Written comments may also be submitted at the public meeting. A limited period of time for the public to present oral comments to the Radiation Cleanup Regulation Subcommittee will also be provided.

FOR FURTHER INFORMATION CONTACT: Pamela Russell, Office of Radiation and Indoor Air, Radiation Studies Division, Mailcode 6603J, 401 M Street, SW., Washington, DC 20460. For general questions or information on the meeting logistics, from outside the Washington, DC area, call EPA's toll-free Superfund/RCRA Hotline, 1–800–424–9346. In the Washington area, dial 703–412–9810. Copies of the issue paper and the agenda for the meeting can be obtained by calling the Hotline or through the Cleanup Regulation Electronic Bulletin Board, 1–800–700–STDS, outside the Washington area; locally, call 703–790–0825.

Dated: September 9, 1993.

Abby J. Pirnie,

Acting Director, Office of Cooperative Environmental Management.

[FR Doc. 93–22572 Filed 9–14–93; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4729–7]

Superfund Evaluation Committee of the National Advisory Council for Environmental Policy and Technology (NACEPT); Open Meeting

Under Public Law 92463 (The Federal Advisory Committee Act), EPA gives notice of a meeting on October 4, 1993 of the Superfund Evaluation Committee. The Superfund Evaluation Committee is a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT), an advisory committee to the Administrator of the EPA.

The Subcommittee will present its findings, after the conclusion of five meetings to discuss key issues affecting the reauthorization of the Superfund legislation to the Administrator. The meeting will take place in the Great Hall of the Department of Justice (DOJ) (Constitution Avenue between 9th and 10th) from 9:30–5 p.m. DOJ is a secure building and there are space restrictions: name and social security number of those wanting to attend must be submitted at least one week prior to the meetings. Federal or other picture identification will be required for entry. Interested parties may call the RCRA/Superfund Hotline at 1–800–424–9346, 703–920–9810, or 1–800–486–3323 (TDD) for copies of the materials EPA is providing to the Committee.

Written comments will be reviewed by the Committee if received one week prior to the meeting. Written comments of preferably not more than 25 pages (at least 25 copies) may be provided to the committee up until the meeting. Those interested in attending must contact Abby Pirnie (U.S. EPA 401 M St. SW. Washington, DC 20460, mail code, A101(F6) or phone, 202–260–7567, or fax, 202–260–3682.

Dated: September 7, 1993.

Abby J. Pirnie,

NACEPT Designated Federal Official.

[FR Doc. 93–22573 Filed 9–14–93; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4730–1]

Intent to Grant an Exclusive Patent License

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to grant an exclusive patent license.

SUMMARY: Pursuant to 37 CFR part 404, EPA hereby gives notice of its intent to grant an exclusive, royalty-bearing, revocable license to practice the inventions described and claimed in the patents listed below, and all reexamined patents and reissued patents granted in connection with such patents, to a joint venture of The Center for the Environment and Development, located in Research Triangle Park, North Carolina and Seoul Sharp Company, Ltd., located in Seoul, South Korea.

U.S. Patent No. 5,217,511 entitled "Enhancement of Electrostatic Precipitation with Electrostatically Augmented Fabric Filtration," issued June 8, 1993, and corresponding foreign patent applications filed under the Patent Cooperation Treaty;

U.S. Patent No. 5,059,219 titled "Electroprecipitator with Alternating Charging and Short Collector Sections," issued October 22, 1991, and corresponding foreign patent applications filed in Canada, Australia and the European Patent Office;

U.S. Patent No. 4,904,283 entitled "Enhanced Fabric Filtration Through Controlled Electrostatically Augmented Dust Deposition," issued February 27, 1990;

U.S. Patent No. 4,885,139 entitled "Combined Electrostatic and Acidic Gas Removal System," issued December 5, 1989;

U.S. Patent No. 4,822,381 entitled "Electroprecipitator with Suppression of Rapping Reentrainment," issued April 18, 1989.

The announcements of these patents as being available for licensing were made in the March 21, 1990, January 10, 1992, and March 9, 1992 issues of the **Federal Register.** The proposed exclusive license will contain appropriate terms, limitations and conditions to be negotiated in accordance with 35 U.S.C. § 209 and the U.S. Government Patent Licensing Regulation at 37 CFR Part 404.

EPA will negotiate the final terms and conditions and grant the exclusive license, unless within 60 days from the date of this Notice the EPA Patent Counsel receives, at the address below, written objections to the grant, together with supporting documentation. The documentation from objecting parties having an interest in practicing the above patents should include an application for exclusive or nonexclusive license with the information set forth in 37 CFR 404.8. The EPA Patent Counsel and other EPA officials will review all written responses and then recommend to the Assistant Administrator for Research and Development, for the U.S. Environmental Protection Agency, or his or her designee, who has been delegated the authority to issue patent licenses under 35 U.S.C. 207, whether to grant the exclusive license.

DATES: Comments to this notice must be received by the EPA Patent Counsel at the address listed below on or before November 15, 1993.

FOR FURTHER INFORMATION CONTACT: Thomas Gorman, Patent Counsel, Office of General Counsel (LE–132K), U.S. Environmental Protection Agency, Washington, DC 20460, Telephone (202) 260–1339.

Gerald H. Yamada,

Acting General Counsel.

[FR Doc. 93–22574 Filed 9–14–93; 8:45 am]

BILLING CODE 6560–50–M

[OPP–180901; FRL 4644–3]

Receipt of Application for Emergency Exemption to Use Difenoconazole; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Idaho Department of Agriculture (hereafter referred to as the "Applicant") for use of the fungicide difenoconazole (trade

name Dividend) (CAS No. 119446–68–3) to control dwarf bunt or TCK smut *Tilletia controversa* on up to 300,000 pounds of winter wheat seed in Idaho. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before September 30, 1993.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180901" should be submitted by mail to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (H7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Room 52, 6th Floor, 2800 Jefferson Davis Highway, Arlington, VA (703–308–8326).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of the fungicide, difenoconazole, available as Dividend 3FS from Ciba-Geigy Corporation, to control dwarf bunt or TCK smut on up to 300,000 pounds of winter wheat seed in Idaho. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicant, dwarf bunt (TCK smut) can be a very devastating fungal pathogen in winter wheat fields in Idaho. A severe infection can result in complete devastation of the wheat head and a 100 percent crop loss in some susceptible varieties. Winter snow cover in 1992, and wet 1993 spring conditions have created favorable conditions for the development of dwarf bunt disease in Idaho. According to the Applicant, no registered pesticides or alternative practices are available that will adequately control this disease. If difenoconazole is not available for use, economic losses of nearly $9 million are expected in 1993 due to yield losses in winter wheat. Under the proposed exemption, one application of Dividend 3FS would be made at the rate of 0.5 to 1.0 fluid ounce per 100 pounds of seed. The dilution rate is a minimum of 16 ounces of water using a standard slurry or mist-type seed treater.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide) (40 CFR 166.34 (a)(1)). Difenoconazole is a new chemical. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Idaho Department of Agriculture.

Dated: August 25, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–22297 Filed 9–14–93; 8:45 am]

BILLING CODE 6560–50–F

[AMS-FRL–4729–5]

Announcement of Fuel Economy Retrofit Device Evaluation for the Fuelon Power Gasoline Fuel Additive

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Fuel Economy Retrofit Device Evaluation.

SUMMARY: This document announces the completion of the EPA evaluation of the "Fuelon Power" gasoline fuel additive under provisions of section 511 of the Motor Vehicle Information and Cost Savings Act. The notice also announces our findings, conclusions, and the availability of the report.

FOR FURTHER INFORMATION CONTACT: Edward Anthony Barth, Regulation Development and Support Division, Office of Mobile Sources, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105, Telephone: (313) 668–4299

SUPPLEMENTARY INFORMATION:

I. Background

Section 511(b)(1) and section 511(c) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2011(b)) requires that:

(b)(1) "Upon application of any manufacturer of a retrofit device (or prototype thereof), upon the request of the Federal Trade Commission pursuant to subsection (a), or upon his own motion, the EPA Administrator shall evaluate, in accordance with rules prescribed under subsection (d), any retrofit device to determine whether the retrofit device increases fuel economy and to determine whether the representations (if any) made with respect to such retrofit devices are accurate."

(c) "The EPA Administrator shall publish in the **Federal Register** a summary of the results of all tests conducted under this section, together with the EPA Administrator's conclusions as to (1) the effect of any retrofit device on fuel economy; (2) the effect of any such device on emissions of air pollutants; and (3) any other information which the Administrator determines to be relevant in evaluating such device."

EPA published final regulations establishing procedures for conducting evaluations of fuel economy retrofit devices on March 23, 1979 [44 FR 17946].

II. Origin of Request for Evaluation, Device Descriptions and Report Identification

This evaluation of the Fuelon Power gasoline fuel additive was conducted upon the request of the Federal Trade Commission. Fuelon Power is an aftermarket gasoline fuel additive that is added to the vehicle tank by the operator when refueling the vehicle. The product consists of a proprietary blend of hydrocarbon products which are claimed to substantially reduce vehicle exhaust emissions and improve fuel economy.

Two reports were developed by EPA, the first report, "EPA Evaluation of the Fuelon Power Gasoline Fuel Additive Under section 511 of the Motor Vehicle Information and Cost Savings Act", Report Number EPA-AA-TEB–511–92–

01 contains the analysis and conclusions and consists of 22 pages including all attachments. The second report, "Emissions and Fuel Economy Effects of the Fuelon Power Gasoline Fuel Additive", Report Number EPA-AA-TEB-92-01, consists of 13 pages and completely describes EPA testing of the Fuelon Power gasoline fuel additive. This report is contained in the preceding 511 Evaluation report as an attachment.

III. Availability of Evaluation Reports

Copies of these reports may be obtained from the National Technical Information Service by using the above report numbers. Address requests to: National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161, Telephone: (703) 487-4650 or FTS 737-4650

IV. Summary of Evaluation

EPA fully considered all of the information readily available for the additive. The evaluation of the Fuelon Power gasoline fuel additive was based on the information provided by the manufacturer with the additive, related literature, and the results of the EPA confirmatory testing of the additive.

Two typical vehicles were tested at EPA's Motor Vehicle Emission Laboratory. The basic test sequence included 1,000 miles of mileage accumulation, duplicate Federal Test Procedures (FTP), and duplicate Highway Fuel Economy Tests (HFET). This test sequence was conducted both without and with the Fuelon Power additive in the test vehicle's fuel.

The overall conclusion from the testing and evaluation is that the Fuelon Power gasoline fuel additive did not significantly reduce vehicle emissions or improve fuel economy for either the FTP or HFET.

The additive clearly did not reduce vehicle exhaust emissions nor produce the large—greater than 15 percent—fuel economy benefits claimed by the manufacturer. Therefore, users of the Fuelon Power gasoline additive are unlikely to realize either an emissions or fuel economy benefit in actual driving. Vehicle operation and performance were unchanged by the additive.

Dated: September 8, 1993.

Michael H. Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 93-22569 Filed 9-14-93; 8:45 am]

BILLING CODE 6560-50-P

[OPPTS-44601; FRL-4643-6]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on sodium cyanide (CAS No. 143-33-9) submitted pursuant to a testing consent order under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these testing consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for sodium cyanide were submitted by DuPont Chemicals pursuant to a testing consent order at 40 CFR 799.5000. They were received by EPA on August 9, 1993. The submission describes a LC_{50} study with the Northern Bobwhite using water borne exposure and a LC_{50} study with the mallard using water borne exposure. This chemical is used in the heap leach process for mining.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS-44601). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Nonconfidential Information Center, also known as, TSCA Public Docket Office, Rm. E-G102, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: September 1, 1993.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93-22568 Filed 9-14-93; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4729-4]

Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity to Comment Regarding the City of Independence, MO

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment regarding the City of Independence, Missouri.

SUMMARY: EPA is providing notice of a proposed administrative penalty assessment for alleged violations of the Clean Water Act ("Act"). EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g)(4)(A).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR part 22. The procedures by which the public may submit written comment on a Proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty (30) days after issuance of public notice.

On September 16, 1993, EPA commenced the following Class II proceeding for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551-7630, the following Complaint:

In the Matter of the City of Independence, Missouri, EPA Docket No. VII-93-H-0001 and VII-93-W-0001.

The Complaint proposes a penalty of One Hundred Twenty-Five Thousand Dollars ($125,000) for failing to comply

with certain conditions of its National Pollutant Discharge Elimination System permit concerning the acceptance and treatment of wastes hauled to its Rock Creek waste water treatment plant under contract.

FOR FURTHER INFORMATION: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed penalty assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above.

The administrative record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by the City of Independence, Missouri is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding prior to thirty (30) days from the date of this notice.

Dated: September 3, 1993.

William W. Rice,

Acting Regional Administrator.

[FR Doc. 93–22575 Filed 9–14–93; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

September 7, 1993.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0161.

Title: Section 73.61, AM directional antenna field strength measurements.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit.

Frequency of Response: Recordkeeping requirement.

Estimated Annual Burden: 1,847 recordkeepers; 19.232 hours average burden per recordkeeper; 35,522 hours total annual burden.

Needs and Uses: Section 73.61 requires that each AM station using directional antennas make field strength measurements as often as necessary to insure proper directional antenna system operation. Stations not having approved sampling systems make field strength measurements every three months. Stations with approved sampling systems must make field strength measurements as often as necessary. Also, all AM stations using directional antennas must make partial proofs of performance as often as necessary. The data is used by FCC Staff in field inspections/investigations and by AM licensees with directional antennas to ensure that adequate interference protection is maintained between stations and to ensure proper operation of antennas.

OMB Number: 3060–0326.

Title: Section 73.69, Antenna monitors.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of response: On occasion reporting requirement.

Estimated Annual Burden: 20 responses; 1.5 hours average burden per response; 30 hours total annual burden.

Needs and Uses: Section 73.69(c) requires AM station licensees with directional antennas to file an informal request to operate without required monitors with the Engineer in Charge of the radio district in which the station is located when conditions beyond the control of the licensee prevent the restoration of an antenna monitor to service within the allowed period. Section 73.69(d)(1) requires that AM licensees with directional antennas request and obtain temporary authority to operate with parameters at variance with licensed values when an authorized antenna monitor is replaced pending issuance of a modified license specifying new parameters. Section 73.69(d)(5) requires AM licensees with directional antennas to submit an informal request for modification of license to the FCC within 30 days of the date of antenna monitor replacement. Station licensees must operate in accordance with station licenses.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–22473 Filed 9–14–93; 8:45 am]

BILLING CODE 6712–01–M

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

September 7, 1993.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0165.

Title: Part 41 Franks, § 41.31, Records to be Maintained and Reports to be Filed.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit.

Frequency of Response: Recordkeeping requirement and on occasion reporting requirement.

Estimated Annual Burden: 68 recordkeepers; 6 hours average burden per recordkeeper; 408 hours total annual burden.

Needs and Uses: Section 210 of the Communications Act of 1934, as amended, requires that common carriers subject to the Act maintain records to reflect the name, address, etc., of persons holding telephone or telegraph franks, so as to enable the Commission and/or carriers to compile, if needed, reports in this area. Though the Commission is not currently requiring the actual periodic reporting of this data, it is information which should continue to be maintained in case the need arises to assure that the franking privileges are being adequately policed by the companies themselves. Section 41.31 of the Commission's rules implements Section 210 of the Communications Act of 1934. This

information helps to ensure that franks are being addressed fairly. Failure to have the information recorded would prohibit the Commission from being able to respond to complaints and from generally being able to police the activity.

OMB Number: 3060–0147.

Title: Section 64.804, Extension of Unsecured Credit for Interstate and Foreign Communications Services to Candidates for Federal Office.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit.

Frequency of Response: Semi-annual reporting requirement.

Estimated Annual Burden: 26 responses; 8 hours average burden per response; 208 hours total annual burden.

Needs and Uses: Collection of this information is required by statute—Section 401 of the Federal Election Campaign Act of 1971, Public Law 92–225. Section 64.804 of FCC rules, requires communications common carriers with operating revenues exceeding $1 million who extend unsecured credit to a political candidate or person on behalf of such candidate for Federal office to report, twice a year, data including due and outstanding balances. This information is used by the agency to monitor the extent of credit extended to candidates for Federal office.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–22474 Filed 9–14–93; 8:45 am]

BILLING CODE 6712–01–M

[Report No. 1964]

Petition for Reconsideration of Action in Rulemaking Proceeding

September 9, 1993.

Petition for reconsideration has been filed in the Commission rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in room 239, 1919 M Street, NW. Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to this petition must be filed September 30, 1993. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4 (b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Implementation of section 4(g) of the Cable Television Consumer Protection Act of 1992 (MM Docket No. 93–8)

Number of Petitions Filed: 1

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–22472 Filed 9–14–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement No. 403]

Cooperative Agreements for National Programs to Strengthen Comprehensive School Health Programs and Prevent Health Problems Among Youth; Amendment

A notice announcing the availability of Fiscal Year 1994 funds for cooperative agreements for National Programs to Strengthen Comprehensive School Health Programs and Prevent Health Problems Among Youth was published in the **Federal Register** on September 3, 1993. The notice is amended as follows:

On page 46974, third column, under the heading "Eligible Applicants", the first paragraph is amended to read: "Eligible applicants are national organizations and national minority organizations that are health, education, and social service agencies that are private, nonprofit, professional, or voluntary. Eligible applicants must have organizational capacities and experience to assist state and local education agencies, institutions of higher education, and/or other relevant agencies in preventing behaviors that place young people at risk for HIV infection, STDs, and other important health problems. Eligible organizations must also have affiliate offices, organizations, or constituencies in a minimum of 10 states and territories."

All other information and requirements of the September 3, 1993, **Federal Register** notice remain unchanged.

Dated: September 9, 1993.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–22510 Filed 9–14–93; 8:45 am]

BILLING CODE 4160–18–P

Food and Drug Administration

[Docket No. 93D–0287]

"Guidance Document for Lead in Shellfish;" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance document entitled "Guidance Document for Lead in Shellfish." This document was developed in response to requests from various State public health and environmental agencies. This document addresses lead, a contaminant that is of particular concern to the agency and to State authorities. The information provided in this guidance document should assist State and local decisionmakers in addressing the local or regional problems with lead in shellfish. This information will also be useful in determining the need to issue consumption advisories or to close harvesting waters when shellfish harvested from particular waters are found to be contaminated.

ADDRESSES: Submit written requests for single copies of this guidance document (free of charge) to the Food and Drug Administration, Policy Guidance Branch (HFS–416), 200 C St. SW., Washington, DC 20204. Requests should be identified with the docket number found in brackets in the heading of this document. Send two self-addressed adhesive labels to assist that office in processing your request. The guidance document is available for public examination in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Gregory M. Cramer, Center for Food Safety and Applied Nutrition (HFS–416), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–3888.

SUPPLEMENTARY INFORMATION: FDA has prepared a guidance document on lead in shellfish entitled, "Guidance Document for Lead in Shellfish," in response to requests from various State public health and environmental agencies. This document will assist State and local decisionmakers in addressing the public health significance of lead in shellfish and in evaluating the need for issuance of consumption advisories or to close harvesting waters when shellfish

harvested from particular waters are found to be contaminated.

In the **Federal Register** of February 26, 1993 (58 FR 11609), the agency announced the availability of four other guidance documents on elemental contaminants in shellfish, "Guidance Document for Arsenic in Shellfish," "Guidance Document for Cadmium in Shellfish," "Guidance Document for Chromium in Shellfish," and "Guidance Document for Nickel in Shellfish."

The guidance document that is the subject of this notice provides public health information about lead, how to sample shellfish in preparation for testing for lead, procedures for analyzing for lead contamination, consumption and exposure assessments, and a summary of the toxicological and adverse effects of lead. Guidance is provided on how tolerable levels of shellfish consumption or contamination might be determined.

FDA plans to develop additional guidance documents to address other contaminants present in shellfish and finfish that are of public health significance.

Dated: September 9, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–22512 Filed 9–14–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–93–3665]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information:

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How frequently information submissions will be required;

(7) An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 8, 1993.

Kay Weaver,

Acting Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Applications for Housing Assistance (FR–3466).

Office: Housing.

Description of the Need for the Information and Its Proposed Use: The information collected is needed to enable the project owner to tentatively determine the family's eligibility, determine the unit size, screen applicants and assess the effectiveness of the marketing strategy outlined in the Affirmative Fair Housing Marketing Plan.

Form Number: None.

Respondents: Individuals or households and businesses or other for-profit.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information collection	54,714		1		.05		2,735

Total Estimated Burden Hours: 2,735.

Status: New.

Contact: James J. Tahash, HUD, (202), 708–3944, Angela Antonelli, OMB, (202) 395–6880.

Dated: September 7, 1993.

Proposal: Loan Guarantee Program, Amendment to Section 108, 24 CFR Part 570.

Office: Community Planning and Development.

Description of the Need for the Information and Its Proposed Use: The information collection is needed to review applications from State and local governments. It is used to evaluate information submitted in compliance with section 108 Loan Guarantee Program of the National Affordable Housing Act of 1990.

Form Number: None.

Respondents: State or Local Governments.

Frequency of Submission: Annually and Recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information collection	100		1		88.65		8,865
Recordkeeping	100		1		44.00		4,400

Total Estimated Burden Hours: 13,265.

Status: Reinstatement.

Contact: Paul D. Webster, HUD, (202) 708–1871, Angela Antonelli, OMB, (202) 395–6880.

Dated: August 31, 1993.

Proposal: Nehemiah Housing Opportunity Grants Program (FR–3438).

Office: Housing.

Description of the Need for the Information and Its Proposed Use: Under the Nehemiah Housing Opportunity Program, HUD is authorized to make grants to non-profit organizations to enable them to provide second mortgages to families purchasing homes that are constructed or substantially rehabilitated.

Form Number: None.

Respondents: Individuals or households, State or local Governments, and non-profit institutions.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information collection	136		Varies		Varies		5,032

Total Estimated Burden Hours: 5,032.

Status: Revision.

Contact: Joan Morgan, HUD, (202) 708–2676, Angela Antonelli, OMB, (202) 395–6880.

Dated: August 30, 1993.

Proposal: HOPE for Elderly Independence Program.

Office: Public and Indian Housing.

Description of the Need for the Information and Its Proposed Use: The purpose of this program is to provide supportive services for frail elderly residents in the community. They will be able to receive services in their homes. The information is needed to apply for funds and evaluate the effectiveness of the demonstration.

Form Number: None.

Respondents: Individuals or Households and States or Local Government.

Frequency of Submission: Quarterly and Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
PHA applications	100		1		14		1,400
Budget formats	25		1		3		75
Quarterly program reports	25		3		1.5		113
Annual program reports	25		1		3		75
Tenant applications	1,500		1		4		6,000

Total Estimated Burden Hours: 7,663.

Status: Reinstatement.

Contact: Gwen Carter, HUD, (202) 708–3887, Angela Antonelli, OMB, (202) 395–6880.

Dated: August 31, 1993.

Proposal: Freedom of Information Act (FOIA) of 1986.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: Third Party Tracers use forms HUD–57002 and 57003 to verify unpaid distributive share payments and unearned mortgage insurance premiums found on FOIA listings for Mutual Mortgage Insurance (MMI) loans paid off from 1977 through two years ago.

Form Number: HUD–57002 and 57003.

Respondents: Individuals or households; businesses or other for-profit; and non-profit institutions.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	10		1,000		.1		1,000

Total Estimated Burden Hours: 1,000.

Status: New.

Contact: Ken Tucker, HUD, (202) 708–2438, Angela Antonelli, OMB, (202) 395–6880.

Dated: September 8, 1993.

Proposal: Survey of Tenants in Certain Properties With HUD-Held and Foreclosed Mortgages.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: The Department is required to preserve the number of units which are occupied by low- or moderate-income persons at the time of assignment or foreclosure, whichever is greater. HUD must also inquire as to the income levels of unassisted tenants for whom information is not available.

Form Number: None.

Respondents: Individuals or households, businesses or other for-profit, and Federal agencies or employees.

Frequency of Submission: Other.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Survey of currently HUD-held inventory	9,881		1		.05		494
Unit owners	85		1		.50		43

Total Estimated Burden Hours: 537.

Status: Extension.

Contact: James J. Tahash, HUD, (202) 708–3944, Angela Antonelli, OMB, (202) 395–6880.

Dated: September 8, 1993.

Proposal: Draw Request.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: Form HUD–9746A is used by homebuyers and contractors to request construction draws for rehabilitation work that has been completed.

Form Number: HUD–9746A.

Respondents: Businesses or other for-profit.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–9746A	4,000		5		1.5		30,000

Total Estimated Burden Hours: 30,000.

Status: Revision.

Contact: Kenneth L. Crandall, HUD, (202) 708–2720, Angela Antonelli, OMB, (202) 395–6880.

Dated: September 8, 1993.

[FR Doc. 93–22506 Filed 9–4–93; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket N–93–3661; FR–3566–N–02]

Task Force on Occupancy Standards in Public and Assisted Housing

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of public hearings.

SUMMARY: The Task Force on Occupancy Standards in Public and Assisted Housing was established on December 31, 1992 in accordance with the provisions of section 643 of the Housing and Community Development Act of 1992 (Pub. L. 102–550) and the Federal Advisory Committee Act (FACA) (5 U.S.C. app 2). The Task Force's charter was published in the **Federal Register** on January 7, 1993 at 58 FR 3039. The Task Force was created to review all rules, policy statements, handbook and technical assistance memoranda issued by the Department on the standards and obligations governing residency in public and assisted housing; and make recommendations in its final report to HUD and Congress for the establishment of reasonable criteria for occupancy, so that HUD could revise its standards, regulations, and guidelines to provide accurate and complete guidance to owners and managers of federally assisted housing. The **Federal Register** on July 12, 1993 at 58 FR 37501 announced that three public hearings were to be held by the Task Force following the dissemination to the public of its draft report. This notice to confirm the dates and locations of those hearings at which the public can offer comments on the Task Force's Preliminary Report and other federally assisted housing related issues.

FOR FURTHER INFORMATION CONTACT: Laurence D. Pearl, Office of Fair Housing and Equal Opportunity, room 5226, Department of Housing and Urban Development, 451 Seventh Street, SW. Washington, DC 20410. Telephone: (202) 708–0288 (voice) or (TDD) (202) 708–0113. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Time and Place

The public hearings will be held on Tuesday, September 21, 1993 at the San Antonio Housing Authority, 818 South Flores Street, San Antonio, TX; Monday, September 27, 1993 at the Harbor Point Community Center, 270 Mount Vernon Street, Dorchester, MA; and Friday, October 1, 1993 at the Center Park Community Center, 2121 26th Avenue, South, Seattle, WA. The public hearings will be held each of the three days from 10 a.m. to 8 p.m. with several breaks planned.

Providing Comments at the Public Hearings

Individuals who want to provide comments at the hearings should write or call the HUD Offices of Fair Housing and Equal Opportunity in San Antonio, TX, Boston, MA or Seattle, WA with the following information:

(1) Name, address and telephone number.

(2) The name of the group or organization the speaker represents, if any.

(3) The issue to be discussed (for example, the application process, notices in plain language).

(4) Preferred time for speaking (morning, afternoon, early evening or evening).

(5) If you are a person with a mental or physical disability, information about reasonable accommodations you may need to attend and speak at the hearing.

The three HUD Offices' addresses and telephone numbers appears at the end of this notice.

Individuals who are given time to provide testimony will be notified of their selection and the anticipated time for their presentation. The Task Force will use a panel format to receive testimony. The Task Force will try to give time to speak to everyone who wants to comment. Walk-ins will be accommodated but must register the day of the hearing to be placed on the roster. But, because of limited time, the Task Force may not be able to schedule time for everyone. Individuals and organizations may provide written testimony at the hearings. If written testimony is offered by a speaker, one copy should be submitted at the time of

check in. The written testimony should include a cover sheet which lists the person's name and organization, if any; address and telephone number; location and date of the public hearing. If possible, the Task Force recommends that speakers bring at least fifteen written copies of their testimony during the public hearing. The Task Force recognizes that not everyone will be able to meet this request. Written comments to the Task Force Preliminary Report may also be offered at the hearing, or mailed to the Office of General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–0500 by November 1, 1993.

Dated: September 7, 1993.

Bonnie Milstein,

Chair, Task Force on Occupancy Standards in Public and Assisted Housing.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity.

HUD Office Addresses and Telephone Numbers

San Antonio Office, Washington Square, 800 Dolorosa, San Antonio, TX 78207–4563, Telephone No. (210) 229–6885.

Boston Regional Office, Room 308, Thomas P. O'Neill, Jr. Federal Bldg., Causeway Street, Boston, MA 02222–1092, Telephone No. (617) 565–5304.

Seattle Regional Office, Suite 200, Seattle Federal Office Bldg, 909 1st Avenue, Seattle, WA 98104–1000, Telephone No. (206) 220–5170.

[FR Doc. 93–22507 Filed 9–17–93; 8:45 am]

BILLING CODE 4210–28–M

INFORMATION SECURITY OVERSIGHT OFFICE

National Industrial Security Program Policy Advisory Committee; Meeting

Notice is hereby given that the National Industrial Security Program Policy Advisory Committee (NISPPAC) will meet September 30, 1993, from 1 p.m. to 3 p.m., in room 105 of the National Archives Building, Seventh Street and Pennsylvania Avenue, NW, Washington, DC. This notice is required by the Federal Advisory Committee Act (5 U.S.C. App. 2) and implementing regulation 41 CFR 101–6.

The purpose of this meeting is to discuss matters of policy with respect to the National Industrial Security Program (NISP). The agenda for this meeting will include discussion on the effective implementation of the NISP, general discussion on the goals of the NISPPAC, and its by-laws.

This meeting will be open to the public. However, due to space limitations and access procedures, the names and telephone numbers of individuals planning to attend must be submitted to the Information Security Oversight Office (ISOO) no later than September 28, 1993. Written statements from the public will be accepted in lieu of an opportunity for comment.

For further information, contact Steven Garfinkel, Director, ISOO, 750 17th Street, NW., suite 530, Washington, DC 20006, telephone (202) 634–6150.

Dated: September 10, 1993.

Steven Garfinkel,

Director, Information Security Oversight Office.

[FR Doc. 93–22616 Filed 9–14–93; 8:45 am]

BILLING CODE 6820–AF–M

DEPARTMENT OF THE INTERIOR

Geological Survey

CHIM Evaluation Consortium; Cooperative Research and Development Agreement

AGENCY: Geological Survey, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. Geological Survey (USGS) is planning to enter into a Cooperative Research and Development Agreement (CRADA) with CHIM Evaluation Consortium (CHIMEC), a consortium of minerals exploration companies. The purpose of the CRADA is to evaluate and test the CHIM electrochemical exploration method to determine its applicability to minerals exploration. Part of this research will involve testing of a newly developed USGS CHIM electrode. Any other organization from the minerals exploration industry interested in pursuing the possibility of a CRADA for similar kinds of activities should contact the USGS.

DATES: This notice is effective September 15, 1993.

ADDRESSES: Information on the proposed CRADA is available to the public upon request at the following location:

U.S. Geological Survey; Chief, Branch of Geochemistry; P.O. Box 25046; Denver Federal Center, MS–973; Denver, Colorado 80225–0046.

FOR FURTHER INFORMATION CONTACT: Dr. David Smith of the U.S. Geological Survey, Branch of Geochemistry, at the address given above, telephone (303) 236–1800, no later than 30 days from the publication of this notice.

SUPPLEMENTARY INFORMATION: An organization interested in a similar CRADA should be able to provide access to sites with known mineralization and having potential for maximizing the return of CHIM research conducted there. It is desirable that their sites have well-defined zones of mineralization, of known type, defined by drilling and other exploration tools, and that other geochemical tests have been, or will be, made at the site.

Selection of an organization to participate in this CRADA will be based on the types and variety of potential test sites available from the industry organization, the degree of scientific cooperation to be provided, and total resources to be made available that will contribute directly to advancing the CHIM research program of the USGS.

Benjamin A. Morgan,

Chief Geologist.

[FR Doc. 93–22543 Filed 9–14–93; 8:45 am]

BILLING CODE 4310–13–M

Bureau of Land Management

[WY–980–4340–04]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plat of survey of the following described lands are scheduled to be officially filed in the Wyoming State Office, Cheyenne, Wyoming, thirty (30) calendar days from the date of this publication.

Sixth Principal Meridian, Wyoming

T. 55N., R. 69W.,
accepted September 7, 1993

If protests against a survey, as shown on the above plat, are received prior to the official filing, the filing will be stayed pending consideration of the protest(s) and or appeal(s). A plat will not be officially filed until after disposition of protest(s) and or appeal(s).

This plat will be placed in the open files of the Wyoming State Office, Bureau of Land Management, 2515 Warren Ave., Cheyenne, Wyoming, and will be available to the public as a matter of information only. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $1.10 per copy.

A person or party who wishes to protest a survey must file with the State Director, Bureau of Land Management, Cheyenne, Wyoming, a notice of protest prior to thirty (30) calendar days from the date of this publication. If the

protest notice did not include a statement of reasons for the protest, the protestant shall file such a statement with the State Director within thirty (30) calendar days after the notice of protest was filed.

The above-listed plat represents a dependent resurvey.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.

Dated: September 7, 1993.

John P. Lee,

Chief, Branch of Cadastral Survey.

[FR Doc. 93–22536 Filed 9–14–93; 8:45 am]

BILLING CODE 4310–22–M

National Park Service

Niobrara Scenic River Advisory Commission Meeting

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Niobrara Scenic River Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

MEETING DATE AND TIME: October 12, 1993; 10 a.m. until 3 p.m.

ADDRESSES: Cherry County Court House, Main Street, Valentine, Nebraska.

Agenda topics include a summary review of the comments received by the National Park Service in response to the June newsletter; an update and discussion on the status of the draft management plan for the Niobrara Scenic River by the National Park Service planning team; the opportunity for public comment; and a proposed agenda, date, time, and location for the next meeting.

The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Requests for time for making presentations may be made to the Superintendent prior to the meeting or to the Chair at the beginning of the meeting. In order to accomplish the agenda for the meeting, the Chair may want to limit or schedule public presentations.

The meeting will be recorded for documentation and a summary in the form of minutes will be transcribed for dissemination. Minutes of the meeting will be made available to the public after approval by the Commission members. Copies of the minutes may be requested by contacting the Superintendent. An audio tape of the meeting will be available at the headquarters office of the Niobrara/Missouri National Scenic Riverways in O'Neill, Nebraska.

FOR FURTHER INFORMATION CONTACT: Warren Hill, Superintendent, Niobrara/Missouri National Scenic Riverways, P.O. Box 591, O'Neill, Nebraska 68763–0591, (402) 336–3970.

SUPPLEMENTARY INFORMATION: The Commission was established pursuant to Public Law 102–50, section 5. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, on matters pertaining to the development of a management plan and on the management and operation of the 40-mile and 30-mile segments of the Niobrara River designated by section 2 of Public Law 102–50 which lie outside the boundary of the Fort Niobrara National Wildlife Refuge and that segment of the Niobrara River from its confluence with Chimney Creek to its confluence with Rock Creek.

Dated: September 2, 1993.

William W. Schenk,

Acting Regional Director, Midwest Region.

[FR Doc. 93–22481 Filed 9–14–93; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–643 (Final)]

Defrost Timers From Japan; Institution of Antidumping Investigation

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–643 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether 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 Japan of defrost timers, provided for in subheading 9107.00.40 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, 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 C (19 CFR part 207).

EFFECTIVE DATE: August 24, 1993.

FOR FURTHER INFORMATION CONTACT: Tedford Briggs (202–205–3181), 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

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of defrost timers from Japan are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on January 19, 1993, by Paragon Electric Co., Inc., Two Rivers, WI.

Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) 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 this investigation upon the expiration of the period for filing entries of appearance.

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 this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) 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.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on December 22, 1993, and a public version will be issued

thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on January 11, 1994, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before December 27, 1993. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on January 3, 1994, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony *in camera*.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is January 5, 1994. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is January 20, 1994; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before January 20, 1994. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also 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 investigation must be served on all other parties to the investigation (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: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: September 10, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–22560 Filed 9–14–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–349]

Change of Commission Investigative Attorney

In the Matter of certain diltiazem hydrochloride and diltiazem preparations.

Notice is hereby given that, as of this date, John M. Whealan, Esq. of the Office of Unfair Import Investigations is designated as the Commission investigative attorney in the above-cited investigation instead of Juan S. Cockburn, Esq.

The Secretary is requested to publish this Notice in the **Federal Register**.

Dated: September 9, 1993.

Lynn I. Levine,

Director, Office of Unfair Import Investigations.

[FR Doc. 93–22561 Filed 9–14–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–464 (Final)]

Sparklers From the Peoples' Republic of China; Final Critical Circumstances Investigation

AGENCY: United States International Trade Commission.

ACTION: Institution of a final critical circumstances investigation and scheduling of procedures for that determination.

SUMMARY: The Commission hereby gives notice of the institution of a final critical circumstances investigation No. 731–TA–464 (Final) under section 735(a) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether critical circumstances exist by reason of imports from China of sparklers, provided for in subheading 3604.10.00 of the Harmonized Tariff Schedule of the United States.

EFFECTIVE DATE: September 10, 1993.

FOR FURTHER INFORMATION CONTACT: Stephen McLaughlin (202–205–3095), Office of the General Counsel, 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

On July 26, 1993, the Department of Commerce notified the Commission of an amendment to its final determination of sales at less than fair value and outstanding antidumping order, in accordance with a remand from the Court of International Trade in the above-referenced case. 58 FR 40624 (July 29, 1993). The amended final determination includes an affirmative critical circumstances determination as to Jiangxi Native Products Import & Export Corp. and all other exporters of sparklers, excluding Guangxi Native Products Import & Export Corp. and Hunan Native Products Import & Export Corp. In their original final determination, Commerce had made a negative determination on critical circumstances.

The original petition was filed on July 2, 1990, by Elkton Sparkler Co., North East, MD and Diamond Sparkler Co., Youngstown, OH. Suspension of liquidation was ordered on December 17, 1990. Commerce made its original final determination regarding sales of imports at LTFV and no critical circumstances effective April 26, 1991. The Commission made its original final determination on June 11, 1991. On May 7, 1993, the Court (CIT) affirmed the results of remand in this case.

The Commission requested import data from the U.S. Customs Service regarding imports of sparklers from China, and particularly those produced by Jiangtxi, during the 90 day period for which retroactive duties may be assessed (September 17 to December 17, 1990) and the 90 day period immediately prior to that time (June 17 to September 16, 1990). By letter dated August 30, 1990, the U. S. Customs Service responded to the Commission's request. The Customs Service indicated that total import volume of sparklers from China declined from September 17, 1990 to December 17, 1990, compared with the prior 90 day period. In addition, Customs indicated that sparklers manufactured or produced by Jiangtxi were not imported during either period.

The Customs Service has also informed the Commission that there are

no unliquidated entries of sparklers from China dating from the period September 17, 1990–December 17, 1990. Thus there are no unliquidated entries upon which retroactive duties could be assessed.

Entries of Appearance

Entries of appearance must be filed within seven calendar days of the date of publication of this notice.

Waiver of Commission Rules

Unless an interested party enters their appearance and objects within seven calendar days of the date of publication of this notice, the Commission intends to waive rules 207.21–25 regarding staff reports, hearings, and briefs of parties for this investigation. 19 CFR 207.21–25.

Written Submissions

Any written submissions by interested parties on the merits must be filed with the Commission no later than 14 days from the date of publication of this notice in the **Federal Register**.

The Commission will issue a final determination by the end of the 75-day investigative period, October 12, 1993.

Authority : This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20(b) of the Commission's rules.

Issued: September 10, 1993.

By order of the Commission.

Donna Koehnke,

Secretary.

[FR Doc. 93–22562 Filed 9–14–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–350]

Initial Determination Terminating Respondent on the Basis of Settlement Agreement

In the Matter of certain sputtered carbon coated computer disks and products containing same, including disk drives.

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding administrative law judge in the above captioned investigation terminating the following respondent on the basis of a settlement agreement: Conner Peripherals, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on September 8, 1993.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205–1802.

Issued: September 8, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–22563 Filed 9–14–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigations Nos. 731–TA–636 and 637 (Final)]

Stainless Steel Wire Rod From Brazil and France; Revised and Supplementary Schedule

AGENCY: United States International Trade Commission.

ACTION: Revised and supplementary schedule for the subject investigations.

EFFECTIVE DATE: September 3, 1993.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202–205–3185), 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: On August 2, 1993, the Commission instituted the subject investigations together with investigation No. 731–TA–638 (Stainless Steel Wire Rod from India) and established a schedule for its conduct (**Federal Register**, August 18, 1993, 58 FR 43908). Subsequently, the Department of Commerce extended the date of its final determinations for Brazil and France from October 11, 1993, to December 20, 1993 (**Federal Register**, August 24, 1993, 58 FR 44660). Accordingly, the Commission's determinations for Brazil and France will be postponed until after Commerce's final determinations, and supplemental briefs pertaining thereto may be filed on or before January 3, 1994. The Commission's schedule will otherwise stay coincident with Inv. No. 731–TA–638 and remain as previously published.

For further information see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: September 7, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–22564 Filed 9–14–93; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Full Committee Meeting

Notice is hereby given that the Advisory Committee on Construction Safety and Health, established under section 107(e)(1) of the Contract Work

Hours and Safety Standards Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656), will meet on September 30, 1993, at the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., room S–4215A and B, Washington, DC. The meeting is open to the public and will begin at 9 a.m.

At this meeting, the Advisory Committee will receive the report of its Fall Protection work group and will provide OSHA with recommendations regarding the development of an interim policy for uniform enforcement of fall protection requirements.

Written data, views or comments may be submitted, preferably with 20 copies, to the Division of Consumer Affairs, at the address provided below. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting. Anyone wishing to make an oral presentation should notify the Division of Consumer Affairs before the meeting. The request should state the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation. Persons who request the opportunity to address the Advisory Committee may be allowed to speak, as time permits, at the discretion of the Chairman of the Advisory Committee. Individuals with disabilities who wish to attend the meeting should contact Tom Hall, at the address indicating below, if special accommodations are needed.

For additional information contact: Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone 202–219–8615. An official record of the meeting will be available for public inspection at the Division of Consumer Affairs.

Signed at Washington, DC this 10th day of September, 1993.

David C. Zeigler,

Acting Assistant Secretary of Labor.

[FR Doc. 93–22584 Filed 9–14–93; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Cooperative Agreements for the "Arts Plus" Initiative

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of from 8 to 12 separate Cooperative Agreements to qualified nonprofit arts organizations in partnership with public schools, to support projects of three years duration. The projects must focus on dance, theater, musical theater, or opera education, and must help move the arts toward inclusion as a basic element of preK -12 education. The funding period of the Cooperative Agreements is anticipated to be from approximately August 1994 to approximately August 1997. Funding for these projects will be in a range from approximately $50,000 to $150,000 total for the three years. Each recipient of a Cooperative Agreement will be required to satisfy a matching requirement on a 1-to-1 basis in non-Federal funds. Eligibility to apply is limited to arts organizations that are a dance theater, or musical theater, or opera organization or company. Arts presenters are also eligible as applicants if they exhibit the following characteristic: A presenting organization selects artists and companies, engages them to perform or exhibit, pays them a fee, and brings them together with general audiences. Presenting organizations provide performance and exhibition opportunities necessary to the existence of many artists. In addition, presenting organizations must present paid professional artists to the general public in a balanced seasonal format, and employ full-time paid professional administrative staff whose primary responsibility is presenting professional artists. Those interested in receiving the Solicitation package should reference Program Solicitation PS 94–01 in their written request and include two (2) self-addressed labels. Questions should be addressed to the Arts in Education Program at (202) 682–5426. Verbal requests for the Solicitation will not be honored.

DATES: Program Solicitation PS 94–01 is scheduled for release approximately November 1, 1993 with proposals due January 19, 1994.

ADDRESSES: Requests for the Solicitation should be addressed to the National Endowment for the Arts, Contracts Division, room 217, 1000 Pennsylvania Avenue., NW., Washington, DC 20506.

William I. Hummel,

Director, Contracts and Procurement Division.

[FR Doc. 93–22541 Filed 9–14–93; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from August 23, 1993, through September 2, 1993. The last biweekly notice was published on September 1, 1993.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the

expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives 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 a hearing and petitions for leave to intervene is discussed below.

By October 15, 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 a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, 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 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) 248-5100 (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 a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3, Maricopa County, Arizona

Date of amendment request: August 5, 1993.

Description of amendment requests: The amendment would change the frequency of several channel functional tests for the reactor protection system and the engineered safety feature actuation system instrumentation from once per month to quarterly. The additional information is provided in support of the licensee's proposal to also extend the surveillance frequencies for the automatic actuation logic for safety injection, containment isolation, containment spray, main steam line isolation, and recirculation from monthly to quarterly. This amendment request supersedes an amendment request dated December 28, 1992, published in the **Federal Register** on February 3, 1993 (58 FR 6994).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis about the issue of no significant hazards consideration, which is presented below:

Standard 1—Involve a significant increase in the probability or consequences of an accident previously evaluated.

Increasing the surveillance interval for RPS and ESFAS instrumentation has two principle effects with opposing impacts on core melt risk. The first impact is a slight increase in core melt frequency that results from the increased unavailability of the instrumentation in question. The unavailability of the tested instrumentation components is translated to result in a failure of the reactor to trip, an Anticipated Transient Without Scram, or a failure of the appropriate engineered safety features to actuate when required. The opposing impact is the corresponding reduction in core melt frequency that would result due to the reduced exposure of the plant to test induced transients.

Representative fault tree models were developed for Palo Verde and the corresponding core melt frequency increases and decreases were quantified in CEN-327-A and CEN-327-A, Supplement 1. The NRC Staff found that changes in the RPS unavailabilities that result from extending the surveillance test intervals from 30 days to 90 days were not considered to be significant. Estimates of the reduction in scram frequency from the reduction in test-induced scrams and the corresponding reduction in core melt frequency were found acceptable. Extended surveillance intervals were found to result in a net reduction in core melt risk. Operation of the facility in accordance with this proposed amendment, therefore, will not involve a significant increase in the probability or consequence of an accident previously evaluated.

Standard 2—Create the possibility of a new or different kind of accident from any accident previously evaluated.

This amendment request does not involve any changes in equipment and will not alter the manner in which the plant will be operated. For this reason, this amendment will not create the possibility of a new or different kind of accident from any previously evaluated.

Standard 3—Involve a significant reduction in a margin of safety.

The margin of safety is not significantly reduced. There are no changes to the equipment or plant operations. The changes to [plant protection system] PPS setpoints and allowable values, while nonconservative, are not significant. The only impact of this change is the development of a more appropriate balance between increased core melt risk due to slightly increased equipment unavailability and reduced core melt risk due to a reduction in plant exposure to test-induced transients. Implementation of the proposed change is expected to result in an overall improvement in safety due to the fact that reduced testing intervals will result in fewer inadvertent reactor trips and less frequent actuation of ESFAS components. The conclusions of the accident analyses in the [Palo Verde Nuclear Generating Station] PVNGS [Updated Final Safety Analysis Report] UFSAR remain valid and the safety limits continue to be met.

The NRC staff has reviewed the licensees' analysis and, based on that review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Attorney for licensees: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072-3999

NRC Project Director: Theodore R. Quay

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: August 20, 1993.

Description of amendment request: The proposed amendment would modify Technical Specification 3/4.4.5, Steam Generators, to add as an alternative to tube plugging, the repair of steam generator tubes that have indications of degradation. Babcock & Wilcox Nuclear Service Company (B&W) has developed a repair methodology that allows degraded steam generator tubes to be repaired by sleeving and remain in service. The design and installation methodology account for tube mechanical and structural aspects, water chemistry, metallurgical aspects, and thermal/hydraulic considerations, as well as allowing for subsequent inspections of the tube and sleeve. This methodology is documented in Topical Report BAW-2045PA, Revision 1.

Basis for proposed no significant hazards consideration determination As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Final Safety Analysis Report conservatively evaluated a double-ended rupture of a steam generator tube. A severed tube with a mechanical sleeve installed in it has been shown by tests to have mechanical strength at least as great as that of a new tube. Thus a sleeve tube is no more likely to rupture than any other tube in the steam generator.

Tube sleeves are designed to accommodate all loads that any steam generator tube may experience due to normal plant conditions and all anticipated transients specified for the steam generator.

A sleeved tube is functionally equivalent to an unsleeved tube except for less effective heat transfer due to the air gap and a slight pressure drop due to the primary flow restriction. These differences would be insignificant to the performance of the steam generator in any accident situation.

The sleeves are structurally equivalent to the steam generator tubes.

There is no increase in the possibility for increased fatigue loadings. There is not possibility for the sleeve to become dislodged from its plugging location and enter the RCS flow path. The sleeving process results in the deformation of the sleeve into the steam generator tube in at least one end of the sleeve. This process ensures that the sleeve remains locked in to its mating tube once the kinetic weld has been completed.

The plant safety analysis for tube plugging bounds tube sleeving.

Therefore, there would be no increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The only equipment affected by sleeving is the steam generator. The most severe malfunction of a steam generator is a tube rupture. The consequences of a ruptured sleeve are no greater than the consequences of a ruptured tube. Sleeving does not increase the probability of a steam generator failure because the sleeved tube has been shown to be mechanically stronger than an unsleeved tube. Thus, a steam generator with sleeved tubes would perform in the same manner as one without sleeved tubes, and there is no risk of a new or different accident.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The proposed revision to the Shearon Harris Technical Specifications to permit the installation of tube sleeves does not reduce the margin of safety as presently defined in BASES section 3/4.4.5. The analysis for the proposed tube sleeve design (based on B&W Nuclear Services Company Report BAW-2045PA, Revision-1) demonstrates that the structural integrity of the RCS is maintained. Design of the tube sleeve considers mechanical/structural aspects, water chemistry and metallurgical aspects as well as thermal/hydraulic considerations.

The integrity of steam generator tubes is in fact enhanced by the installation of sleeves due to increased vibration stability margin and the ability to bridge over imperfections and degradations.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: S. Singh Bajwa

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: August 27, 1993.

Description of amendment request: The proposed changes will revise the Technical Specifications to support the elimination of the reactor coolant resistance temperature detector (RTD) bypass system and the substitution of RTDs mounted in thermowells that extend directly into the reactor coolant system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change will not change the RCS temperature or temperature related setpoints. The new thermowell RTD system will supply the same temperature measurements as the manifold RTD system. Total response time for temperature related setpoints will remain unchanged. The Overtemperature Delta-T reactor trip and Overpower Delta-T reactor trip will function in the same manner to terminate DNB-related transients.

The process protection circuitry that is being modified will use the same style qualified printed circuit cards that have been used a SHNPP. The process control circuitry, with electronic isolation from the process protection circuitry, will use a Westinghouse designed and qualified circuit card to implement the median signal select function. The new thermowell RTD system will be more resistant to the effects of RTD failures because no operator action is necessary to defeat erroneous control T-avg and control Delta-T channel inputs, as is the case with the manifold RTD system. The thermowells that will be welded into the RCS are similar to other thermowells that are already installed and will meet applicable ASME codes. The probability and consequences of thermowell failure or leakage are bounded by the analysis of the current system. The probability of leakage is reduced due to the elimination of significant footage of RCS pressure boundary piping and valves. Therefore, there will be no increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The protection or control systems will not be significantly changed. A thermowell failure is similar to a bypass loop failure. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

This change does not affect any safety limit or limiting safety system setpoint or the total delay inherent in the temperature monitoring system. In addition, the total allowances specified in the Technical Specifications for instrument channel accuracies are being met. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: S. Singh Bajwa

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: May 13, 1993

Description of amendment request: The proposed amendment would revise Technical Specification 3/4.6.1.7, Containment Purge Ventilation System, to allow the simultaneous opening of the miniflow purge supply and exhaust valves for habitability and ALARA purposes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) A significant increase in the probability or consequences of an accident previously evaluated.

The proposed change was evaluated with respect to the consequences in the first few seconds of a LOCA, i.e. from the beginning of the accident until the miniflow purge system is isolated. A conservative analysis demonstrated that the radiological releases through the miniflow purge system would be very small.

The largest additional dose calculated with conservative assumptions was less than 4 rem thyroid dose at the Byron Station site boundary and less than 5 rem thyroid dose at the Braidwood Station site boundary. This additional dose was added to the LOCA doses previously calculated and reported in Chapter 15 of the UFSAR. The new dose total remains well within the limits of 10CFR100. It should be noted that there is significant margin between the thyroid doses and the 300 rem guideline specified in 10CFR100.

Simultaneous opening of the 8-inch containment purge supply and exhaust isolation valves does not increase the probability of an accident previously evaluated. Component and system performance will not be adversely affected since equipment and system design criteria continue to be met. The isolation valves do

not initiate any accident discussed in the FSAR. The containment isolation signals which automatically close the 8-inch isolation valves are not affected by the proposed change.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

The possibility for an accident or malfunction of a different type than any evaluated previously in the safety analysis report is not created. The proposed change is in the operation of the system an not in the design of the equipment. The containment isolation signal received by the 8-inch containment purge system is unchanged and the closure time assumed for the isolation valves are also unaffected by this change.

The change in operation of the 8-inch containment purge system does not create new or different accidents. The initiation of postulated accidents does not depend on the 8-inch containment purge system. The proposed operation does not create a different accident from any previously evaluated because the purge system will continue to be isolated by the containment isolation signal.

(3) Involve a significant reduction in a margin of safety.

The margin of safety as defined in the basis of the Technical Specifications is not significantly reduced by the change in the miniflow purge system operation. All acceptance criteria with respect to fuel, RCS pressure boundary, and containment integrity continue to be met.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: For Byron, the Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: James E. Dyer

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: June 29, 1993.

Description of amendment request: The proposed amendment would revise the Technical Specifications to incorporate the requirements of the revised 10 CFR Part 20 which becomes effective January 1, 1994. These changes are: (1) adding definitions for controlled area, deep dose equivalent, dose equivalent, high radiation area, and restricted area; revising definitions for member of the public and unrestricted area; (2) reducing the curie content limit of the primary water storage tank and updating the radioactive effluent holdup tank limit reference; (3) relocating certain information in Section 5; (4) revising high radiation area controls; (5) extending the Radioactive Effluent Release Report submittal frequency from semiannual to annual; (6) revising radiation monitoring instrumentation requirements; and (7) making editorial changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the definitions, radioactive effluent holdup tank limits and location of previous 10CFR20 requirements do not impact previously evaluated accidents because there is no change in the types and amounts of effluents that will be released. There will be no increase in individual or cumulative occupational radiation exposures. The proposed changes to the high radiation area controls provide more controls for enhanced exposure monitoring; they do not change the effluents or exposures.

Relocating information to the Offsite Dose Calculation Manual (ODCM) and the editorial changes are administrative in nature. The proposed changes do not reduce the requirements of any Technical Specification requirement. The changes provide consistency and improve readability. The information deleted from Section 5 is covered in more detail in the ODCM. Therefore, the level of control is maintained.

Changing the frequency of submitting the Radiological Effluent Release Report from semiannual to annual is consistent with the revised requirements of 10CFR50.36a. The change does not adversely impact the ability to meet applicable regulatory requirements related to liquid and gaseous effluents. The report is a historical record of station effluents and has no impact on the actual release process. The NRC will continue to receive the same information, only on a different, approved schedule.

The changes to the radiation monitor setpoints are consistent with the monitoring requirements of the applicable accident (fuel handling accident) described in Chapter 15 of the UFSAR. The setpoints and revised table note provide more specific requirements.

B. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes in radiation monitoring instrumentation requirements are more specific. Calculations were performed to determine the appropriate setpoints based on the current plant design and operation. The changes provide better control over the instrumentation.

The remaining proposed changes have no effect on the probability of an accident. The changes are administrative in nature and do not affect plant design or operation. There is no change to the types and amounts of effluent that will be released, nor is there an increase in individual or cumulative occupational radiation exposures.

C. The proposed changes do not involve a significant reduction in a margin of safety.

Reducing the activity limit for the primary water storage tank from 2000 curies to 10 curies is conservative. The 10 curie limit, which would apply to all unprotected outside tanks is within the revised limits in 10CFR20. Compliance with the limits of 10CFR20.1301 (revised) will be demonstrated by operating within the limits of 10CFR50 Appendix I, and 40 CFR 190.

The proposed changes to the radiation monitoring instrumentation provide additional controls over the current requirements. The instrumentation continues to meet the requirements described in the bases. The bases themselves are unchanged.

The remaining changes are editorial and have no effect on the margin of safety for any Technical Specification.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: For Byron, the Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: James E. Dyer

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: August 18, 1993.

Description of amendment request: The licensee has proposed to incorporate an additional Technical Specification to require that the 480 VAC motor control center (MCC) 5 and its automatic bus transfer (ABT) scheme be operable during Modes 1, 2, 3, and 4.

Basis for proposed no significant hazards consideration determination:

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a significant hazards consideration because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to incorporate an additional LCO [limiting condition for operation] requiring MCC-5 and its associated ABT scheme be operable in Modes 1 through 4 does not involve any physical modifications to the unit, nor does it alter the manner in which the electrical distribution system is operated. Incorporation of the proposed change will impose an additional restriction on the operation of the Haddam Neck Plant.

The proposed change to permit testing of certain features of the MCC-5 ABT scheme does not involve any credible failure modes which would result in a design basis accident. During the testing, MCC-5 would remain energized from the preferred 480 VAC power supply.

Testing is not expected to measurably increase the probability of losing MCC-5. The probability of losing the preferred power source during the 30 minute interval that the ABT may be inoperable is very low. Moreover, the loss of MCC-5 is not expected to directly lead to a reactor trip. For example, only if the semi-vital power automatic transfer to MCC-12 additionally failed would all semi-vital AC power be lost. The result would be tripping of the main feedwater pumps and a loss of feedwater event. However, the probability of testing the MCC-5 ABT scheme coincident with the loss of MCC-5's preferred power supply, and failure of the semi-vital AC automatic transfer is insignificant. Likewise, other contributors, such as a total loss of instrument air owing to a loss of MCC-5, are events of low probability. There would be no measurable impact on the loss of feedwater probability.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed change to incorporate an additional LCO requiring MCC-5 and its associated ABT scheme be operable in Modes 1 through 4 does not involve any physical modifications to the unit, nor does it alter the manner in which the electrical distribution system is operated. Incorporation of the proposed change will impose an additional restriction on the operation of the Haddam Neck Plant.

During the testing of the ABT scheme associated with MCC-5, the alternate 480 VAC power supply to MCC-5 will not be automatically available should a loss of offsite power occur, although the preferred 480 VAC power source will remain available. This situation is similar to a condition currently allowed by the Haddam Neck Technical Specifications, having an emergency diesel generator unavailable due to testing. Also, the proposed change to permit the MCC-5 ABT scheme to be unavailable for 30 minutes during testing is bounded by the ability to have an emergency diesel generator unavailable for 72 hours.

Should the proposed testing find the ABT scheme to be in a failed condition, the action statement would allow up to 72 hours to effect repairs and to restore the MCC-5 ABT scheme to an operable status, provided MCC-5 remains powered by an operable emergency diesel generator. Again, this is equivalent to having one emergency diesel generator inoperable at present for up to 72 hours, given a failure of the emergency diesel generator, before performing a plant shutdown.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety.

The proposed change to incorporate an additional LCO requiring MCC-5 and its associated ABT scheme be operable in Modes 1 through 4 does not involve any physical modifications to the unit, nor does it alter the manner in which the electrical distribution system is operated.

Incorporation of the proposed change will impose an additional restriction on the operation of the Haddam Neck Plant.

The proposed change to permit on-line testing of the ABT scheme associated with MCC-5 does not impact the physical protective boundaries, nor does it affect the performance of any safety system. The proposed change does affect the reliability and availability of MCC-5. The improvement in the reliability of MCC-5 (between 2.5E-2 and 4E-2 decrease in failure probability) more than compensates for the increase in unavailability due to testing of the ABT scheme associated with MCC-5 (5E-4 to 3E-3 increase for weekly testing). Also, the proposed change will have an insignificant impact (less than 3E-9) on the frequency of a core melt scenario. This potential increase would be more than offset by the decrease due to improved reliability gained by on-line testing.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50 92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: August 18, 1993.

Description of amendment request: The licensee has proposed to modify the Technical Specifications to permantly remove the ability for the Haddam Neck Plant to operate with three loops while in MODES 1 or 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a significant hazards consideration because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change is to the technical specifications only and cannot be an initiating event for any previously analyzed accident. As such, the change does not affect the probability of occurrence of the previously evaluated accidents. This license amendment request will permanently remove the ability to operate with three loops in operation in MODES 1 or 2, which is a more restrictive condition.

Plant operation and plant equipment important to safety are not affected by the proposed change. The offsite radiological releases from design basis accidents have been evaluated and will not be increased from this change.

As such, there will be no effect on the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Deleting all the references to three-loop operation will not change the allowed plant conditions or plant response sufficiently to create an accident of a different type than any previously evaluated. Three-loop operation was not allowed in MODES 1 or 2 during Cycle 17 due to the lack of large- and small-break LOCA [loss of coolant accident] analyses for the zircaloy-clad fuel. Current plant procedures prohibit three-loop operation in MODES 1 or 2. The impact of the prohibition of three-loop operation on the plants design basis analysis has been reviewed. There is no possibility of a malfunction of a different type than previously analyzed.

3. Involve a significant reduction in a margin of safety.

The review of the non-LOCA and large-break LOCA analysis has shown that the consequences have not been adversely affected. The three-loop accident analyses have been deleted from the Haddam Neck Plant's UFSAR [Updated Final Safety Analysis Report] Chapter 15 and the plant

procedures currently prohibit three-loop operation in MODES 1 or 2. The proposed change has no impact on any of the protective boundaries.

The proposed change does not change the intent of any technical specifications other than prohibiting three-loop operation during MODES 1 and 2. The change does not impact 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: Russell Library, 123 Broad Street, Middletown, Connecticut 06457

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of amendment request: July 29, 1993.

Description of amendment request: The proposed amendment would modify the Fermi 2 Technical Specifications (TS) to reflect implementation of the new revision to 10 CFR Part 20. This affects numerous TS which reference 10 CFR Part 20 or reflect terminology or definitions contained in 10 CFR Part 20. It also affects those TS related to dose and radiological effluent limits.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change to revise 10CFR20 references to recognize the new section numbers, definitions to ensure consistency with 10CFR20, and administrative controls for record keeping to maintain compliance with the new Part 20, does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not impact the operation or design of any plant structures, systems or components. As a result, this proposed change cannot increase the probability or the consequences of any accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not affect the plant design or operation. As a result, this proposed change cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Involve a significant reduction in a margin of safety.

The proposed changes do not affect the plant design or operation. The changes will not increase the amounts or change the types of effluents that may by released offsite, nor do they significantly increase individual or cumulative occupational radiation exposures. These changes only ensure compliance with revised 10CFR20. With respect to the change in the measurement distance for high radiation areas, this is a conservative change which requires measurements to be made at a closer distance to the source of radiation. These changes do not alter any of the requirements or responsibility for protection of the public and employees against radiation hazards. As a result, these changes cannot reduce a margin of safety.

The proposed change to the liquid and gaseous release rate requirements does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed revisions will not result in a significant change to the types or amounts of effluents released nor will there be an increase in individual or cumulative radiation exposures. In addition, these changes do not impact the operation or design of any plant structures, systems, or components. Therefore, it can be concluded that the proposed changes do not involve an increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not affect the plant design or operation nor do they result in a change to the configuration of any equipment. There will be no significant change in types or increase in the amount of effluents released off-site. As a result, this proposed change cannot create the possibility of a new or different kind of accident from any previously evaluate.

(3) Involve a significant reduction in a margin of safety.

The proposed revisions do not involve any significant change in the types or increase in the amount of effluents released off-site. The proposed changes do not involve any actual change in the methodology used in the control of radioactive wastes or radiological environmental monitoring. For liquid effluents, the basis of the new limits is 10 times 50 mrem per year, which is the same as the previously basis of 500 mrem/year. For gaseous effluents, the proposed change will incorporate into the Technical Specifications the currently used compliance criteria. The methodology that will be used in the control of radioactive effluents and calculation of effluent monitor setpoints will result in the same effluent release rate as the current methodology now being used. Therefore, these changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

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: William M. Dean, Acting

Entergy Operations Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: August 5, 1993.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) by moving the requirements for loose-part detection to the Updated Final Safety Analysis Report (UFSAR). This action is related to the Commission's program for restructured Standard Technical Specifications and is requested based on the interim Policy Statment criteria to be utilized in determining which requirements need to be governed by Technical Specifications (see 52 FR 3788 published February 6, 1987).

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 relocates Loose-Part Detection Instrumentation requirements from the TS to the UFSAR consistent with the NRC interim Policy Statement on Technical Specification Improvements. Criterion 1 of the Policy Statement indicates that the TS should include installed instrumentation that is used to detect, and indicate in the control room, a significant abnormal degradation of the reactor coolant pressure boundary. This criterion is intended to ensure that the TS control those instruments specifically installed to detect excessive reactor coolant system leakage. This criterion is not interpreted to include instrumentation used to detect precursors to reactor coolant pressure boundary leakage (e.g., Loose-Part Detection Instrumentation). The proposed change does not affect any material condition of the plant that could directly contribute to causing or mitigating the effects of an accident. Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed change will not involve any design change. The proposed change will not alter the operation of the plant or the manner in which it is operated. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change will relocate Loose-Part Detection Instrumentation requirements from the TS to the UFSAR. The proposed change will have no adverse impact on the reactor coolant system pressure boundary nor will any other protective boundary or safety limit be affected. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn 1400 L Street N.W., Washington, D.C. 20005-3502

NRC Project Director: Harry Rood (Acting)

Entergy Operations Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: August 5, 1993.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) for the Containment Spray System (CSS) to clarify the requirements for Applicability in Mode 4 and to increase the testing interval for verifying that each containment spray nozzle is unobstructed.

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 that modifies the footnote defining the CSS Applicability during Mode 4 does not affect any design basis accidents. The CSS is maintained available to mitigate the effects of a LOCA [loss-of-coolant accident] or MSLB [main steamline break] and also to provide a mechanism for removing iodine from the containment atmosphere under post-LOCA conditions. However, at the reduced temperatures and pressures associated with the latter portion of Mode 4, the probability and consequences of the events identified above are greatly reduced. In addition the Containment Cooling Systems [sic] is required to be operable in Mode 4 per LCO [Limiting Condition for Operation] 3.6.2.2 and is available to provide depressurization and cooling of containment.

Increasing the CSS spray unobstructed nozzle test interval from 5 years to 10 years does not affect any design basis accident. Performing this surveillance provides assurance that spray coverage of the containment during an accident has not degraded and based on the passive design of the nozzles, testing at 10 year intervals is considered adequate.

Therefore, based on the above the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

No new accident initiators or failure modes are created by modification to the footnote associated with CSS Mode 4 Applicability or by extending the CSS nozzle test interval. In addition the proposed change will not alter the operation of the plant or the manner in which it is operated. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change will involve no adverse impacts on the protective boundaries, safety limits or margins to safety. The modification concerning CSS Mode 4 Applicability is consistent with the current licensing bases and extending the CSS nozzle surveillance test is in agreement with NUREG-1432 "Standard Technical Specifications Combustion Engineering Plants" and NUREG-1366 "Improvements of Technical Specifications Surveillance Requirements". Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn 1400 L Street N.W., Washington, D.C. 20005-3502

NRC Project Director: Harry Rood (Acting)

Entergy Operations Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: August 5, 1993.

Description of amendment request: The proposed amendment would revise the Technical Specifications to change the frequency from once per 31 days to once per 92 days for the Control Element Assembly (CEA) freedom of movement 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 intent of the CEA movement surveillance test is to detect CEAs which are stuck out of the core, and to demonstrate that each CEA can move freely within a small range. The current Waterford 3 Technical Specification 31 day surveillance interval was based on "Standard Technical Specifications for Combustion Engineering Pressurized Water Reactors", NUREG-0212, which in turn established the interval based on engineering judgment. Operating experience has demonstrated that this surveillance is not a principal method for detecting stuck CEAs. As indicated in NUREG-1366, in most instances where control rods (CEAs) were found to be mechanically inoperable they were discovered during control rod drop timing tests performed during startup physics testing or when the rods were withdrawn from the core during plant startup.

Industry data on control rod drive system reliability indicates an extremely low mechanical failure rate. Electrical problems with these systems, in general, do not prevent insertion of a control rod into the core when the reactor trip breakers are open. The Waterford 3 Updated Final Safety Analysis Report (UFSAR), Chapter 15 Accident Analysis assumes the most reactive CEA is stuck in the fully withdrawn position on a reactor trip. As discussed above, other means of detecting stuck CEAs in normal use make operation with an undetected stuck CEA improbable. Therefore, this proposed change does not involve a significant increase in the probability of or consequences of any accident previously evaluated.

No new accident initiators are created by the extended test interval. A single CEA stuck in the fully withdrawn position and CEA misoperation events have been previously analyzed in the Waterford 3 UFSAR Chapter 15 Accident Analysis. Additionally, the change will not alter operation of the the plant or the manner in which it is operated. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not significantly affect the probability of a CEA failing to perform its safety function assumed in the safety analysis (i.e. insertion into the core). The change is in agreement with the CEA exercising frequency required by the "Standard Technical Specifications Combustion Engineering Plants", NUREG-1432 Revision O and with the recommendations of "Improvements of Technical Specifications Surveillance Requirements", NUREG-1366. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn 1400 L Street N.W., Washington, D.C. 20005-3502

NRC Project Director: Harry Rood (Acting)

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: May 3, 1993.

Description of amendment request: The proposed amendments would change Plant Hatch, Units 1 and 2, Technical Specifications (TS) to conform with the amended NRC regulations as noticed in the **Federal Register** (57 FR 39353) dated August 31, 1992. The proposed changes would revise the frequency of reporting the quantity of each of the principal radionuclides released to the unrestricted areas in liquid and gaseous effluents from semiannual to annual. Such reporting at Plant Hatch is currently made on a semiannual basis in the Semiannual Radioactive Effluent Release Report.

In addition, the licensee has requested that the above changes, along with others submitted earlier, be issued by the NRC staff in one amendment for each of the Hatch units. The earlier submittals were: (1) Relocation of Radiological Effluent Technical Specifications (RETS), dated September 21, 1992, and (2) Technical Specifications Affected by The New 10 CFR Part 20 Requirements, dated October 14, 1992, as supplemented March 26, 1993.

By letters dated December 2, 1992, and June 10, 1993, the NRC staff requested additional information regarding the new 10 CFR 20 requirements. By letters dated January 15 and July 30, 1993, the licensee responded to the staff's requests for additional information.

The NRC staff had previously published two separate **Federal Register** notices for the above submittals. The first regarding RETS and the second regarding the new 10 CFR 20 requirements were published on April 14, 1993 (58 FR 19481).

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 52.92(c). The NRC staff's review is presented below.

The proposed changes are administrative in nature and do not involve any change to the design or method of operation of any plant equipment used to mitigate the consequences of an accident. Also, the proposed changes do not alter the assumptions of the Final Safety Analysis Report (FSAR) accident analyses. Accordingly, no new failure modes have been defined for any plant system or component important to safety nor has any new limiting failure been identified as a result of the proposed changes. Since the FSAR accident analyses remain bounding, the radiological consequences previously evaluated are not adversely affected by the proposed changes, and the effectiveness of the radiological control program is not reduced. Therefore, the staff has concluded that the proposed changes 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.

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: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: David B. Matthews

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: July 28, 1993.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to incorporate the new requirements of 10 CFR Part 20. The request includes changing the release rate limits for gaseous and liquid effluent, the monitoring and reporting requirements, the definitions and the record retention requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve any increase in the probability of occurrence or consequences of an accident previously evaluated because there will be no change in the types or amounts of effluent that will be released, nor will there be an increase in individual or cumulative occupational radiation exposures.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. The changes are administrative in nature and will not change the types or amounts of effluents that will be released.

(3) Operation of the facility in accordance with the proposed amendment would not involve any reduction in a margin of safety. Maintaining the current instantaneous gaseous release rate limits and the liquid effluent release limit based on an annual dose of 500 mrem (basis for the old 10 CFR Part 20, Appendix B criteria) are acceptable. Compliance with the new 10 CFR Part 20 limits will be demonstrated by operating within the limits of 10 CFR Part 50, Appendix I and 40 CFR Part 190.

The proposed changes will not increase the probability or consequences of any previously analyzed accident, introduce any new or different kind of accident, or reduce any existing margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: John N. Hannon

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: July 28, 1993.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to incorporate the new requirements of 10 CFR Part 50. The request includes changing the reporting frequency of the Radioactive Material Release Report and the 10 CFR 50.59 reporting of the facility changes, tests, and experiments. Other changes include the frequency of the Offsite Dose Assessment Manual

(ODAM) and the reporting of the safety and relief valve challenges.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve any increase in the probability of occurrence or consequences of an accident previously evaluated because the changes only affect reporting.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. The changes are administrative in nature and do not alter the operation of any plant systems.

(3) Operation of the facility in accordance with the proposed amendment would not involve any reduction in a margin of safety. The changes do not alter any plant systems or their operation. The changes are administrative in nature.

The proposed changes will not increase the probability or consequences of any previously analyzed accident, introduce any new or different kind of accident, or reduce any existing margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: John N. Hannon

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: August 23, 1993.

Description of amendment request: The proposed amendment would revise the Cooper Nuclear Station (CNS) Technical Specifications to modify the licensee's organizational structure by creating the management position of "Vice President - Nuclear." The titled position Vice President - Nuclear will assume all the functions and responsibilities of the previous titled position of Nuclear Power Group Manager.

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?

Evaluation

The proposed change in the titled position of the Vice President - Nuclear is administrative in nature. The functions and responsibilities of previous position of Nuclear Power Group Manager will be performed by the new position of Vice President - Nuclear. This is solely a title change to the position identified in the Technical Specifications. The description, job function, and responsibilities of the position remain the same. This position title change in the organization does not affect plant design or operation, nor does it affect the way any systems, structures, or components are operated or maintained. The individual filling this position is qualified to perform the assigned tasks and responsibilities. Also, this proposed change does not alter the conditions or assumptions in any of the Updated Safety Analysis Report (USAR) accident analyses. Since the USAR accident analyses remain bounding, the consequences previously evaluated are not adversely affected by the proposed change. Therefore, it can be concluded that the 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?

Evaluation

The proposed Technical Specification revision changes the position title of the Nuclear Power Group Manager to the Vice President - Nuclear. This titled position change only affects a title in the organizational structure for the District. All responsibilities for this position remain as described in the Technical Specifications for management activities and they will continue to be performed by a qualified individual. This change does not affect the design or operation of any system, structure, or component in the plant, and is considered to be [an] administrative change. Accordingly, no new failure modes have been defined for any plant system or component important to safety, nor has any new limiting failure been identified as a result of the proposed change. 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?

Evaluation

This proposed change to the Technical Specifications is in the Administrative Controls Section, specifically a title change in the organizational structure. The Nuclear Power Group Manager position is being changed to Vice President - Nuclear. All responsibilities for this position remain as described in the Technical Specifications for management activities and they will continue to be performed by a qualified individual. The proposed change does not adversely impact the plant's ability to meet applicable regulatory requirements. The proposed change does not alter any administrative controls, nor does the proposed change involve any physical alterations to the plant, and does not affect any plant safety parameters or setpoints. Therefore, this proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: 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: Harry Rood (Acting)

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of amendment request: March 30, 1993; superseded August 27, 1993. This notice supersedes the notice published on April 28, 1993 (58 FR 25860) in its entirety.

Description of amendment request: The proposed amendment would revise Technical Specifications 4.8.1.1.2.e and f. The changes would replace the current requirement to perform a hot Loss of Off-Site Power test following the 24-hour full power emergency diesel generator (EDG) run during shutdown with a requirement to perform a hot restart EDG test following a full load diesel run of greater than 2 hours in any operating condition. The proposed changes are consistent with NUREG-1434, "Standard Technical Specifications - General Electric Plants, BWR/6."

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 2, in accordance with the proposed

amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Regulatory Guide 1.108, Rev. 1, states the performance of a Loss of Off-site Power test (Technical Specification 4.8.1.1.2.e.4) immediately following the 24 hour run demonstrates that the Diesel Generator can start in the prescribed time when the Diesel Generator is at its normal operating temperature. The Loss of Off-site Power test will be performed at standby conditions to provide assurance that the Diesel Generator is capable of responding to a Loss of Off-site Power as assumed in the accident analysis. The purpose of performing the Loss of Off-site Power test immediately following the 24 hour run is to demonstrate the hot restart capability of the diesel generator at full load temperature conditions. However, establishing full load temperature conditions with other than a 24 hour run (i.e., with at least a 2 hour full power run) provides the necessary initial conditions for the hot restart test. Demonstrating diesel generator hot restart capability, without loading the engine, does not invalidate or reduce the effectiveness of the hot restart test, because normal operating temperatures are achieved prior to demonstrating hot restart capability. The proposed method of establishing full load temperature conditions has been previously reviewed by the NRC and found to be an acceptable alternative to the 24 hour run. This test may be performed in any plant condition since its performance at power will have no adverse effect on plant operations. The reliability of the diesel generators is not affected by these changes. Therefore, the probability of a diesel generator failure when required to actuate during an accident is not increased due to these changes.

Diesel generator design and function remain as previously analyzed. Their response during accident conditions are not affected by these changes. Therefore, no significant increase in the probability or consequences of an accident previously evaluated results from these changes.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

This request does not involve a physical change in any system configuration and no new operating configurations are introduced. The proposed surveillances are consistent with current requirements. These changes will not result in any net reduction in testing and will not affect Diesel Generator reliability. This test may be performed in any plant condition since its performance at power will have no adverse effect on plant operations. Therefore, these changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

Allowing the diesel generators to reach full temperature conditions by other than the 24 hour run required by Technical Specification 4.8.1.1.2.e.8 has been found to be acceptable by the NRC staff as satisfying the intent of Regulatory Guide 1.108, Rev. 1, Position C.2.a(5) for conducting the hot restart test following the 24 hour load test. These changes will not result in any net reduction in testing and will not affect diesel generator reliability, as the hot restart test will be preceded by at least a 2 hour full power run to ensure that the diesel generators are at normal operating temperatures. This test may be performed in any plant condition since its performance at power, will have no adverse effect on plant operations. As proposed, these changes will adequately demonstrate the diesel generator's functional capability at full load temperature conditions, thus ensuring the designed margin of safety in the diesel generator's ability to start and accept the required loads in the prescribed time. Therefore, these changes will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on 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

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: July 29, 1993.

Description of amendment request: The licensee proposes to revise the Millstone Unit No. 3 Technical Specifications by expanding the limiting condition of operation (LCO) for Technical Specification 3.6.6.1 to delineate the equipment necessary to comprise an operable supplementary leak collection and release system (SLCRS); expanding the LCO for Technical Specification 3.7.9 to denote the equipment necessary to comprise an operable auxiliary building filter system (ABFS) and to state that the action statements of Technical Specification 3.6.6.1 must be met when an ABFS is declared inoperable; substituting the term "secondary containment boundary" for the term "annulus" in Technical Specification Surveillance 4.6.6.1.d.3; clarifying the areas represented by the term secondary containment boundary in Bases Section 3/4.6.6.1; rewriting Bases Section 3/4.6.6.1 to expand the basis for the SLCRS LCO, action statements, and surveillance requirements; revising Bases Section 3/4.7.9 to be consistent with the proposed revision to Technical Specification 3.7.9; and replace the phrase "a halogenated hydrocarbon refrigerant" in Technical Specification Surveillances 4.6.1.1.f, 4.7.7.g and 4.7.9.f with the phrase "an acceptable."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a significant hazards consideration because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The rationale for this conclusion is:

(a) The proposed change to delineate the equipment required to comprise an operable SLCRS in the LCO for technical Specification 3.6.6.1 would impose an additional restriction on the operation of Millstone Unit No. 3.

To support these changes, NNECO has proposed to revise Bases Section 3/4.6.6.1 The proposed changes to Bases Section 3/4.6.6.1 will provide a more informative discussion on the basis for the LCO, action statements, and surveillance requirements.

(b) The proposed change to replace the term "annulus" with the term "secondary containment boundary" in Technical Specification Surveillance 4.6.6.1.d.3 in conjunction with the proposed change to clarify the areas included within the secondary containment boundary in Bases Section 3/4.6.6.1 would permit Millstone Unit No. 3 to operate with the potential for the upper elevations of the enclosure building to be at a slightly positive pressure....

...Containment leakage scenarios are a very small contributor to the total acceptable public risk for Millstone Unit No. 3, and no credit is taken for secondary containment or filtration in evaluating such scenarios. Additionally, the most likely containment leakage scenarios do not involve high levels of volatile iodine species, and since the filters do not treat noble gases, the importance of filters is somewhat reduced. In regard to the design bases LOCA analyses, the SRP conclusion that Millstone Unit No 3 have "reasonable assurance" that 10CFR100 limits will be met is still valid. This is based on the very low probability that unfiltered leakage from the top of the enclosure building would be of significance A significant release via that pathway would require the simultaneous occurrence of the following low probability conditions: 1) high levels of volatile iodine species airborne in containment; 2) containment leakage into the

enclosure building; 3) bypass of the SLCRS ductwork intakes in the mid-level of the enclosure building as activity rises to the upper elevation; 4) leakage pathways to the environment in the upper levels of the enclosure building; 5) lack of significant plateout via such leakage paths; and 6) the proper meteorological conditions (e.g., at least a 50 degree Fahrenheit temperature differential between outside and inside air) such that a positive pressure might exist. The combined probability of such conditions is so low that it need not be considered in a determination of "reasonable assurance."

(c) The proposed change to delineate the equipment necessary to comprise an operable ABFS in the LCO for Technical Specification 3.7.9, and the proposed change to require compliance with the action statements of Technical Specification 3.6.6.1 when an ABFS is declared inoperable in the action statements for Technical Specification 3.7.9 will impose additional restrictions on the operation of Millstone Unit No. 3. The proposed revision to Bases Section 3/4.7.9 will ensure that the basis and the LCO for Technical Specification 3.7.9 are consistent with each other.

(d) The proposal to replace the phrase "a halogenated hydrocarbon refrigerant" denoted in Technical Specification Surveillances 4.6.1.1.f, 4.7.7.g, and 4.7.9.f with the phrase "an acceptable" will not change any of the acceptance criteria for the charcoal filter leak rate test. The changes are being proposed to permit Millstone Unit No. 3 to cope with the future ban of certain halogenated hydrocarbons. Because the changes will not impact the assumed efficiency of the charcoal filters, the calculated dose consequences of any postulated accident will not be affected.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not compromise the ability of the SLCRS and ABFS to mitigate the consequences of an accident. Also, the proposed changes do not involve any physical alterations to plant equipment or procedures which would introduce any new or unique operational modes or accident precursors.

3. Involve a significant reduction in a margin of safety.

The proposed changes do not involve a significant reduction in a margin of safety. The rationale for this conclusion is the same as that presented above for item 1 of this section and is not repeated here.

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

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: July 16, 1993.

Description of amendment request: The amendment would revise the Technical Specifications (TS) contained in Appendix A of the Operating Licenses to allow one of the required on-shift Senior Reactor Operator (SRO) positions to be combined with the required Shift Technical Advisor position. This proposed change from a dedicated STA position to a dual-role SRO/STA position is in accordance with the recommendation in the NRC's "Policy Statement on Engineering Expertise on Shift," issued on October 28, 1985, and transmitted to all power reactor licensees and applicants by NRC Generic Letter 86-04, "Policy Statement on Engineering Expertise on Shift," dated February 13, 1986.

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 do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Implementation of the proposed changes will not involve any physical changes to plant systems, structure, or components (SSC), or the manner in which these SSC are operated, maintained, modified, tested, or inspected. Therefore, the proposed use of the dual-role SRO/STA position does not increase the probability of an accident previously evaluated.

The consequences of an accident previously evaluated could be affected by the performance of the individual filling the dual-role SRO/STA position. However, implementation of the proposed changes will result in personnel with enhanced operational knowledge being assigned to perform the STA function of providing accident assessment expertise, and analyzing and responding to off normal occurrences when needed. The NRC's stated preference in the October 28, 1985, "Policy Statement on Engineering Expertise on Shift," indicates that the NRC has concluded that the individual filling the dual-role SRO/STA position may perform these functions better than a non-licensed individual filling the STA position even when the SRO/STA is concurrently functioning as one of the required shift SROs. Furthermore, implementation of the proposed changes will not affect the staffing or qualification of the fire brigade members. Therefore, the proposed TS changes do not increase the consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Implementation of the proposed TS changes will not involve physical changes to plant SSC, or the addition of new SSC. Furthermore, implementation of the proposed changes will not adversely affect the manner in which plant SSC are operated, maintained, modified, tested, or inspected. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The margin of safety is not affected because the STA and fire brigade leader positions will be filled by appropriately qualified personnel and shift staffing required by TS Table 6.2.2-1 and 10 CFR 50.54(m)(2) will continue to be maintained.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Michael L. Boyle, Acting

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: August 20, 1993.

Description of amendment request: The licensee proposes to modify the Technical Specifications surveillance requirements for the Standby Gas Treatment System (SGTS) Charcoal Filter Deluge System. The licensee is planning to modify the actuation mechanism for the deluge system from automatic to manual actuation. Existing TS surveillance requirement 4.14.A.7.a requires a simulated automatic

actuation test of the SGTS fire suppression spray system once 18 eighteen months. The licensee proposed to change TS 4.14.A.7.a to require a manual activation test of the SGTS fire suppression spray system every 18 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 proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because the modification and the TSCR do not affect any transient or accident evaluations. The existing simulated automatic actuation test and the proposed manual test is or will be performed with the associated SGTS line out of service. The system's hydraulic performance is unaffected by the modification. The manually actuated system will result in an increase in response time to a charcoal filter fire. The increase in response time does not affect the consequences of the fire because response time is not a critical factor item due to the slow-developing, non-flaming characteristics of this type of fire. In addition, the redundant SGTS train is unaffected by the charcoal fire because it is separated from the affected train by a 2 foot thick concrete wall.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated because no accident precursors are introduced by either the TSCR or the modification.

3. The proposed changes do not involve a significant reduction in a margin of safety because the system's design will not be degraded as a result of either the modification or the TSCR.

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, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Charles L. Miller

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: August 26, 1993.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Table 4.1-2 to provide a one-time extension of the current surveillance interval for calibration of the pressure switches which sense main turbine control valve fast closure. The 18-month surveillance interval for these pressure switches with the 25 percent extension allowed by TS 4.0.B.1 expires on October 18, 1993. The amendment would extend the surveillance interval until the 1993 fall maintenance outage, currently scheduled to start on October 23, 1993. This would allow the calibrations to be performed during the outage and thereby reduce radiation dose and eliminate the potential for an inadvertent reactor scram while the pressure switches are being calibrated.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the James A. FitzPatrick Nuclear Power Plant in accordance with the proposed amendment would not involve a significant hazards consideration, as defined in 10 CFR 50.92, since the proposed changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

None of the accidents evaluated in Chapter 14 of the FSAR [Final Safety Analysis Report] are affected by the surveillance interval extension. However, one of the FSAR Chapter 14 transients, generator load rejection without bypass, takes credit for the pressure switches affected by this proposed amendment. This transient is described in FSAR Section 14.5.2.1 and the results are shown in figures 14.5-14 through 25. This limiting transient, evaluated for the current operating cycle in the Supplemental Reload Licensing Report, assumes a reactor scram is initiated by the turbine control valve oil pressure trip signal.

To affect this transient analysis, the pressure switches must fail to actuate within the assumed time. The instrument drift analysis for Reactor Protection System, including pressure switches 94PS-200A, B, C, D, evaluated the extension of the surveillance interval to 30 months (24 months plus the allowable 25%). Field calibration data for identical switches were used to determine the maximum expected drift. During the last outage, the four pressure switches were calibrated to actuate between 598 and 610 psig. The maximum expected drift was then added to the highest calibrated pressure (610 psig) and subtracted from the lowest calibrated pressure (598 psig). All four pressure switches remained within the specified range of 500 to 850 psig. Since the switch setpoints remain within Technical Specification limits, the pressure switches would be expected to actuate within the time assumed in the analysis.

A load rejection event is a function of the off-site power grid reliability. Therefore, the extension to the surveillance interval does not increase the probability of this event.

2. Create the possibility of a new or different kind of accident from those previously evaluated.

The pressure switches will perform their intended safety function. Since the maximum expected drift does not exceed Technical Specification limits, the pressure switches would be expected to actuate within the time assumed in the transient analysis. Therefore, the proposed extension to the surveillance interval does not create the possibility of a new or different type of accident.

3. Involve a significant reduction in the margin of safety as defined in the basis for Technical Specifications.

The pressure switches detect loss of the electro-hydraulic control system oil pressure within the specified range. The purpose of calibrating the pressure switches is to verify the trip level setting is between 500 and 850 psig.

The proposed extension to the pressure switch surveillance calibration interval does not change the operation of the switches or change the ability of the pressure switches to perform their intended function. The requested extension is less than a 1% increase in the surveillance interval. This minimal extension to the surveillance interval should not have an affect on the drift characteristics of the pressure switches.

The next surveillance interval will begin upon completion of this surveillance. Therefore, this proposed extension does not involve a significant reduction in the margin of safety as defined in the basis for Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: August 6, 1993.

Description of amendment request: The proposed changes modify Section 4.2.1, "Aquatic Monitoring," of the Environmental Protection Plan by incorporating the requirements of a revised incidental take statement. The National Marine Fisheries Service issued a revised biological opinion on May 14, 1993, which included a revised incidental take statement. The revision extends the sea turtle monitoring period and the frequency of the monitoring.

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 not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes would increase the time frame and, after a station related mortality, the frequency of sea turtle monitoring and reporting requirements in the Environmental Protection Plan (Appendix B to the facility operating license). The changes are administrative in nature and would in no way affect the initial conditions, assumptions, or conclusions of the Salem Generating Station, Units 1 and 2, accident analyses. In addition, the proposed changes would not affect the operation or performance of any equipment assumed in the accident analyses. Based on the above information, we conclude that the proposed changes would not significantly increase the probability or consequences of an accident previously evaluated.

2. Will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes are administrative in nature and would in no way impact or alter the configuration or operation of the facilities and would create no new modes of operation. We therefore conclude that the proposed changes would not create the possibility of a new or different kind of accident.

3. Will not involve a significant reduction in a margin of safety.

As indicated in the discussion of Criterion 1, the changes are administrative in nature and would in no way affect plant or equipment operation or the accident analyses. We therefore conclude that the proposed changes would not result in 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: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Charles L. Miller

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: August 6, 1993.

Description of amendment request: This amendment request changes the technical specifications to provide for a separate action if the Accumulator cannot meet the requirements of the Limiting Condition for Operation due to boron concentration. The allowed outage time to restore boron concentration is changed from one hour to 72 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. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed change to the applicability is an administrative change for clarity. The proposed change to the allowed outage time for one accumulator inoperable as a result of the boron concentration outside the required values does not alter the plant configuration or operation. The boron concentration of the accumulators is considered only during the recirculation phase of the analyzed accidents. One accumulator outside the required concentration limits will have no effect on available Emergency Core Cooling System water and an insignificant effect on core subcriticality during core reflood, switchover from cold leg to hot leg recirculation injection, or sump pH. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident.

The proposed change in allowed outage time does not require physical alteration to any plant system or change the method by which any safety-related system performs its function. It provides uniformity with the latest specifications per NUREG-1431, Standard Technical Specifications - Westinghouse Plants. Therefore, the proposed change will not increase the possibility of a new or different kind of accident from any accident previously identified.

3. Involve a significant reduction in a margin of safety.

The proposed change to the Applicability is an administrative change for clarity. The proposed change in allowed outage time for one accumulator inoperable as a result of the boron concentration outside of the required values does not alter the manner in which safety limits, limiting safety system setpoints, or limiting conditions for operation are determined. The boron concentration of the accumulators is considered only during the recirculation phase of the analyzed accidents and the contribution of one accumulator is small when its volume is compared with the total volume of the Reactor Coolant System and the Refueling water storage tank. One accumulator outside the allowed concentration limits will have no effect on available Emergency Core Cooling System water and an insignificant effect on core subcriticality during core reflood, switchover from cold leg to hot leg recirculation injection, or pH. Therefore, this change does not involve a significant reduction in any 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: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Michael L. Boyle, Acting

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: June 18, 1993.

Description of amendment request: The proposed amendment would divide Figure 5.1.1-1 into Figure 5.1.1-1a which depicts the geographical areas for calculating liquid effluents and Figure 5.1.1-1b depicting the Exclusion area around the reactor and the area for calculating gaseous effluents.

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 do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed separation of Technical Specification Figure 5.1.1-1, into Figure 5.1.1-1a and 5.1.1-1b, and the revision of the

appropriate sections of the Technical Specifications which refer to these figures, are clarifications to the geographical areas utilized when computing dose calculations resulting from liquid and gaseous effluents. This change is requested to resolve the inconsistency between the Technical Specification and the licensing basis in the Updated Safety Analysis Report (USFAR) along with the guidance given by the NRC in NUREG-0133 "Preparation of Radiological Effluent Technical Specifications for Nuclear Power Plants." This change does not affect any plant systems, nor could it affect possible initiating events for accidents previously evaluated, or any system functional requirements. Additionally, the proposed changes have no effect on accident conditions or assumptions. Based upon the above, the proposed change could not increase the probability or consequences of any accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

As stated above, the proposed change is a clarification, which does not increase the possibility of any new or different kind of accident since it does not affect the reactor coolant pressure boundary or other plant systems or structures which could inititate a new or different kind of accident. This clarification will also not impact any system functional requirements nor plant maintenance or operability requirements in such a manner that could initiate a new or different kind of accident. Consequently, no new failure modes are introduced as a result of the proposed changes.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The change does not involve a signifcant reduction in the margin of safety because it is a clarification to resolve the inconsistency between the Technical Specifications and the licensing basis in the USAR Figures 2.1-3 and 2.1-4, along with the NRC's guidance in NUREG-0133. Therefore, the proposed change does not reduce the margin of safety as defined in the basis for any Technical Specification.

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: Perry Public Library, 3753 Main Street, Perry, Ohio 44081

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: John N. Hannon

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: June 25, 1993.

Description of amendment request: The proposed amendment would revise the Plant Operations Review Committee (PORC) composition and quorum description, present the membership composition through a set of requirements defining the necessary level of training and qualifications required, change from position specific management titles to functional titles, change the term "designated alternate" to "designee," and remove the requirements in Specification 6.5.2.5 to have the, Nuclear Safety Review Committee meetings "at least once per calendar quarter during the initial year of operation following fuel loadings and."

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 do not involve a significant increase in the probability or consequences of an accident previously evaluated.

These changes are administrative in nature only. The change to the Plant Operations Review Committee (PORC) composition Specification provides statements defining the requirements for committee membership, including the necessary training and qualifications. The membership requirements provide for representation from selected plant functional review areas, together with provisions permitting the Plant Manager to expand the membership, thereby enhancing the interdisciplinary review function of the PORC. The disciplines listed within the Specification correspond to the plant functional areas found in the BWR Standard Technical Specifications, but have been renamed to reflect the generic disciplines identified in ANSI N18.1. Overall PORC membership qualifications are maintained as a result of the proposed changes.

The revision in the number of PORC personnel from nine to "at least six but not more than eleven" provides for supplementation of the committee membership to broaden the experience base. The lower bound of six is a result of eliminating a requirement for duplication of a specific discipline (Health Physics), removing the requirement for Licensing representation, and recognizing that the PORC Chairman could be drawn from among the members instead of being an additional individual, as at present. The upper bound of eleven helps to ensure the continuity of reviews. Also, the qualifications and requirements for membership have been clearly specified. The quorum requirements have been modified to ensure that at least a majority of the members will be present at all meetings, regardless of the total number of members specified to make up the PORC at any given time.

The proposed changes to the other Section 6 Specifications to replace the specific management position titles with functional titles in no way reduces the authority or confuses the responsibilities for safe operation of the plant by management personnel since the functional titles used within the Technical Specifications will be correlated against the current position-specific titles listed within plant administrative procedures and the USAR. This will continue to make it clear as to which specific positions are responsible for the overall plant nuclear safety and unit operations.

The editorial changes are being made to avoid confusion between similar terms and eliminate a no longer needed stipulation. Therefore, they are strictly administrative and have no bearing on the probability or consequences of an accident.

These administrative changes by their nature do not impact accident initiation or mitigation sequences, or other assumptions contained in the safety analyses, nor do they affect the Technical Specifications that preserve safety analysis assumptions. Additionally, these changes do not modify the physical design and/or operation of the plant. Therefore, they cannot possibly impact the probability or consequences of any previously analyzed accidents.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

These changes are administrative in nature only. No physical alterations of plant configuration or changes to setpoints or operating parameters are proposed. No material procedural changes are proposed. The proposed language does not significantly alter the overall requirements for PORC membership, while preserving the quorum requirements and providing for cross-disciplinary reviews to be performed by the various disciplines represented on the Committee. Replacing the specific management position titles with functional titles cannot confuse organizational position responsibilities since the USAR and plant administrative procedures will continue to make it clear as to which specific positions are responsible for the overall plant nuclear safety and unit operations.

The editorial changes are strictly administrative and are being made to avoid confusion between similar terms and eliminate a no longer needed stipulation. Therefore, these proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The changes being proposed are administrative in nature and do not relate to

or modify the margin of safety defined in and required to be maintained by the Technical Specifications. The deletion of the position-specific composition list of the PORC membership and it's replacement by a set of requirements defining the necessary level of training and qualifications (i.e., the technical, operational, and management experience required) will not decrease the effectiveness of this organization. The PORC will continue to provide cross-disciplinary reviews of the operational, maintenance, design and safety issues addressed in their charter. This proposed change preserves reviews in selected plant functional areas while maintaining a varied PORC membership composition. Administrative controls contained within the USAR and plant administrative procedures are in place to control the membership of the PORC and to specify management lines of authority.

This amendment request also proposes to utilize functional management titles rather than position-specific titles for selected management positions. These functional management positions will be clearly identified and cross-referenced to the corresponding position-specific titles within plant procedures and the USAR. Therefore, distinct, unambiguous lines of authority and responsibility will continue to exist and be delineated. The editorial changes avoid confusion between similar terms and eliminate an obsolete requirement.

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: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Public Service Electric & Gas Company, Docket No. 50-311, Salem Nuclear Generating Station, Unit 2, Salem County, New Jersey

Date of amendment request: August 4, 1993, and supplemented by letter dated August 24, 1993.

Brief description of amendment request: This amendment would modify the Technical Specification for the A.C. power sources, on a one-time basis, to allow connection of two new 500/13.8 kv transformer bus sections as part of the Salem switchyard project. It would also modify the emergency diesel generator testing requirements during the action statement entries.Date of publication of individual notice in **Federal Register:** September 1, 1993 (58 FR 46250)

Expiration date of individual notice: October 1, 1993.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document rooms for the particular facilities involved.

Baltimore Gas and Electric Company, Docket No. 50-318, Calvert Cliffs Nuclear Power Plant, Unit No. 2, Calvert County, Maryland

Date of application for amendment: July 16, 1993

Brief description of amendment: The amendment revises Technical Specifications (TSs) 3/4.2, "Power Distribution Limits," and 3/4.3, "Instrumentation," to relax the requirements for the number and distribution of operable in-core detectors for the remainder of Operating Cycle 10. The in-core detectors are required to verify that the core power distribution is consistent with the safety assumptions used in the safety analyses and to protect the current power distribution TS limits. The changes also apply penalties to the values measured by the in-core detectors prior to their comparison with TS limits to assure that the TS limits monitored by the in-core detectors will continue to be valid.

Date of issuance: August 23, 1993.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 158.

Facility Operating License No. DPR-69: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 22, 1993 (58 FR 39253)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 23, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: June 11, 1993.

Brief description of amendment: The amendment revises Technical Specification Surveillance Requirement 4.1.1.1.1 pertaining to the determination of shutdown margin by adding an "and"

at the end of 4.1.1.1.1.d, and changes the reference to 4.1.1.1.1.e in Surveillance Requirement 4.1.1.1.2 to read 4.1.1.1.d.

Date of issuance: August 31, 1993.
Effective date: August 31, 1993.
Amendment No. 39.
Facility Operating License No. NPF-63. Amendment revises the Technical Specifications.
Date of initial notice in **Federal Register:** July 21, 1993 (58 FR 39048).
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 31, 1993.
No significant hazards consideration comments received: No.
Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: May 18, 1993.
Brief description of amendment: The amendment changes the Haddam Neck Technical Specifications to allow a relaxation in the pressurizer safety valve setpoint tolerance to +3% from +1%. This +3% tolerance is used for the "as found" acceptance criterion for additional valve testing.
Date of issuance: September 2, 1993.
Effective date: September 2, 1993.
Amendment No.: 163.
Facility Operating License No. DPR-61. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** June 23, 1993, (58 FR 34073) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated September 2, 1993.
No significant hazards consideration comments received: No.
Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: May 19, 1993.
Brief description of amendment: The amendment revises the Technical Specifications (TS) to reflect staff positions and improvements to the TS in response to Generic Letter 90-06, "Resolution of Generic Issue 70, 'Power-Operated Relief Valve and Block Valve Reliability,' and Generic Issue 94, 'Additional Low-Temperature Overpressure Protection for Light Water Reactors.'≥
Date of issuance: September 2, 1993.
Effective date: September 2, 1993.
Amendment No.: 164.
Facility Operating License No. DPR-61. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** June 9, 1993 (58 FR 32380) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated September 2, 1993.
No significant hazards consideration comments received: No.
Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: March 29, 1993, as supplemented April 29, 1993.
Brief description of amendment: This amendment revises the surveillance interval in Table 4.2.2, Item 2, "Partial Movement of All Control Rods (Minimum of 6 In)" from once "Every Two Weeks" to once "Every 92 Days."
Date of issuance: August 31, 1993.
Effective date: August 31, 1993.
Amendment No.: 157.
Facility Operating License No. DPR-20. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** May 12, 1993 (58 FR 28054) The supplemental letter submitted April 29, 1993, provided clarifying information only and did not change the initial proposed no significant hazards consideration determination.
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 31, 1993.
No significant hazards consideration comments received: No.
Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: March 23, 1993.
Brief description of amendment: The amendment revises the submittal frequency of the Radioactive Effluent Release Report from semiannual to annual in accordance with a change to 10 CFR 50.36a. The amendment also changes the provisions for written delegation of approval of plant procedure changes by the Plant Manager.
Date of issuance: August 27, 1993.
Effective date: August 27, 1993, with full implementation within 30 days.
Amendment No.: 91.
Facility Operating License No. NPF-43. Amendment revises the Technical Specifications
Date of initial notice in **Federal Register:** May 12, 1993 (58 FR 28055) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 27, 1993.
No significant hazards consideration comments received: No.
Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: July 13, 1993.
Brief description of amendments: The amendments revise the boron concentration limits within the refueling Water Storage Tank and within the Cold Leg Accumulators in order to support the safe operation of McGuire Unit 2 Cycle 9 and subsequent cycles.
Date of issuance: August 26, 1993.
Effective date: August 26, 1993.
Amendment Nos.: 138 and 120.
Facility Operating License Nos. NPF-9 and NPF-17: Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** July 23, 1993 (58 FR 39581) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 26, 1993.
No significant hazards consideration comments received: No.
Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Duquesne Light Company, et al., Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of application for amendments: December 30, 1992, as supplemented March 12 and June 8, 1993.
Brief description of amendments: The amendments revise the Appendix A Technical Specifications (TS) relating to steam generator (SG) tubing. The amendments permit sleeving of SG tubes at the tube support plate and tube sheet regions in accordance with the process performed by the vendor Westinghouse Electric Corporation. TS 4.4.5.4 has been revised to reflect the sleeving option and to make minor editorial corrections.

Date of issuance: August 30, 1993.
Effective date: As of date of issuance and to be implemented within 60 days of issuance.
Amendment Nos.: 176 and 56.
Facility Operating License Nos. DPR-66 and NPF-73: Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** April 6, 1993 (58 FR 17912) and July 7, 1993 (58 FR 36433) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 30, 1993.
No significant hazards consideration comments received: No.
Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of application for amendment: April 12, 1993.
Brief description of amendment: The amendment reduces the minimum flow limit for the Auxiliary and Fuel Handling Building Ventilation System from 118,810 cubic feet per minute (cfm) to 100,580 cfm. The amendment also removes the reference to flow recorder FR-151, one of three instruments that measures flow in the system, from the Technical Specifications.
Date of issuance: September 2, 1993.
Effective date: September 2, 1993.
Amendment No.: 177.
Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** June 9, 1993 (58 FR 32383) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated September 2, 1993.
No significant hazards consideration comments received: No.
Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: July 2, 1993.
Brief description of amendment: The amendment allows a one-time deviation from the requirement in Technical Specification (TS) 6.9.3.2 that the operating limit minimum critical power ratio (OLMCPR) be calculated in accordance with the latest approved version of NEDE-24011-P-A, "General Electric Standard Application for Reactor Fuel." The deviation consists of a footnote added to TS 6.9.3.2 that states that the .04 minimum critical power ratio (MCPR) penalty for misoriented fuel bundles does not apply to the remainder of Cycle 5 fuel load. The amendment permits River Bend to be operated for the remainder of Cycle 5 with an OLMCPR of 1.18 rather 1.22.
Date of issuance: August 24, 1993.
Effective date: August 24, 1993.
Amendment No. 67.
Facility Operating License No. NPF-47. The amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** July 22, 1993 (58 FR 39257) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 24, 1993.
No significant hazards consideration comments received: No.
Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: July 2, 1993.
Brief description of amendment: The amendment revises the frequency for submittal of the Radioactive Effluent Release Reports from semiannual to annual and extends the preparation period from 60 days to 90 days. Additionally, the listed reference for acceptable calculation methods is changed from Regulatory Guide 1.109, "Calculation of Annual Doses to Man from Routine Releases of Reactor Effluents for the Purpose of Evaluating Compliance with 10 CFR Part 50, Appendix I," Revision 1, October 1977, to NUREG-0133, "Preparation of Radiological Effluent Technical Specifications for Nuclear Power Plants."
Date of issuance: August 27, 1993.
Effective date: August 27, 1993.
Amendment No.: 68.
Facility Operating License No. NPF-47. The amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** July 22, 1993 (58 FR 39255) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 27, 1993.
No significant hazards consideration comments received: No.
Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: May 12, 1993.
Brief description of amendment: The amendment would delete the surveillance requirement for environmental monitors from the Technical Specifications (TS). A previous amendment relocated the surveillance requirement for the environmental monitors to the offsite dose calculation manual (ODCM), but through an administrative error, the surveillance requirement was not deleted from TS Table 4.1-3, "Minimum Frequencies for Checks, Calibrations and Testing of Miscellaneous Instrumentation and Controls."
Date of issuance: August 23, 1993.
Effective date: August 23, 1993.
Amendment No.: 142.
Facility Operating License No. DPR-36: Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** July 21, 1993 (58 FR 39053) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 23, 1993.
No significant hazards consideration comments received: No.
Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578.

North Atlantic Energy Service Corporation, Docket No. 50-443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: April 8, 1993.
Description of amendment request: The proposed amendment revises TS Figure 2.1-1, Reactor Core Safety Limit—Four Loops in Operation, to correct non-conservative curves.
Date of issuance: August 24, 1993.
Effective date: August 24, 1993.
Amendment No.: 24.
Facility Operating License No. NPF-86. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34082). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 24, 1993.
No significant hazards consideration comments received: No.
Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: May 14, 1993 (Reference LAR 93-02).

Brief description of amendments: The amendments revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant Unit Nos. 1 and 2 to revise TS 3.3.1, "Reactor Trip System Instrumentation," regarding the reactor protection system (RPS). The amendments correct a typographical error in Table 3.3.1, Action 26, by adding the words "the next," to clearly state that a total of 12 hours is allowed to perform maintenance.

Date of issuance: August 31, 1993.

Effective date: August 31, 1993.

Amendment Nos.: 82 and 81.

Facility Operating License Nos. DPR-80 and DPR-82: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 21, 1993 (58 FR 39057) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 31, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: October 19, 1992, as supplemented March 5, 1993.

Brief description of amendment: The amendment revised Technical Specifications (TS) Section 4.6.A.2 (Emergency Power System Periodic Tests) to change the frequency of emergency diesel generator (EDG) capacity testing to accommodate operation on a 24-month fuel cycle. In addition, TS Section 4.6.A.2 and its associated Bases were revised to add an EDG overload testing requirement and to clearly specify the EDG ratings. These changes followed the guidance provided in Generic Letter 91-04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle."

Date of issuance: August 31, 1993.

Effective date: August 31, 1993.

Amendment No.: 138.

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 12, 1992 (57 FR 53789) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 31, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: June 28, 1993.

Brief description of amendment: The amendment revises Technical Specification 4.7.A.2.f to eliminate the requirement to perform a Type A, B, or C leak rate test following the completion of planned repairs to sections of Core Spray system minimum flow lines (3≥-W23-152-7A, B) during the fall 1993 maintenance outage.

Date of issuance: August 30, 1993.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 196.

Facility Operating License No. DPR-59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 21, 1993 (58 FR 39060) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 30, 1993.

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.

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: April 23, 1993.

Brief description of amendment: This amendment revises TS 3.11.2.8 and Surveillance Requirement 4.11.2.8 for Radioactive Effluents Venting or Purging to allow the containment drywell to be vented through the hardened torus vent following Type A Integrated Leakage Rate Testing.

Date of issuance: August 30, 1993.

Effective date: August 30, 1993.

Amendment No.: 58.

Facility Operating License No. NPF-57: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 26, 1993 (58 FR 30200) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 30, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070.

Public Service Electric & Gas Company, Docket No. 50-272, Salem Nuclear Generating Station, Unit No. 1, Salem County, New Jersey

Date of application for amendment: April 24, 1992, and supplemented by letter dated February 2, 1993.

Brief description of amendment: The amendment reduces the required minimum safety injection flow rates, increases the maximum allowed emergency core cooling system (ECCS) pump runout flow rates, modifies the acceptance criteria for ECCS pump performance, and updates the Bases section.

Date of issuance: August 31, 1993.

Effective date: As of date of issuance and shall be implemented prior to restart from the eleventh refueling outage, currently scheduled to begin on October 2, 1993.

Amendment No.: 143.

Facility Operating License No. DPR-70: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 2, 1992 (57 FR 40219) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 31, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: October 15, 1990, as supplemented March 8, 1991, November 30, 1992, and July 13, 1993.

Brief description of amendment: The amendment would remove Containment Isolation Valve Table 3.6-1 from the Technical Specifications. The Appendix J waiver requests contained in the November 30, 1992, letter will be addressed at a later date.

Date of issuance: August 30, 1993.

Effective date: August 30, 1993.

Amendment No.: 54.

Facility Operating License No. DPR-18: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 12, 1990 (55 FR 51186) The October 15, 1990, March 8, 1991, November 30, 1992, and July 13, 1993, supplements provided information that did not change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in aSafety Evaluation dated August 30, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: April 23, 1992, as supplemented by August 6, 1993.

Brief description of amendment: This amendment revises the snubber visual inspection schedule in the Technical Specifications (TS) by replacing it with an alternate visual inspection schedule as recommended by Generic Letter (GL) 90-09, "Alternate Requirements for Snubber Visual Inspection Intervals and Corrective Actions," dated December 11, 1990.

Date of issuance: August 30, 1993.

Effective date: August 30, 1993.

Amendment No.: 53.

Facility Operating License No. DPR-18: Amendment revised Appendix A Technical Specifications of Facility Operating License DPR-18.

Date of initial notice in **Federal Register:** December 9, 1992 (57 FR 58250) The August 6, 1993, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 30, 1993

No significant hazards consideration comments received: No.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

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: March 1, 1993 (TS 93-03).

Brief description of amendments: The amendments increase the maximum voltage limit specified in the Technical Specifications resulting from a full-load rejection surveillance test of the emergency diesel generators.

Date of issuance: August 27, 1993.

Effective date: August 27, 1993.

Amendment Nos.: 170 - Unit 1 160—Unit 2.

Facility Operating License Nos. DPR-77 and DPR-79: Amendments revise the technical specifications.

Date of initial notice in **Federal Register:** April 14, 1993 (58 FR 19487) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 27, 1992.

No significant hazards consideration comments received: None.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402.

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: December 15, 1992.

Brief description of amendment: The amendment revises Technical Specification (TS) Table 4.2.5 SRM/IRM Surveillance Requirement for "Detector Not Fully Inserted" "trip function" by replacing "Note 6" under calibration, with "N/A."

Date of issuance: August 25, 1993.

Effective date: August 25, 1993.

Amendment No.: 136.

Facility Operating License No. DPR-28. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34097) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 25, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Virginia Electric and Power Company, et al., Docket No. 50-339, North Anna Power Station, Unit No. 2, Louisa County, Virginia

Date of application for amendment: December 4, 1992.

Brief description of amendment: This amendment allows a reduction in the measured reactor coolant system flow rate to accommodate the systems effects associated with increasing steam generator tube plugging.

Date of issuance: August 30, 1993.

Effective date: August 30, 1993.

Amendment No.: 152.

Facility Operating License No. NPF-7: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 3, 1993 (58 FR 7008) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 30, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: April 8, 1993.

Brief description of amendments: These amendments separate the containment recirculation spray subsystems into two containment recirculation spray trains consistent with standard Technical Specifications.

Date of issuance: September 2, 1993.

Effective date: September 2, 1993.

Amendment Nos.: 172, 153.

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 12, 1993 (58 FR 28063) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 2, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

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 application for amendments: March 15, 1993, as supplemented April 21, 1993.

Brief description of amendments: These amendments eliminate the specific main control room and the emergency switchgear room air conditioning chillers identification from the Technical Specifications, and specify a time limit to restore one of the two inoperable chillers to operable status.

Date of issuance: September 1, 1993.

Effective date: September 1, 1993.

Amendment Nos. 182, 182.

Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 21, 1993 (58 FR 39060) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 1, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: December 22, 1992

Brief description of amendment: This amendment revises Technical Specifications Sections 4.0.3 and 4.0.4 and associated Bases on the applicability of surveillance requirements in accordance with the guidance of Generic Letter 87-09, "Sections 3.0 and 4.0 of the Standard Technical Specifications (STS) on the Applicability of Limiting Conditions for Operation and Surveillance Requirements."

Date of issuance: August 27, 1993

Effective date: August 27, 1993

Amendment No.: 67

Facility Operating License No. NPF-42. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 9, 1993 (58 FR 32392) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 27, 1993

No significant hazards consideration comments received: No.

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

Dated at Rockville, Maryland, this 8th day of September 1993.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects - I/II, Office of Nuclear Reactor Regulation

[Doc. 93-22392 Filed 9-14-93; 8:45 am]

BILLING CODE 7590-01-F

[Docket No. 50–461]

Illinois Power Co., (Clinton Power Station, Unit No. 1); Exemption

I

The Illinois Power Company (the licensee), is the holder of Facility Operating License No. NPF–62 which authorizes operation of the Clinton Power Station (CPS), Unit 1, at a steady-state power lever not in excess of 2894 megawatts thermal. The facility is a boiling water reactor located at the licensee's site in DeWitt County, Illinois. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now and hereafter in effect.

II

In its letters dated February 17 and April 16, 1993, the licensee applied for partial exemptions from the Commission's regulations. The subject exemptions are from the requirements in Appendix J to 10 CFR part 50 that: (1) The third Type A test of each 10-year interval be conducted when the plant is shut down for the 10-year plant inservice inspection; and (2) all containment penetrations be leak rate tested every two years.

III

An exemption request included in the licensee's February 17, 1993, submittal was for a partial exemption from the requirement of 10 CFR part 50, Appendix J, Section III.D.1.(a). This Section requires, in part, that "* * * a set of three Type A tests shall be performed, at approximately equal intervals during each 10-year service period. The third test of each set shall be conducted when the plant is shutdown for the 10-year plant inservice inspections." The licensee proposes to perform the three Type A tests at approximately equal intervals within each 10-year period, with the third test of each set conducted as close as practical to the end of the 10-year period. However, there would be no required connection between the Appendix J 10-year interval and the inservice inspection 10-year interval.

The 10-year plant inservice inspection (ISI) is the series of inspections performed every 10 years in accordance with Section XI of the ASME Boiler and Pressure Vessel Code and Addenda as required by 10 CFR 50.55a. The licensee performs the ISI volumetric, surface, and visual examinations of components and system pressure tests in accordance with 10 CFR 50.55a(g)(4) throughout the 10-year inspection interval. The major portion of this effort is presently being performed every 18 months during the refueling outages. As a result, there is no extended outage in which the 10-year ISI examinations are performed.

There is no benefit to be gained by the coupling requirement cited above in that elements of the CPS ISI program are conducted through each 10-year cycle rather than during a refueling outage at the end of the 10-year cycle. Consequently, the subject coupling requirement offers no benefit either to safety or to the economical operation of the facility.

Moreover, each of these two surveillance tests (i.e., the Type A tests and the 10-year ISI program) is independent of the other and provides assurances of different plant characteristics. The Type A test assures the required leak-tightness to demonstrate compliance with the guidelines of 10 CFR part 100. The 10-year ISI program provides assurance of the integrity of the structures, systems, and components as well as verifying operational readiness of pumps and valves in compliance with 10 CFR 50.55a. There is no safety-related concern necessitating their coupling in the same refueling outage. Accordingly, the staff finds that application of the regulation is not necessary to achieve the underlying purpose of the rule.

On this basis, the staff finds that the licensee has demonstrated that there are special circumstances present as required by 10 CFR 50.12(a)(2). Further, the staff also finds that the uncoupling of the Type A tests from the 10-year ISI program will not present an undue risk to the public health and safety.

In their letter dated April 16, 1993, the licensee requested a one-time partial exemption from the requirements of 10 CFR part 50, Appendix J, Sections III.B.1.(b), III.B.3 and III.D.2 for the Type B testing of the inclined fuel transfer system (IFTS) penetration 1MC–4. The leakage rate for this penetration is required to be measured according to the method prescribed in 10 CFR part 50, Appendix J, Paragraph III.B.1.(b). The Type B test(s) shall be performed at least once every 24 months in accordance with Paragraph III.D.2.(a), and the results shall be added to the combined leakage rate for all penetrations and valves subject to Types B and C tests to verify that the total combined leakage rate is less than the acceptance criteria identified in Paragraph III.B.3. The licensee's proposal is for a one-time partial exemption, for CPS operating cycle 5, from the Type B testing requirements for the IFTS containment penetration as a result of the potential inability to perform a valid Type B local leak rate test (LLRT) on the penetration two-ply bellows assembly.

After completing a review of the facts provided in Information Notice 92–20, "Inadequate Local Leak Rate Testing," issued on March 3, 1992, the licensee

determined that there was only one bellows assembly at CPS used in a similar application, IFTS containment penetration 1MC–4. Due to the design and configuration of this containment penetration bellows assembly, the current method for performing Type B testing on the bellows assembly may be inadequate. The possibility exists that separation of the two plies of the bellows may not be sufficient to allow air flow to any crack locations such that the current method of performing the Type B test (pressurization between the two plies of the bellows) may not challenge 100% of the area of the two-ply bellows constituting the containment barrier(s). The licensee is, therefore, evaluating a number of options to provide a valid, reliable Type B test on the subject penetration. These options include replacing the bellows assembly with one that could be tested in accordance with 10 CFR part 50, appendix J, and developing an alternative means of testing the penetration which meets the requirements of appendix J.

The licensee has investigated the option of replacing the bellows assembly with one that can be tested in accordance with appendix J. The best design is one which can be installed without disassembling the IFTS tube and removing the upper pool shutoff valve (located just upstream of the blind flange to which the bellows assembly is attached). A bellows assembly design has been identified which does not require any piping disassembly; however, the bellows would require an ASME "N" stamp and the lead time for procurement and fabrication is expected to be about one year. Based on this lead time it will not be possible to replace the bellows assembly during the next refueling outage; currently scheduled to begin in September 1993.

The licensee is also evaluating the use of a special test box which can be installed over the IFTS containment penetration bellows assembly to permit performance of an acceptable local leak rate test (minimum pathway) of the assembly. A vendor has been identified who can design and fabricate a test fixture for the testing of 1MC–4. The box would be made in two or more pieces of stainless steel and would be temporarily attached for the test and then removed upon completion. However, the box is very large (46 inches inside diameter and 27.5 inches in height) and the probability of safely securing and making the box leak tight at the test pressure could prove to be difficult. The licensee further states that the work scope for the upcoming refueling outage has already been established and fixed. The impact to the outage schedule and the cost resulting from attempting to utilize a test box in testing the bellows assembly would be significant. Additional time would have to be scheduled for installation and removal of the test box. The potential radiation exposure associated with the test box installation and removal is also a consideration. In addition, based on the uncertainties associated with the capabilities of the proposed test box, it is not clear that use of the test box will provide the most accurate or useful results.

The licensee has decided that it would not be prudent to quickly implement either of the options described until an in-depth design review of the options can be completed. This review would consider all aspects of the problem, including an evaluation of the cost of replacement vice the risks of a temporary fix. The proposed exemption would, therefore, provide the licensee with the time needed to complete a thorough review. Although the requested exemption would permit the licensee to not complete a valid Type B test of the IFTS penetration until the fifth refueling outage (RF–5), the licensee is confident that significant leakage from the bellows assembly can still be identified as discussed below.

Until review of Information Notice 92–20, the licensee believed the design of the bellows assembly permitted Type B testing to be performed on the penetration in compliance with the requirements of Appendix J. Notwithstanding, the licensee believes the bellows assembly has shown to be acceptably leak tight and that significant degradation can continue to be detected by testing and inspection. A recent visual examination of the bellows assembly outer surface was performed and no signs of degradation were found. The last LLRT performed on containment penetration 1MC–4 indicated a leakage of 21.36 sccm. While the licensee recognizes that these test results may be questionable, they believe they reflect the relative leakage rate of the penetration. ILRT test results to date have all been well within the acceptance criteria (except for a technical problem experienced during RF–3). During the next refueling outage, the licensee will continue to test the bellows assembly as previously tested, will maintain an acceptance criteria of less than 100 sccm per assembly, and will perform a thorough examination of the outer bellows surface. In addition, as a final assurance, the integrity of the bellows will be confirmed as part of the ILRT to be performed during the outage.

The staff has determined that the currently scheduled testing (both LLRT and ILRT), as well as the planned visual examination of the bellows assembly during the next refueling outage, and the historically low associated test leakage provide sufficient justification to support a one-time partial exemption from the Type B testing requirements for containment penetration 1MC–4 until the fifth refueling outage. The staff also agrees that the licensee has made a good faith effort to comply with the requirements of 10 CFR part 50, Appendix J, for the IFTS containment penetration and has, therefore, demonstrated that there are special circumstances present as required by 10 CFR 50.12(a)(2). Furthermore, the staff finds that delaying the completion of a valid Type B test on penetration 1MC–4 until the fifth refueling outage will not present an undue risk to the public health and safety.

IV

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12(a), these exemptions as described in Section III are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest and hereby grants the exemptions with respect to the requirements of 10 CFR part 50, appendix J, Paragraphs III.D.1.(a), III.B.1.(b), III.B.3, and III.D.2.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of these exemptions will have no significant impact on the environment (58 FR 31549).

Dated at Rockville, Maryland, this 7th day of September 1993.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Acting Director, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–22517 Filed 9–17–93; 8:45 am]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

Commission Visit

September 9, 1993.

Notice is hereby given that on September 19, through September 22, 1993, members of the Commission and certain advisory staff personnel will visit the mailing operations and/or manufacturing facilities/printing plants of Billy Graham Associates, Cowles Media, Mackay Envelope, Northwest Airlines and Zip Sort in Minneapolis, Minnesota. Visits will also take place at Gage Lettershop Services in Howard Lake, Minnesota; Fingerhut in St. Cloud,

Minnesota; and Quebecor Printing in St. Paul, Minnesota. In addition, members of the Commission and certain advisory staff personnel will meet with representatives of A National Alliance for a FAIR Postal Policy in Minneapolis, Minnesota.

A report of the visits will be on file in the Commission's Docket Room. For further information contact Charles L. Clapp, Secretary of the Commission at 202–789–6840.

Cyril J. Pittack,

Acting Secretary.

[FR Doc. 93–22483 Filed 9–14–93; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release 34–32858; International Series Release No. 580; File No. 600–20]

Self-Regulatory Organizations; International Securities Clearing Corporation; Filing a Request for Extension of Temporary Registration as a Clearing Agency

September 9, 1993.

Notice is hereby given that on August 23, 1993, the International Securities Clearing Corporation ("ISCC") filed with the Securities and Exchange Commission ("Commission") an application, pursuant to section 19(a) of the Securities Exchange Act of 1934 ("Act"),[1] extend ISCC's temporary registration as a clearing agency for a period of twenty-four months or such longer period as the Commission deems appropriate.[2] The Commission is publishing this notice to solicit comments on the request for extension of registration from interested persons.

On May 12 1989, the Commission granted the application of ISCC for registration as a clearing agency, pursuant to sections 17A and 19(a) of the Act,[3] and rule 17Ab2–1(c) thereunder, on a temporary basis for a period of eighteen months.[4] At that time, the Commission granted to ISCC a temporary exemption from compliance with section 17A(b)(3)(C) of the Act,[5] which requires fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs. Since that time, the Commission has extended ISCC's temporary registration through November 30, 1993.[6]

One of the primary reasons for ISCC's registration as a clearing agency was to enable it to provide for the safe and efficient clearance and settlement of international securities transactions by providing links to centralized, efficient processing systems in the United States and in foreign financial institutions. ISCC continues to develop its capacity to offer these services,[7] but at present, business conditions in the international securities markets have not yet adequately challenged ISCC's linkage agreements with foreign financial institutions to permit ISCC to be permanently registered as a clearing agency.

ISCC has a current exemption from section 17A(b)(3)(C) of the Act due to ISCC's limited participant base. ISCC has represented to the Commission that it believes it still does not have a meaningful participant base, with only twenty of the thirty-two ISCC members currently using ISCC services.[8] Since this is an increase of only sixteen active members since ISCC's initial temporary registration, ISCC believes that granting "fair representation" to these active members in accordance with section 17A(b)(3)(C) of the Act would allow these members inordinate control over the process for nominating and selecting members of the ISCC Board of Directors. ISCC therefore requests an extension of the exemption from section 17A(b)(3)(C) of the Act as part of the extension of ISCC's temporary registration.[9]

Interested persons are invited to submit written data, views, and arguments concerning the foregoing application. Such written data, views, and arguments will be considered by the Commission in granting registration or instituting proceedings to determine whether registration should be denied in accordance with section 19(a)(1) of the Act.[10] 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 application and all written comments will be available for inspection at the Commission's Public Reference Room 450 Fifth Street, NW., Washington, DC 20549. All submissions should refer to the File No. 600–20 and should be submitted by October 15, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jonathan G. Katz,

Secretary.

[FR Doc. 93–22526 Filed 9–14–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32856; File No. SR–CBOE–93–31]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Installation of Stock Order Entry Terminals at Options Trading Posts

September 9, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 21, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to install at one or more trading posts on the equity options floor automated order-entry terminals whereby options market-makers may enter orders to buy or sell stocks underlying the options in which they make markets. These terminals will provide front-end input for automated order routing and/or execution systems such as the DOT System of the New York Stock Exchange, Inc. ("DOT System") or the MAX System of the Chicago Stock Exchange, Inc. ("MAX System"). Stock orders entered in such terminals will be for the purposes of managing risks associated with options market-making activities. Such terminals will not be used to make

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[1] 15 U.S.C. 78s(a) (1988).

[2] Letter from Karen Saperstein, General Counsel, ISCC, to Christine Sibille, Attorney, Division of Market Regulation, Commission (August 17, 1993) ("Registration Letter").

[3] 15 U.S.C. 78q–1 and 78s(a) (1988).

[4] Securities Exchange Act Release No. 26812 (May 12, 1989), 54 FR 21691 (May 19, 1989).

[5] 15 U.S.C. 78q–1(b)(3)(C) (1988).

[6] Securities Exchange Act Release Nos. 28606 (November 16, 1990), 55 FR 47976; and 30005 (November 27, 1991), 56 FR 63747.

[7] For example, ISCC recently established a data transmission link with Euroclear Systems. Securities Exchange Act Release No. 32564 (June 30, 1993), 58 FR 36722.

[8] Registration Letter, note 2, supra. Six of these members use ISCC's link with the London Stock Exchange and three members use ISCC's link with CEDEL. One member is testing ISCC's link with Euroclear, and fourteen members have expressed interest in using this link. Sixteen members use ISCC's Global Clearance Network Service with Citibank. See Securities Exchange Act Release No. 29841 (October 18, 1991), 56 FR 55960 (Order approving Global Clearance Network Service).

[9] Id.

[10] 15 U.S.C. 78s(a)(1) (1988).

[11] 17 CFR 200.30–3(a)(16) (1992).

markets in the underlying stocks themselves. Initially, the Exchange intends to install a limited number of order-entry terminals at selected trading posts. Based upon its experience with these terminals, the Exchange may add additional order-entry terminals at other posts on the floor. The installation of order-entry terminals at option trading posts represents an expansion of the use of stock terminals previously approved by the Commission,[1] pursuant to which stock price and quotation information terminals have been installed at trading posts, and order-entry terminals have been permitted in member firm booths at the side of the floor. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to permit stock order-entry computer terminals to be located at trading posts on the equity options trading floor in order to facilitate the entry of orders to buy or sell underlying stocks by options market-makers as a means of managing risks associated with their options market-making activities. Heretofore, stock terminals located at options trading posts on the Exchange's trading floor have only been used to obtain current stock prices and quotation information; stock order-entry terminals have been located off the trading floor in market members' booths. According to the Exchange, expanding the functionality of computer terminals at the posts to encompass stock order entry will permit market-makers to more efficiently assume positions in underlying stocks to hedge the risks of options positions assumed in connection with their market-making activities, since it will no longer be necessary for stock orders to be communicated from the trading posts to a booth or other off-floor location for further transmission to a stock order execution facility (e.g., the DOT System or the MAX System). Stock order entry terminals proposed to be placed at equity options trading posts will be used for order entry only and will not be used to make two-sided markets in stocks. Orders entered through these terminals will be monitored by the CBOE for compliance with all applicable Exchange and SEC rules and regulations.

The CBOE believes that the proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) of the Act in particular by facilitating the ability of market-makers to fulfill their market-making obligations, thereby removing impediments to and perfecting the mechanism of a free and open market and protecting investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 CBOE. All submissions should refer to File No. SR–CBOE–93–31 and should be submitted by October 6, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Jonathan G. Katz,

Secretary.

[FR Doc. 93–22529 Filed 9–14–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 19693; 811–6003]

GMO Investment Trust; Application

September 9, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: GMO Investment Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Application seeks an order declaring that it has ceased to be an investment company under the Act.

FILING DATE: The application on Form N–8F was filed on August 30, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 4, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or,

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[1] See Securities Exchange Act Release No. 21858 (March 18, 1985), 50 FR 11774 (order approving use of Instinet terminals on CBOE options trading floor) ("Exchange Act Release No. 21858"); Securities Exchange Act Release No. 22110 (June 3, 1985), 50 FR 24344 (order approving use of stock order-entry terminals on AMEX options trading floor) ("Exchange Act Release No. 22110").

[2] 17 CFR 200.30–3(a)(12) (1992).

for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 40 Rowes Wharf, Boston, Massachusetts 02110.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 272–7027, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, non-diversified management investment company organized as a Massachusetts business trust. On April 6, 1990, applicant filed a notification of registration pursuant to section 8(a) of the Act, and a registration statement pursuant to section 8(b) of the Act and the Securities Act of 1933. The registration statement became effective on January 10, 1991, and applicant commenced its initial public offering on January 15, 1991.

2. On March 11, 1993, the sole holder of beneficial interest of applicant gave notice of his desire to redeem all his shares and transfer such proceeds to the GMO Short Term Income Fund. As of March 25, 1993, the interest of applicant's sole beneficial shareholder was liquidated and shares were purchased on his behalf in an account established with GMO Short Term Income Fund. The total amount of the distribution was $3,240,345.30.

3. Prior to liquidation, applicant's assets consisted of two repurchase agreements and an Australian Bank Bill. The repurchase agreements matured on March 25, 1993, for cash at the maturity value of such securities. The Australian Bank Bill was sold on the open market on March 22 at fair market value.

4. Expenses incurred in connection with the liquidation of applicant consist of legal and accounting fees in the amount of approximately $8,700. Grantham, Mayo, Van Otterloo & Co., applicant's investment adviser, assumed all of the liquidation expenses.

5. At a meeting held on July 8, 1993, applicant's board of trustees authorized the filing of this application to effect the termination of the applicant as an investment company.

6. Applicant has no debts or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–22532 Filed 9–14–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 19694; 812–8472]

Nations Fund, Inc., et al.; Application for Exemption

September 9, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Nations Fund, Inc. ("Nations Fund"), Nations Fund Trust ("Nations Trust"), and all existing and future series thereof (collectively, the "Funds"); NationsBank of North Carolina, N.A. ("NationsBank"), and any entity controlling, controlled by, or under common control (as defined in section 2(a)(9) of the Act) with NationsBank that serves as investment adviser to the Funds or to any investment company or portfolio thereof hereinafter referenced (the "Adviser"); and any future investment companies and series thereof that are advised by NationsBank or by any entity controlling, controlled by, or under common control (as defined in section 2(a)(9) of the Act) with NationsBank (collectively, with the Funds the "Portfolios").

RELEVANT ACT SECTIONS: Exemptive relief requested pursuant to section 17(d) and Rule 17d–1.

SUMMARY OF APPLICATION: Applicants seek a conditional order permitting the Portfolios to pool their uninvested cash balances in one or more joint accounts (the "Account"), and to use the daily balance of the Account to enter into one or more repurchase agreements having a maturity of not more than seven days.

FILING DATE: The application was filed on June 22, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 4, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Nations Fund, Inc. and Nations Fund Trust, One Exchange Place, 53 State Street, Boston, Massachusetts 02109; and NationsBank of North Carolina, N.A., One NationsBank Plaza, T39–5, 101 South Tryon Street, Charlotte, North Carolina 28255.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 272–2511, or C. David Messman, Branch Chief, (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Nations Fund and Nations Trust both are registered, open-end management investment companies. Nations Fund currently consists of five series, and Nations Trust currently consists of 23 series.

2. NationsBank acts as investment adviser to all of the series of Nations Fund and Nations Trust. The Boston Company Advisors, Inc. is the administrator for all series of Nations Fund and Nations Trust. Funds Distributor, Inc. is the distributor of all series of Nations Fund and Nations Trust.

3. Each Fund has a custodial relationship with NationsBank of Texas, N.A., Provident National Bank, or Boston Safe Deposit and Trust Company, but any of the Portfolios may use another custodian or a sub-custodian selected and qualified under section 17(f) of the Act (collectively, the "Custodians") if they deem it in their best interest to do so.

4. On any given day, each of the Portfolios has, or may be expected to have, cash balances held by its Custodian, which otherwise would not be invested in portfolio securities by the

Adviser at the end of the trading day. Ordinarily, the Adviser would invest such cash in short-term investments authorized by the Portfolio's investment policy to earn additional income for the Portfolio. Applicants propose to establish with their respective Custodians one or more Accounts, which will be used exclusively to pool excess cash of the Portfolios participating in such Account to purchase one or more repurchase agreements.

5. Under the proposed arrangement, each repurchase transaction would be entered into by the Adviser calling one of the previously approved counterparties of repurchase agreements, indicating the size of the desired repurchase transaction, and negotiating the rate of interest. Master repurchase agreements with the approved counterparties establish minimum collateral levels, the securities eligible to be held as collateral, and the maximum term of a transaction. To facilitate repurchase transactions and to help obtain more attractive rates, the Custodian may enter into third-party arrangements for custody of assets and collateral securities with other qualified banks. The term of a repurchase transaction would typically be overnight (or over a holiday or weekend) and in no event more than seven days.

6. After the size of a repurchase transaction has been agreed to, the Custodian would be notified and, prior to releasing funds, would be required to verify that eligible collateral securities of sufficient value had been received. These securities would be either (a) wired to the account of the Custodian (or third-party custodian) at the appropriate Federal Reserve Bank, or (b) physically transferred to a segregated account of the Custodian (or third-party custodian).

7. All joint repurchase transactions would be effected in accordance with the established standards and procedures of the Funds and with the guidelines set forth in Investment Company Act Release No. 13005 (Feb. 2, 1983). If necessary, the Portfolios would modify their systems and standards to comply with any positions the SEC or its staff may take with respect to repurchase agreements by rule, interpretive release, no-action letter, any release adopting any new rule, or any release adopting any amendments to any existing rule.

8. Applicants believe the proposed Account would have the following benefits for the Portfolios:

(a) The Portfolios would collectively save significant fees and expenses by reducing the number of transactions in which they would engage, compared with the number of transactions the Portfolios would engage in through separate accounts;

(b) Under normal market conditions, it is possible to negotiate a rate of return on large repurchase agreements that is greater than the rate of return that can be negotiated for small repurchase agreements. Thus, the Portfolios would benefit from a greater rate of return than would be available for repurchase agreements negotiated individually by each Portfolio;

(c) The reduction in the number of trade tickets written by each counterparty to a repurchase agreement will simplify the transaction for the parties involved and reduce the opportunities for errors.

Applicants' Legal Conclusions

1. Each Portfolio, by participating in the proposed Account, and the Adviser, by managing the proposed Account, could be deemed to be joint participants in a transaction within the meaning of section 17(d), and the proposed Account could be deemed to constitute a joint enterprise or other type of joint arrangement within the meaning of rule 17d–1. Furthermore, under the definition of "affiliated person" set forth in section 2(a)(3), each of the applicants could be deemed an affiliated person of each other applicant.

2. Applicants represent that the proposed method of operating the Account would not result in any conflicts of interest among any of the Portfolios, or between a Portfolio and an Adviser. Applicants also have determined that there does not appear to be any basis upon which to predicate greater benefits to one Portfolio than to another, because the daily uninvested cash balance of any one Portfolio on any given day is neither a function of the size of the Portfolio nor the particular securities in which it invests, but is rather a function of other factors, such as portfolio management decisions, shareholder purchases and redemptions or the timing of settlement of trades. Although the Adviser would gain some benefit through administrative convenience and some possible reduction in clerical costs, the primary beneficiaries would be the Portfolios and their shareholders, because the Account would provide a more efficient and productive way of administering daily investment transactions.

3. Applicants believe that it would be desirable to permit participation by future Portfolios without the necessity of applying for an amendment to the requested order. Future Portfolios would be required to participate in the Account on the same terms and conditions as the existing Funds.

4. Applicants believe that, because the Account will invest in repurchase agreements that (a) typically will have an overnight, over-the-weekend or holiday duration, and in no event will have a duration in excess of seven days, (b) by their nature are held to maturity, and (c) have no trading market, the value of the repurchase agreements held in the Account would be best reflected by the amortized cost method of valuation.

5. Rule 17d–1(b) under the Act provides that, in passing upon applications under rule 17d–1, the SEC will consider whether each party's participation in the proposed joint arrangement is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants. Applicants believe that, for the reasons set forth above and in light of the conditions set forth below, the criteria for issuance of an order under section 17(d) of the Act and rule 17d–1 thereunder are met.

Applicants' Conditions

Applicants will operate the Account subject to the following conditions:

1. The Account will be established as one or more separate cash accounts on behalf of the Portfolios at the Custodian. The Portfolios may deposit daily all or a portion of their uninvested net cash balances into the Account.

2. Cash in the Account will be invested solely in repurchase agreements (which typically will have an overnight or over-the-weekend duration, and in no event will have a duration of more than seven days), collateralized by suitable U.S. Government obligations (i.e., obligations issued or guaranteed as to principal or interest by the Government of the United States or by any of its agencies or instrumentalities), and satisfying the uniform standards set by the Portfolios for such investments.

3. All repurchase agreements entered into by the Account will be valued on an amortized cost basis. Each Portfolio that relies upon rule 2a–7 will use the average dollar weighted maturity of such repurchase agreements for the purpose of computing the Portfolio's average portfolio maturity with respect to the portion of its assets held in such Account.

4. In order to ensure that there will be no opportunity for one Portfolio to use any part of a balance of the Account credited to another Portfolio, no

Portfolio will be allowed to create a negative balance in the Account for any reason, although each Portfolio will be permitted to draw down its *pro rata* share of the entire balance at any time. Each Portfolio's decision to invest through the Account will be solely at the Portfolio's option, and no Portfolio will be obligated to invest through, or to maintain any minimum balance in, the Account. In addition, each Portfolio will retain the sole rights of ownership of any of its assets, including interest payable on such assets, invested in the Account. Each Portfolio's investment in the account will be documented daily on the books of the Portfolio as well as on the respective Custodian's books.

5. Each Portfolio will participate in the income earned or accrued in the Account, including all investments held by such Account, on the basis of the percentage of the total amount in such Account on any day represented by its share of such Account.

6. The Adviser will administer, manage and invest the cash balance in the Account in accordance with the terms of its management contracts with the Portfolios, and will not collect any additional or separate fee for the administration of the Account.

7. The Portfolios and the Adviser will enter into an agreement to govern the arrangements in accordance with the foregoing representations.

8. The administration of the Account will be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g–1 thereunder.

9. The board of each Portfolio participating in the Account will evaluate the Account arrangements annually and will authorize the continued participation of the Portfolio in the Account only if it determines that there is a reasonable likelihood that such continued participation will benefit the Portfolio and its shareholders.

10. Substantially all repurchase transactions will have an overnight, over-the-weekend or over a holiday maturity, and in no event will a transaction have a maturity of more than seven days.

11. The Account will not be distinguishable from any other accounts maintained by a Portfolio with its Custodian except that cash from the various Portfolios will be deposited in the Account on a commingled basis. The Account will not have any separate existence with indicia of a separate legal entity. The sole function of the Account will be to provide a convenient way of aggregating individual transactions that would otherwise require daily management and investment by each Portfolio of its cash balances.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–22531 Filed 9–14–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 19697; 812–8326]

Piper Funds Inc., et al.; Application for Exemption

September 9, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Piper Funds Inc. (formerly Piper Jaffray Investment Trust Inc.) ("Piper Funds"), and any future series thereof, and Piper Global Funds Inc. ("Piper Global"), and any future series thereof.

RELEVANT ACT SECTIONS: Conditional, amended order requested under section 6(c) granting an exemption from sections 2(a)(32), 2(a)(35), 22(c), and 22(d), and rule 22c–1.

SUMMARY OF APPLICATION: Applicants seek to amend a prior order that permitted certain investment companies to assess a contingent deferred sales charge ("CDSC") on certain redemptions of shares, and to waive the CDSC under certain circumstances. The amended order would permit applicants to expand the circumstances under which they may waive the CDSC, and clarify certain provisions of the prior order.

FILING DATE: The application was filed on March 25, 1993, and amended on June 22, 1993, and September 8, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 4, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, Piper Jaffray Tower, 222 South Ninth Street, Minneapolis, Minnesota 55402.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 504–2920, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicants are open-end diversified management investment companies organized under the laws of the State of Minnesota. Piper Funds has one class of capital stock that is offered in twelve separate series, and Piper Global has one class of capital stock that is offered in one series. Three of Piper Funds' series are money market funds that offer shares to the public at their net asset value with no sales charge. The other nine Piper Funds' series and Piper Global's series are non-money market funds that offer shares at their net asset value plus a front-end sales charge in connection with transactions involving less than $500,000, or such other amount as agreed to from time to time by applicants and Piper Jaffray Inc. (the "Distributor"). No front-end sales charge is imposed in connection with purchases of $500,000 or more.

2. Piper Capital Management Incorporated (the "Adviser") serves as the investment adviser for applicants. The Distributor serves as the principal underwriter for applicants.

3. Pursuant to an order issued in 1990 and amended in 1991 (the "Existing Order"),[1] applicants and certain other investment companies may impose a CDSC in connection with redemptions of shares purchased without the imposition of a front-end sales charge within twenty-four months following their purchase (the "CDSC Period"). The CDSC is equal to a specified percentage of the lesser of the net asset value of such shares at the time of purchase or at the time of redemption. Currently, the CDSC percentage ranges from 0.2 percent to 1 percent, depending on the investment company.

4. Under the Existing Order, the Funds may waive the CDSC in connection with redemptions of shares: (a) Made by (i) Piper Jaffray Companies

[1] Investment Company Act Release Nos. 17482 (May 9, 1990) (notice) and 17522 (June 6, 1990) (order); Investment Company Act Release Nos. 18288 (Aug. 26, 1991) (notice) and 18322 (Sept. 24, 1991) (order).

Inc., its subsidiaries, outside counsel to applicants, and the following persons associated with such entities: (A) Officers, directors, and partners; (B) employees and retirees; (C) sales representatives; (D) spouses and children under the age of 21 of any such persons; and (E) any trust, pension, profit-sharing, or other benefit plan for any of the persons set forth in (A) through (D); (ii) investment advisory clients of the Adviser, and its affiliate, Piper Trust Company; and (iii) sales representatives of broker-dealers who have entered into sales agreements with the Distributor and their spouses and their children under the age of 21; and (b) in the event of (i) the death or disability of the shareholder, as "disability" is defined in section 72(m)(7), provided that the shareholder, at the time of death or disability, held the shares as an individual, a joint tenant with right of survivorship, or a tenant in common; (ii) a lump sum distribution from an employee benefit plan qualified under section 401(a) of the Internal Revenue Code (the "Code"), an individual retirement account under section 408(a) of the Code, or a simplified employee pension plan under section 408(k) of the Code; (iii) systematic withdrawals from any such plans if the shareholder is at least 59½ years old; (iv) a tax-free return of the excess contribution to an individual retirement account under section 408(a) of the Code; (v) involuntary redemptions effected pursuant to applicants' right to liquidate shareholder accounts whose aggregate net asset value is below the minimum required; or (vi) purchased through an investment executive of the Distributor to the extent such purchases are funded by the proceeds from the sale of shares of any mutual fund other than a money market fund, provided there was no deferred sales load, fee, or other charge imposed in connection with such sale.

5. Under the Existing Order, no CDSC is imposed on exchanges of shares among the investment companies covered by such order in accordance with rule 11a–3 of the Act. In addition, applicant provides a *pro rata* credit paid by the Distributor for any CDSC paid in connection with redemption of Fund shares followed by a reinvestment in any Fund charging a front-end sales load, provided that such reinvestment occurs within 30 or 120 days, depending on the Fund, of the redemption.

6. Applicants request an amended order on behalf of themselves and any open-end registered investment companies formed in the future which are advised by the Adviser and offered at net asset value plus a front-end sales charge, and which are offered in the same "group of investment companies," as defined in rule 11a–3 (collectively, the "Funds"). The amended order would continue to permit the imposition and waiver of the CDSC as provided in the Existing Order and would permit the waiver of the CDSC in the following additional circumstances: (a) Lineal ancestors and descendants of investment advisory clients of the Adviser and its affiliate, Piper Trust Company; (b) participants in investment companies which are advised by the Adviser and exempt from registration under the Act pursuant to section 2(b) of the Act; (c) all employees of broker-dealers who have entered into sales agreements with the Distributor, and spouses and children under the age of 21 of such employees; (d) employee benefit plans containing an actively maintained qualified cash or deferred arrangement under section 401(k) of the Code; (e) custodial accounts under section 403(b)(7) of the Code, also known as tax-sheltered annuities; and (f) trust companies and bank trust departments using funds over which they exercise exclusive discretionary investment authority and which are held in a fiduciary, agency, advisory, custodial, or similar capacity. In addition, in the event a 401(k) plan of an employer has purchased shares in any Fund (other than a money market fund) during any calendar quarter, the CDSC will be waived upon redemption of shares purchased during the same quarter by any other employee benefit plan of such employer that is a qualified plan under section 401(a) of the Code. Any waiver or reduction of a CDSC will be uniformly applied to all offerees of a particular class of shares.

7. Applicants also seek to clarify that the amount of the CDSC charged pursuant to the Existing Order is merely the maximum CDSC that may be charged. Applicants further seek to clarify that the Funds may establish breakpoints in the CDSC schedule so that shareholders who hold shares for a specified period of time or invest a specified amount will receive a reduction or a waiver of the maximum permitted CDSC. The Funds may decide to discontinue the CDSC temporarily or permanently in the future. Any such changes will not be effective until set forth in the applicable Fund's prospectus. In addition, such changes will not affect any outstanding shares, provided that any changes that result in a benefit to shareholders (e.g., that result in reduced fees) may affect such outstanding shares. Applicants also seek to clarify that they may determine, with respect to certain waiver categories permitted under the proposed order, to cease such waiver, provided that such a change will not affect purchases of Fund shares made prior to disclosure of such change in the applicable prospectus. Finally, applicants seek to clarify that twenty-four months is merely the maximum CDSC Period.

Applicants' Condition

If the requested order is granted, applicants agree that they will comply with the provisions of proposed rule 6c–10 under the Act as such rule is currently proposed and as it may be reproposed, adopted, or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–22528 Filed 9–14–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 19698; 812–8204]

SEI Liquid Asset Trust, et al.; Application for Exemption

September 9, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION. Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: SEI Liquid Asset Trust, SEI Tax Exempt Trust, SEI Cash+Plus Trust, SEI Index Funds, SEI Institutional Managed Trust, SEI International Trust, The Capitol Mutual Funds, FFB Lexicon Funds, The ONE[R] GROUP[SM] (the "Trusts"), SEI Financial Management Corporation ("SFM" or the "Administrator"), and SEI Financial Services Company ("SFS" or the "Distributor").

RELEVANT ACT SECTIONS: Order requested under section 6(c) for exemptions from sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c), and 22(d) of the Act and rule 22c-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit the Trusts to (a) issue and sell multiple classes of shares representing interests in the same portfolio of securities, and (b) assess and, in certain circumstances, waive a contingent deferred sales charge ("CDSC") on redemptions of certain shares. Applicants also request such exemptive relief on behalf of any existing or future registered open-end investment companies for which SFM, SFS, or any person directly or indirectly controlling, controlled by, or under

common control with SFM or SFS serves or may serve as principal underwriter or Administrator, and whose shares are divided into two or more classes with differing voting rights and expense allocations and /or that employs CDSC in a manner substantially similar to that described in the application.[1]

FILING DATE: The application was filed on December 7, 1992 and amended on February 22, 1993 and September 2, 1993. By letter dated September 9, 1993, applicants' counsel stated that an additional amendment, the substance of which is incorporated herein, will be filed during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 30, 1993, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. The Trusts, c/o CT Corporation, 2 Oliver Street, Boston, Massachusetts 02109; SFM and SFS, 680 East Swedesford Road, Wayne, Pennsylvania 19087; with a copy to Richard W. Grant, Esq., Morgan, Lewis & Bockius, 2000 One Logan Square, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Staff Attorney at (202) 272–7648, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

[1] There are no other existing investment companies that currently intend to rely on any relief granted to applicants other than those named as parties to the application. Other investment companies may, in the future, rely on the order granting exemptive relief so long as such future investment companies determine to issue multiple classes of shares and/or impose a CDSC in accordance with the representations and conditions in the application.

Applicants' Representations

A. Current Pricing System

1. Each of the Trusts is an open-end management investment company registered under the Act. SFM and SFS are wholly-owned subsidiaries of SEI Corporation. SFM serves as each Trust's shareholder servicing agent and transfer agent, and provides general management services to each Trust in its capacity as Administrator of the Trust. These services may include overall management, regulatory reporting, dividend disbursing agent, reporting to the trustees on portfolio performance, and providing all necessary office space, equipment, personnel, and facilities. SFS, a registered broker-dealer, serves as each Trust's principal underwriter pursuant to separate distribution agreements. Separate investment advisory fees are paid by each Trust to independent investment advisers that are not affiliated with SFM or SFS.

2. Pursuant to an existing order, certain of the applicants are authorized to issue five classes of shares, each of which may be charged incremental transfer agency fees directly attributable to such class.[2]

3. Under the existing order, the Trusts may offer one class of shares in connection with a distribution plan adopted pursuant to rule 12b–1 ("Rule 12b–1 Plan"), with a fee of up to .30% of the average daily net assets of the class. The Rule 12b–1 Plan provides that such class bears the cost of its distribution expenses as provided in a budget approved annually and reviewed quarterly by the Trust's board of trustees (the "Trustees"). The expenses subject to reimbursement are limited to (a) the cost of preparing, producing, and delivering prospectuses, shareholder reports, sales literature, and other materials for distribution to potential shareholders; (b) the costs of complying with state and federal securities laws pertaining to distribution of shares; (c) advertising; and (d) expenses incurred in connection with the promotion and sale of shares (collectively, "Budgeted Expenses"). Under the existing order, the Trusts also may issue three classes of shares that are identical to the first class except that the applicable Rule 12b–1 Plan may provide for an additional distribution fee for distribution-related shareholder services. The Trusts also are authorized to issue a class of shares that is identical to the other four classes except that it is not subject to a Rule 12b–1 Plan.

B. The Variable Pricing Proposal

1. Applicants propose to amend the current multiple class structure to enable each Trust to offer investors the option to purchase either (a) shares with a conventional front-end sales load and, in certain instances, subject to a distribution fee ("Class A shares" or the "Front-End Option"); or (b) shares subject to a CDSC and a higher distribution fee ("Class B shares" or the "Deferred Option"), in addition to their current class structure (the "Variable Pricing System"). Further, under the proposed Variable Pricing System, applicants may from time to time create one or more additional classes of shares, the terms of which may differ from the classes currently offered.

2. Under the Front-End Option, investors may purchase Class A shares at net asset value plus a front-end sales load. The sales load generally will be reduced for larger purchases and under a right of accumulation or other discount purchase plans. In addition, Class A shareholders of certain Trusts will be subject to a distribution fee under a Rule 12b–1 Plan that currently is not expected to exceed .75% of each portfolio's net assets. The distribution fee may include a service fee.[3]

3. Under the Deferred Option, Class B shares would be sold at net asset value without the imposition of a sales load at the time of purchase, but subject to a CDSC, as discussed below. Class B shares also would be subject to a distribution fee under a Rule 12b–1 Plan that would compensate SFS for its services and expenses in distributing each portfolio's shares, including Budgeted Expenses and service fees. It is currently expected that such distribution fee, combined with any service fees, would not exceed 1.00% of each portfolio's net assets. The 1.00% fee is expected to be a combination of a .75% distribution fee under a Rule 12b–1 Plan and a .25% service fee, but, whatever level of fees are established, such fees shall be consistent with the NASD's Rules of Fair Practice.

4. Class B shares may convert to Class A shares after expiration of the period for which a CDSC is imposed, and thereafter be subject to the lower rule 12b–1 fee of the Class A shares. For purposes of calculating the holding period required for conversion, Class B shares would be deemed to have been

[2] Investment Company Act Release Nos. 17878 (Nov. 27, 1990) (notice) and 17915 (Dec. 24, 1990) (order) amending Investment Company Act Release Nos. 17144 (Sept. 20, 1989) (notice) and 17169 (Oct. 18, 1989) (order). If granted, the order requested by the application will supersede these prior orders.

[3] The term "service fee" has the same meaning as used in the amendment to Article III, Section 26 of the Rules of Fair Practice of the NASD. See Exchange Act Release No. 30897 (July 7, 1992).

issued on the date on which the issuance of such Class B shares occurred or, for Class B shares obtained through an exchange or a series of exchanges, the date on which the issuance of the original Class B shares occurred. All Class B shares in a shareholder's account that were purchased through the reinvestment of dividends and other distributions paid in respect of Class B shares will be considered to be held in a separate sub-account. Each time any Class B shares in the shareholder's account convert to Class A shares, a *pro rata* portion of the Class B shares then in the sub-account also will convert to Class A shares.

5. From time to time each Trust may create additional classes of shares, the terms of which may differ from the Class A and Class B shares only in the following respects: (a) Any such class may bear different distribution and servicing fees in conjunction with a Rule 12b–1 Plan; (b) any such class may be offered in conjunction with a non-rule 12b–1 shareholder services plan ("Shareholder Services Plan") with payments made to financial institutions; (c) any such class may bear different designations; (d) any such class will have exclusive voting rights with respect to any Rule 12b–1 Plan adopted exclusively with respect to such class, except as provided in condition 16 as set forth below; (e) any such class may have conversion and/or exchange features that conform to the description of such privileges for Class A and Class B shares; and (f) any such class may bear any of the incremental expenses listed in condition 1(a), *infra* ("Class Expenses").

6. Under a Rule 12b–1 Plan, SFS would make payments to financial institutions which either have entered into a sales agreement with SFS with respect to the distribution of shares or a service agreement whereby such financial institution would provide certain services to their customers who beneficially own shares. Under a Sharehold Services Plan, a Trust would enter into a service agreement whereby such financial institution would provide certain services to their customers who beneficially own shares. In the event that a Trust adopts both a Rule 12b–1 Plan and a Shareholder Services Plan, services provided under one plan will augment or replace, rather than duplicate, services provided under the other plan.

7. Under the proposed Variable Pricing System, all expenses incurred by a portfolio will be allocated among the various classes of shares based on the net assets of the portfolio attributable to each class, except that each class's net asset value and expenses will reflect the expenses associated with that class's Rule 12b–1 Plan (if any), expenses associated with a Shareholder Services Plan (if any), and any Class Expenses. Because of the higher distribution fee and any other expenses that may be attributable to a class, the net income attributable to and the dividends payable on one class will be lower than the net income attributable to and the dividends payable on another class.

8. Currently, shares of one class of portfolio of a Trust may be exchanged at net asset value for the same class of shares of other portfolios of such Trust. It is contemplated that Class B shares of a portfolio of a Trust will be exchangeable only for Class B shares of the other portfolios of such Trust, including Class B shares of money market funds. Class A shares of a portfolio which is not a money market fund will be exchangeable only for Class A shares of the other portfolios of such Trust, including Class A shares of money market funds, and for shares of other Trusts which do not impose a CDSC. Class A shares of a portfolio which is a money market fund will be exchangeable for other Class A shares at net asset value plus the applicable front-end sales load. In addition, shares of a class in which an investor is no longer eligible for participation may be exchanged for shares of a portfolio in which that investor is eligible to participate. All exchange privileges will comply with rule 11a–3 under the Act.

9. Some of the additional classes will be offered only to certain institutional offerees (the "Institutional Classes"). The offerees of the shares of Class A, Class B, and additional classes other than the Institutional Classes (collectively, the "Direct Investor Classes") will not overlap with the offerees of the Institutional Classes. The Institutional Classes will be offered exclusively to the following five limited categories of investors: (a) Benefit plans; (b) defined contribution retirement plans maintained by the Trusts' investment advisers or their affiliates for the benefit of their employees; (c) banks or insurance companies purchasing shares for their own accounts; (d) registered investment companies not affiliated with SFM or with any investment adviser of the Trusts; and (e) endowment funds of non-profit organizations.

10. The benefit plans in category (a) will have several common features. Among these features are total assets in excess of $5 million or such other amounts as the Trusts may establish, a separate trustee for the plan who is vested with investment discretion as to plan assets, certain limitations on the ability of plan beneficiaries to access their plan investments without incurring adverse tax consequences, and such other characteristics as the Trusts may establish.[4] Applicants will exclude individual retirement accounts and retirement plans of self-employed persons. It is possible that the Trusts' investment advisers may serve as investment adviser to some of these plans.

11. The retirement plans in category (b) will consist of qualified defined contribution plans maintained by the Trusts' investment advisers or their affiliates for the benefit of their employees pursuant to section 401(a) of the Internal Revenue Code. The assets of such plans are held in trust by a trustee and beneficiaries have limited pre-retirement access to the assets.

12. Like category (a), the entities in categories (c), (d), and (e) will have in common the essential features of substantial assets under management and investment decision-making by institutional management on behalf of the entity with respect to the purchase of additional classes of the Trusts. Banks and insurance companies typically employ professional staff to manage the investment of cash assets, and portfolio managers make investment decisions on behalf of investment companies. Likewise, an endowment fund of a non-profit organization is professionally managed and individual donors to such endowment funds exercise no investment discretion on behalf of the endowment fund, nor would such an individual donor consider a direct investment in shares of a Fund as an investment alternative in lieu of a donation. Thus, no possibility exists that an individual investor would be able to use these entities as a conduit for individual investing in the Institutional Class shares.

13. Because the offerees of the Direct Investor Classes do not fall within any of the categories of the Institutional Classes, offerees of the Direct Investor Classes will be ineligible to purchase shares of the Institutional Classes. Conversely, investors in categories (a) and (b) may face legal obstacles that would prevent them from purchasing shares of the Direct Investor Class, and investors in categories (c), (d), and (e), who otherwise could purchase Direct Investor Class shares, will be directed to purchase shares of the Institutional

[4] The $5 million minimum asset requirement for entities in (a) assures that the category of investors are of sufficient size to prevent plans from being conduits for individual investing.

Classes by the securities dealer, as required by applicants' compliance procedures.

C. The Proposed CDSC

1. Applicants also request an exemption from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act, and rule 22c–1 thereunder, to permit the Trusts to assess and, under certain circumstances, waive a CDSC on redemptions of certain shares of the Trusts. The amount of any CDSC will be calculated as the lesser of the amount that represents a specified percentage of the net asset value of the shares at the time of purchase, or the amount that represents such percentage of the net asset value of the shares at the time of redemption.

2. No CDSC will be imposed on any shares issued prior to the date of the order granting the exemptive relief. No CDSC will be imposed on (a) redemptions of shares purchased more than seven years prior to redemption (the "CDSC Period"), (b) shares derived from the reinvestment of distributions, or (c) amounts representing an increase in the value of a shareholder's account due to capital appreciation. In determining the applicability and rate of any CDSC, it will be assumed that a redemption is made first of shares representing capital appreciation, next, of shares representing reinvestment of dividends and capital gain distributions, and finally, of shares held by the shareholder for the longest period of time. This will result in the CDSC being imposed at the lowest possible rate. Redemption requests placed by shareholders who own both Class A and Class B shares of a portfolio would be satisfied first by redeeming the shareholder's Class A shares, unless the shareholder has made a specific election to redeem Class B shares.

3. Each of the Trusts is requesting the ability to waive the CDSC for one or more of the following occurrences: (a) On redemptions following the death or disability, as defined in section 72(m)(7) of the Internal Revenue Code of 1986, as amended (the "Code"), of a shareholder if redemption is made within one year of death or disability of a shareholder; (b) in connection with a lump-sum or other distribution following retirement or, in the case of an IRA or Keogh Plan or a custodial account pursuant to section 403(b)(7) of the Code, after attaining age 59½ (or as an alternative after attaining age 70½), and any redemption which results from a tax-free return of an excess contribution pursuant to section 408(d) (4) or (5) of the Code or from the death or disability of the employee; (c) in connection with redemptions of shares purchased by officers, directors or trustees, and employees of the Trusts, the investment advisers to the Trusts and their affiliated entities, the Distribution and its affiliated entities, and by members of the immediate families of such persons; (d) in connection with redemptions of shares made pursuant to a shareholder's participation in any systematic withdrawal plan adopted by a Trust; (e) in part, in connection with redemptions by large accountholders; (f) in connection with redemptions effected by advisory accounts managed by the investment advisers to the Trusts or their affiliated entities; (g) in connection with redemptions by tax-exempt employee benefit plans that result from the enactment or promulgation of any law or regulation pursuant to which continuation of the investment in the Trusts would be improper; and (h) in connection with redemptions effected by registered investment companies in connection with the combination of the investment company with a Trust by merger, acquisition of assets, or by any other transaction. If the Trusts waive or reduce the CDSC, such waiver or reduction will be uniformly applied to all offerees in the class specified.

4. If the trustees of a Trust that has been waiving or reducing its CDSC decide not to waive or reduce such CDSC any longer, the disclosure in that Trust's prospectus will be appropriately revised. Any shares purchased prior to the termination of such waiver or reduction would be entitled to a waiver or reduction of the CDSC as provided in a Trust's prospectus at the time of the purchase of such shares.

5. Each of the Trusts may provide a *pro rata* credit for any CDSC paid in connection with a redemption of shares from a Trust followed by a reinvestment in the Trust effected within 365 days, or a shorter period, of the redemption. The credit will be paid by SFS.

Applicants' Legal Analysis

1. Applicants request an exemptive order to the extent that the proposed issuance and sale of multiple classes of shares representing interests in the Trusts might be deemed: (a) To result in the issuance of a "senior security" within the meaning of section 18(g) and thus be prohibited by section 18(f)(1); and (b) to violate the equal voting provisions of section 18(i).

2. Applicants believe that the proposed Variable Pricing System would better enable the Trusts to meet the competitive demands of today's financial services industry. The proposed arrangement would permit the Trusts to facilitate both the distribution of their securities and provide investors with a broader choice as to the method of purchasing shares without assuming excessive accounting and bookkeeping costs or unnecessary investment risks. Investors also would be able to benefit from the additional safety and stability resulting from their ability to invest in established, sizeable investment funds. Moreover, to the extent that fixed costs would be spread over a greater number of shares than they otherwise would be, applicants maintain that owners of each class of shares may be relieved of a portion of the fixed costs normally associated with mutual funds since they would be spread over a greater number.

3. Applicants believe that the proposed allocation of expenses and voting rights relating to the rule 12b–1 plans, shareholder servicing plans, and Class Expenses in the manner described is equitable and would not discriminate against any group of shareholders. In addition, such arrangements should not give rise to any conflict of interest because the rights and privileges of each class of shares are substantially identical and the interests of the shareholders with respect to distribution fees would be adequately protected since the rule 12b–1 plans for each class will conform to the requirements of the rule.

4. Applicants believe that the proposed Variable Pricing System does not raise any of the legislative concerns that section 18 of the Act was designed to address. The Variable Pricing System will not increase the speculative character of the shares of the Trusts. The proposed arrangement does not involve borrowing, nor will it affect the Trusts' existing assets or reserves. Nothing in the Variable Pricing System suggests that it will facilitate control by holders of any class of shares.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief shall be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of a Trust and be identical in all respects, except as set forth below. The only differences among the classes of shares of a Trust will relate solely to: (a) The method of financing certain Class Expenses that may be imposed upon a particular class of shares and which are limited to (i) incremental transfer agent fees identified by the transfer agent as being attributable to a specific class of shares; (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and

proxies to current shareholders of a specific class of shares; (iii) blue sky registration fees incurred by a class of shares; (iv) federal registration fees incurred by a class of shares; (v) the expense of administrative personnel and services as required to support the shareholders of a specific class; (vi) litigation or other legal expenses relating solely to one class of shares; (vii) trustees' fees incurred as a result of issues relating to one class of shares; and (viii) any other incremental expenses subsequently identified that should be properly allocated to one class of shares which shall be approved by the Commission pursuant to an amended order; (b) the impact of different Rule 12b–1 Plan (if any), or Shareholder Services Plan (if any) payments made by a particular class of shares which will be borne solely by shareholders of such class; (c) the fact that classes will vote separately with respect to the Trust's Rule 12b–1 Plan and Shareholder Services Plan, except as provided in condition 16 below; (d) the fact that only certain classes will have a conversion feature; (e) the different exchange privileges of the classes of shares; and (f) the designation of each class of shares of a Trust.

2. The Trustees of each of the Trusts, including a majority of the independent Trustees, will approve the Variable Pricing System. The minutes of the meetings of the Trustees of each of the Trusts regarding the deliberations of the Trustees with respect to the approvals necessary to implement the Variable Pricing System will reflect in detail the reasons for the Trustees' determination that the Variable Pricing System is in the best interests of both the Trust and its shareholders.

3. On an ongoing basis, the Trustees of the Trust, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Trust for the existence of any material conflicts among the interests of the various classes of shares. The Trustees, including a majority of the independent Trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Administrator and the Distributor will be responsible for reporting any potential or existing conflicts to the Trustees. If a conflict arises, the Administrator, the Distributor, and the Trust's investment adviser at their own costs will remedy such conflict up to and including establishing a new registered management investment company.

4. The initial determination of the Class Expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the board of Trustees of the particular Trust including a majority of the Trustees who are not interested persons of the Trust. Any person authorized to direct the allocation and disposition of monies paid or payable by the Trust to meet Class Expenses shall provide to the Trustees, and the Trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

5. The Trustees of the Trust will receive quarterly and annual statements concerning Rule 12b–1 Plan and Shareholder Services Plan expenditures complying with paragraph (b)(3)(ii) of Rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any Rule 12b–1 Plan or Shareholder Services Plan fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the Trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent Trustees in the exercise of their fiduciary duties.

6. If any class will be subject to a Shareholder Services Plan, such Shareholder Services Plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1 (b) through (f) as if the expenditures made thereunder were subject to Rule 12b–1, except that shareholders need not enjoy the voting rights specified in Rule 12b–1.

7. Dividends paid by a Trust with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that expenditures associated with any Rule 12b–1 Plan or Shareholder Services Plan relating to a particular class will be borne exclusively by such class and any designated Class Expenses will be borne exclusively by the affected class.

8. The methodology and procedures for calculating the net asset value and dividends and distributions of the various classes and the proper allocation of income and expenses among the various classes has been reviewed by an expert (the "Independent Examiner"). The Independent Examiner has rendered a report to the applicants, which has been provided to the staff of the SEC, stating that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Independent Examiner, or an appropriate substitute Independent Examiner, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Trust that the calculations and allocations are being made properly. The reports of the Independent Examiner shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The workpapers of the Independent Examiner with respect to such reports, following request by the Trusts (which the Trusts agree to make), will be available for inspection by the SEC staff upon the written request for such workpapers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Independent Examiner is a "Special Purpose" report on the "Design of a System," as described in SAS No. 44 of the AICPA. The ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

9. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the various classes of shares and the proper allocation of income and expenses among the various classes of shares and this representation has been concurred with by the Independent Examiner in the initial report referred to in condition (8) above and will be concurred with by the Independent Examiner, or an appropriate substitute Independent Examiner, or an ongoing basis at least annually in the ongoing reports referred to in condition (8) above. Applicants will take immediate corrective measures if this representation is not concurred in by the Independent Examiner or appropriate substitute Independent Examiner.

10. The prospectuses for each portfolio of the Trusts will contain a statement to the effect that a financial institution and any other person entitled to receive compensation for selling or servicing shares of the Trust may

receive different compensation with respect to one particular class of shares over another in the Trust.

11. The Distributor will adopt compliance standards as to when shares of a particular class may appropriately be sold to particular inventors. Applicants will require all persons selling shares of the Trusts to agree to conform to these standards. Such compliance standards will require that all investors eligible to purchase shares of the Institutional Classes be sold only shares of the Institutional Classes, rather than any other class of shares offered by the Trust.

12. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Trustees of the Trusts with respect to the Variable Pricing System will be set forth in guidelines which will be furnished to the Trustees.

13. Each Trust will disclose the respective expenses, performance data, distribution arrangements, services, fees, initial sales loads, deferred sales loads, and exchange privileges applicable to each class of shares other than the Institutional Classes in every prospectus, regardless of whether all classes of shares are offered through each prospectus. The Institutional Classes will be offered solely pursuant to a separate prospectus(es). The prospectus(es) for the Institutional Classes will disclose the existence of the Trust's other classes and will identify the entities eligible to purchase such shares, and the prospectuses for the Trust's other classes will disclose the existence of the Institutional Classes and will identify the persons eligible to purchase shares of such class. Each Trust will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Trust as a whole generally and not on a per class basis. Each Trust's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Trust. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will also disclose the respective expenses and/or performance data applicable to all classes of shares, except the Institutional Classes. Advertising materials reflecting the expenses or performance data for the Institutional Classes will be available only to those persons eligible to purchase such Institutional Classes. The information provided by applicants for publication in any newspaper or similar listing of the Trust's net asset value and public offering price will present each class of shares, except the Institutional Classes, separately.

14. Applicants acknowledge that the grant of the exemptive order requested by the application will not imply SEC approval, authorization, or acquiescence in any particular level of payments that the Trusts may make pursuant to a Rule 12b–1 Plan or Shareholder Services Plan in reliance on the exemptive order.

15. Any class of shares with a conversion feature (the "Purchase Class") will convert into another class of shares (the "Target Class") on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in Article III, Section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

16. If a Trust implements any amendment to its Rule 12b–1 Plan (or, if presented to shareholders, adopts or implements any amendment of a non-rule 12b–1 shareholder services plan) that would increase materially the amount that may be borne by the Target Class shares under the plan, existing Purchase Class shares will stop converting into Target Class shares unless the Purchase Class shareholders, voting separately as a class, approve the proposal. The Trustees shall take such action as is necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class of shares ("New Target Class"), identical in all material respects to the Target Class as it existed prior to implementation of the proposal, no later than the date such shares previously were scheduled to convert into the Target Class. If deemed advisable by the Trustees to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class (the "New Purchase Class"), identical to existing Purchase Class shares in all material respects except that New Purchase Class shares will convert into New Target Class shares. The New Target Class and New Purchase Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the Trustees reasonably believe will not be subject to federal taxation. In accordance with condition 3, any additional cost associated with the creation, exchange, or conversion of the New Target Class or New Purchase Class shall be borne solely by the Administrator, the Distributor, and the Trust's investment adviser. The Purchase Class shares sold after the implementation of the proposal may convert into Target Class shares subject to the higher maximum payment, provided that the material features of the Target Class plan and the relationship of such plan to the Purchase Class shares are disclosed in an effective registration statement.

17. Applicants will comply with the provisions of proposed rule 6c–10 under the Act, Investment Company Act Release No. 16619 (Nov. 2, 1988), as such rule is currently proposed and as it may be reproposed, adopted or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–22527 Filed 9–14–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 19695; 812–8216]

The Society Funds, et al.; Application for Exemption

September 9, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: The Society Funds, The Highmark Group, The Parkstone Group of Funds, Conestoga Family of Funds, The ASO Outlook Group, The Sessions Group, American Performance Funds, The Coventry Group, BB&T Mutual Funds Group, and any other registered investment companies for which The Winsbury Company Limited Partnership ("Winsbury"), or any person directly or indirectly controlling, controlled by, or under common control with Winsbury (the "Winsbury Affiliates"), now or in the future serves as principal underwriter and for which the Advisers (as defined below), or any person directly or indirectly controlling, controlled by, or under common control with the Advisers (the "Adviser Affiliates"), now or in the future serve as investment adviser (the "Funds"); Society Asset Management, Inc., Clay Finlay, Inc., The Bank of California, N.A., First of America Investment Corporation, Meridian Investment Company, AmSouth Bank, N.A., National Bank of Commerce, Bank One,

Arizona, N.A., First National Bank of Omaha, BancOklahoma Trust Company, AMR Investment Services, Inc., Boatmen's Trust Company, Amcore Capital Management, Inc., Analytical Risk Management, Ltd., and Branch Banking and Trust Company (the "Advisers"); Winsbury; and The Winsbury Service Corporation ("Winsbury Service").

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 17(b) for an exemption from the provisions of sections 12(d)(1)(A) and 17(a), and pursuant to section 17(d) and rule 17d–1 to permit certain joint transactions.

SUMMARY OF APPLICATION: Applicants seek a conditional order to permit non-money market series (the "Non-Money Market Series") of a Fund to utilize the cash reserves that have not been invested in portfolio securities ("Uninvested Cash") to purchase shares of one or more of the money market series (the "Money Market Series") of such Fund.

FILING DATE: The application was filed on December 14, 1992, and amended on May 11, 1993 and September 1, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 4, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Charles H. Hire, Baker & Hostetler, 65 East State Street, Columbus, Ohio 43215.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 272–7027, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Society Funds ("Society") is a registered open-end management investment company organized as a Massachusetts business trust. Society offers shares in ten series, three of which are Money Market Series and seven of which are Non-Money Market Series. Society Asset Management, Inc. is the investment adviser for each of Society's series other than the International Growth Portfolio, whose investment adviser is Clay Finlay, Inc.

2. The Highmark Group ("Highmark") is a registered open-end management investment company organized as a Massachusetts business trust. Highmark offers shares in eight series, five of which are Money Market Series and three of which are Non-Money Market Series.[1] Merus Capital Management, a division of The Bank of California, N.A., is the investment adviser for each of Highmark's series. The Bank of California, N.A. also provides sub-administrator, sub-transfer agency and sub-accounting services to each of the Highmark series.

3. The Parkstone Group of Funds ("Parkstone") is a registered open-end management investment company organized as a Massachusetts business trust. Parkstone offers shares in fourteen series, three of which are Money Market Series and eleven of which are Non-Money Market Series. First of America Investment Corporation is the investment adviser for each of the Parkstone series. Ivory & Sime International, Inc. and Ivory & Sime plc are sub-investment advisers for the Parkstone International Discovery Fund series.

4. Conestoga Family of Funds ("Conestoga") is a registered open-end management investment company organized as a Massachusetts business trust. Conestoga offers shares in seven series, three of which are Money Market Series and four of which are Non-Money Market Series. Meridian Investment Company is the investment adviser of each of the Conestoga series.

5. The ASO Outlook Group ("ASO") is a registered open-end management investment company organized as a Massachusetts business trust. ASO offers shares in eight series, three of which are Money Market Series and five of which are Non-Money Market Series.[2] AmSouth Bank, N.A. is the investment adviser for each of the ASO series.

6. The Sessions Group ("Sessions") is a registered open-end management investment company organized as an Ohio business trust. Sessions offers twelve series, three of which are Money Market Series and nine of which are Non-Money Market Series. National Bank of Commerce is investment adviser to four of the Sessions series, including one Money Market Series. Bank One, Arizona, N.A. is the investment adviser to four of the Sessions series, including one Money Market Series. First National Bank of Omaha is investment adviser to four of the Sessions series, including one Money Market Series.

7. American Performance Funds ("American") is a registered open-end management investment company organized as a Massachusetts business trust. American offers shares in seven series, two of which are Money Market Series and five of which are Non-Money Market Series. BancOklahoma Trust Company ("BancOklahoma") is the investment adviser for each of the American series other than the Cash Management Fund, a Money Market Series whose investment adviser is AMR Investment Services, Inc. ("AMR"). AMR also serves jointly with BancOklahoma as investment adviser to American's other Money Market Series.

8. The Conventry Group ("Coventry") is a registered open-end management investment company organized as a Massachusetts business trust. Conventry currently offers shares in five series, two of which are Money Market Series and three of which are Non-Money Market Series.[3] Amcore Capital Management is the investment adviser for each of the Coventry series, except one Money Market Series whose investment adviser is Boatmen's Trust Company.

9. BB&T Mutual Funds Group ("BB&T") is a registered open-end management investment company organized as a Massachusetts business trust. BB&T offers shares in six series, one of which is a Money Market Series and five of which are Non-Money Market Series. Branch Banking and Trust Company is the investment adviser for each of the BB&T series.

10. Winsbury, a broker-dealer registered under the Securities Exchange Act of 1934, is the principal underwriter and administrator for each of the Funds. Winsbury is entitled to receive fees for administrative services

[1] Four additional Non-Money Market Series have been registered and have effective registration statements but currently are not being offered to the public.

[2] Three additional Non-Money Market Series have been registered and have effective registration statements but currently are not being offered to the public.

[3] One additional Non-Money Market Series has been registered and has an effective registration statement but currently is not being offered to the public. Analytical Risk Management, Ltd. is the investment adviser for such series.

based on a percentage of net assets from each of the Funds.

11. Winsbury Service, an Ohio corporation under common ownership with Winsbury, provides transfer agency and fund accounting services to each of the Funds. Winsbury Service is entitled to receive fees from each of the Funds for serving as transfer agent based primarily on the number of shareholders of each Fund, and for providing accounting services based upon a percentage of the Funds' net assets.

12. Each of the Advisers received an investment advisory fee from the series that they advise based upon a percentage of net assets of such series. The Bank of California, Bank One, Arizona, N.A., First National Bank of Omaha, and Boatmen's Trust Company also receive fees based upon a percentage of net assets of the series that they advise for acting as custodians for such series. The Bank of California receives fees based upon a percentage of net assets from the Highmark series for performing sub-administrative and sub-accounting services.

13. The Non-Monday Market Series of each Fund invest in a variety of debt and/or equity securities. The Money Market Series of each Fund seek current income, liquidity, and capital preservation by investing in short-term money market instruments such as U.S. Government securities, bank obligations, commercial paper, municipal obligations, or repurchase agreements secured by Government securities.

14. Each Non-Money Market Series has, or may be expected to have, Uninvested Cash in its custodian bank which may be invested directly in individual short-term money market instruments, or may not otherwise be invested in any portfolio securities. This Uninvested Cash may result from a variety of sources, including dividends or interest received on portfolio securities, unsettled securities transactions, reserves held for investment strategy purposes, scheduled maturity of investments, liquidation of investment securities to meet anticipated redemptions, dividend payments, and new monies received from investors.

15. Applicants seek an order that would permit the Non-Money Market Series of a Fund to utilize Uninvested Cash to purchase shares of one or more of the Money Market Series of such Fund and the Money Market Series of a Fund to sell their shares to, and to redeem their shares from, the Non-Money Market Series of such Fund.[4] The Uninvested Cash held by an individual Non-Money Market Series at any particular time may not be large enough generally to make economical direct investments in money market instruments. However, by investing Uninvested Cash in Money Market Series, the Non-Money Market Series will reduce their transaction costs, create more liquidity, enjoy greater returns on the Uninvested Cash, and further diversify their holdings.

16. Under the proposal, no sales charge, contingent deferred sales charge, rule 12b–1 fee, or other underwriting or distribution fee will be charged by a Money Market Series or any underwriter with respect to purchases of shares of such Money Market Series made with Uninvested Cash, or upon the redemption of such shares. In order to avoid duplicative management fees, Winsbury, Winsbury Service, the Advisers, and their respective affiliates will reduce their fees charged to a Non-Money Market Series by the amount that such service providers received as a result of the Non-Money Market Series' investments in the Money Market Series, to the extent that such fees are based upon the Non-Money Market Series' assets invested in shares of the Money Market Series.

17. To ensure that the Non-Money Market Series will not exert any undue influence in the voting process for any matter submitted to a vote by the shareholders of a Money Market Series, the Non-Money Market Series will vote their shares of the Money Market Series in proportion to the vote by all other shareholders of such Money Market Series. The Non-Money Market Series will purchase and redeem shares of the Money Market Series at the same time and price, and will receive dividends and bear expenses, on the same basis as all other shareholders of the Money Market Series.

18. Applicants also request relief that would permit the Non-Money Market Series to invest Uninvested Cash in, and hold shares of, a Money Market Series in excess of the percentage limitations set forth in section 12(d)(1)(A). The value of the shares held by a Non-Money Market Series, however, will be limited as follows: (a) Each Non-Money Market Series will be permitted to invest Uninvested Cash in, and hold shares of, a Money Market Series only to the extent that, (i) the Non-Money Market Series' aggregate investment in the Money Market Series does not exceed the greater of 5% of such Non-Money Market Series' total net assets or $2.5 million, and (ii) the Non-Money Market Series' aggregate investment in all investment companies (including all Money Market Series) does not exceed 10% of such Non-Money Market Series total net assets; and (b) no single Non-Money Market Series will be permitted to own more than 3% of the outstanding shares of any single Money Market Series or any other investment company.

Applicant's Legal Conclusions

1. Under section 6(c), the SEC may exempt any person or transaction from any provision of the Act or any rule thereunder to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants seek relief under section 6(c) for an exemption from section 12(d)(1)(A) and so that the exemption granted from section 17 applies to a class of transactions, rather than to a single transaction. Applicants state that the proposed transactions meets the standards for relief under section 6(c) because they will allow applicants to reduce their transaction costs, create more liquidity, enjoy greater returns on the Uninvested Cash, and further diversify their holdings.

2. Section 12(d)(1)(A) sets certain limits on an investment company's ability to invest in the shares of another investment company. Section 12(d)(1) is intended to protect an investment company's shareholders from undue influence over portfolio management through the threat of large scale redemptions, the acquisition of voting control, the layering of sales charges and advisory fees, and the creation of a complex structure that dissuades a shareholder from ascertaining the true value of the subject security. None of those perceived abuses is created by applicant's proposal.

3. Section 17(a) makes it unlawful for any affiliated person of a registered investment company, acting as principal, to sell any security to, or purchase any security from, such investment company. The series of a Fund may be deemed to be affiliated persons of each other by virtue of being under common control because each Fund has one board of trustees, one principal underwriter and

[4] Prior to submission of this application, certain of the applicants had participated in such activity. Those applicants were advised by the SEC staff that in the staff's opinion purchases and sales of Money Market Series shares between the Non-Money Market Series and the Money Market Series violated section 17 of the Act. Applicants have discontinued such practice pending an exemptive order of the Commission. Any exemptive relief will only be prospective in its application.

administrator, one accountant, and in some instances, one investment adviser and one transfer agent.

4. Section 17(b) permits the SEC to exempt a transaction from the provisions of section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company concerned and the general purposes of the Act.[5]

5. Section 17(d) of the Act and rule 17d–1 thereunder, in the absence of an order granted by the Commission, prohibit an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from participating in, or effecting any transaction in connection with, any joint enterprise or other joint arrangement in which any such registered company, or a company controlled by such registered company is a participant, Under rule 17d–1, the Commission may permit a proposed joint transaction if participation by a registered investment company is consistent with the provisions, policies, and purposes of the Act and not on a basis less advantageous than that of other participants.

6. Applicants submit that the terms of the proposed transactions are fair and reasonable, consistent with the policies and purposes of the Act, and do not present the possibility for overreaching because the Non-Money Market Series will purchase and redeem shares of the Money Market Series at net asset value and there will be no imposition of double management or administrative costs. Applicants also state that the proposed transactions meets the standards for relief under section 6(c) because they will allow applicants to reduce their transaction costs, create more liquidity, enjoy greater returns on the Uninvested Cash, and further diversify their holdings.

Applicants' Conditions

1. Each of the Money Market Series will calculate its net asset value in accordance with rule 2a–7 under the Act.

2. The shares of the Money Market Series of the Funds sold to and redeemed from the Non-Money Market Series of such Funds will not be subject to a sales load, redemption fee, or distribution fee under a plan adopted in accordance with rule 12b–1.

3. Winsbury, Winsbury Service, the Winsbury Affiliates, the Advisers, and the Adviser Affiliates will reduce their fees charged to each Non-Money Market Series of a Fund by an amount (the "Reduction Amount") equal to the net asset value of the Non-Money Market Series' holdings in any Money Market Series of a Fund times the rate at which advisory, administrative, and other fees are charged by Winsbury, Winsbury Service, the Winsbury Affiliates, the Advisers, and the Adviser Affiliates to such Money Market Series (excluding amounts that could have been charged but were waived), provided that such fees are based on a percentage of the Money Market Series' net assets.

4. If Winsbury, Winsbury Service, the Winsbury Affiliates, the Advisers or the Adviser Affiliates waive any portion of their Non-Money Market Series fees or bear any portion of the expenses of a Non-Money Market Series (an "Expense Waiver"), the adjusted fees for the Non-Money Market Series (gross fees minus Expense Waiver) will be calculated without reference to the Reduction Amount. Adjusted fees will then be reduced by the Reduction Amount. If the Reduction Amount exceeds adjusted fees, Winsbury, Winsbury Service, the Winsbury Affiliates, the Advisers, or the Adviser Affiliates will reimburse the appropriate Non-Money Market Series in an amount equal to such excess.

5. Each of the Non-Money Market Series of a Fund will be permitted to invest Uninvested Cash in, and hold shares of, a Money Market Series of such Fund only to the extent that: (a) The Non-Money Market Series' aggregate investment in the Money Market Series does not exceed the greater of 5% of the Non-Money Market Series' total net assets, or $2.5 million; and (b) the Non-Money Market Series aggregate investment in all investment companies (including all Money Market Series) does not exceed 10% of such Non-Money Market Series' total net assets. No Non-Money Market Series of a fund will be permitted to own more than 3% of the total outstanding voting stock of any Money Market Series of such Fund or of any other investment company. For purposes of these limitations, each series of a Fund will be treated as a separate investment company. Accordingly, a single Non-Money Market Series' investments and share ownership of a particular Money Market Series will not be aggregated with the Non-Money Market Series' investments and share ownership of any other series within the same Fund for purposes of determining whether the foregoing limitations have been satisfied.

6. The Non-Money Market Series will vote their shares of each of the Money Market Series in the same proportion as the votes of all other shareholders in such Money Market Series.

7. The Non-Money Market Series of a Fund will purchase and redeem shares of each of the Money Market Series of such Fund as of the same time and at the same price, and will receive dividends and bear their proportionate share of expenses on the same basis as other shareholders of such Money Market Series. A separate account will be established in the shareholder records of each of the Money Market Series for each of the acquiring Non-Money Market Series.

8. Any Non-Money Market Series fees reduced or reimbursed in connection with the purchase and sale of shares of the Money Market Series of the Funds as described herein will be reduced or reimbursed for all time, and will not be subject to recoupment by Winsbury, Winsbury Service, the Winsbury Affiliates, the Advisers, the Advisers Affiliates, and by any future service providers at a later date.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–22530 Filed 9–14–93; 8:45 am]

BILLING CODE 8010–01–M

[5] The policies of the Non-Money Market Series will be amended, as necessary, or a proposal to amend such policies will be submitted to the shareholders of the Non-Money Market Series, where appropriate, to permit such series to purchase and redeem shares of the Money Market Series.

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended September 3, 1993

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49100
Date filed: August 30, 1993

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 27, 1993
Description: Application of Air Serve, Inc., pursuant to section 401(d)(3) of the Act and subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing interstate and overseas charter air transportation.

Docket Number: 49101
Date filed: August 30, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 27, 1993
Description: Application of Air Serve, Inc., pursuant to section 401(d)(3) of the Act and subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing foreign charter air transportation.

Docket Number: 49103
Date filed: August 31, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 28, 1993
Description: Application of Cherokee Air, Ltd., pursuant to section 402 of the Act and subpart Q of the Regulations, applies for a foreign air carrier permit to engage in on-demand charter foreign air transportation between Marsh Harbour, Abaco, Commonwealth of the Bahamas and Miami, Fort Lauderdale, West Palm Beach, and Fort Pierce, Florida, in the United States

Docket Number: 49105
Date filed: September 1, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 29, 1993
Description: Application of Allcanada Express Limited d/b/a Allcanada Express, pursuant to section 402 of the Act and subpart Q of the Regulations, requests a Foreign Air Carrier Permit to engage in the charter air transportation of property and mail between any point or points in Canada and any point or points in the United States.

Docket Number: 49107
Date filed: September 2, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 30, 1993
Description: Application of American Airlines, Inc. pursuant to section 401 of the Act and subpart Q of the Regulations applies for renewal of its certificate for Route 550, authorizing scheduled foreign air transportation of persons, property, and mail between the coterminal points Seattle, Washington, and Portland, Oregon, and the coterminal points Tokyo and Osaka, Japan.

Docket Number: 49112
Date filed: September 2, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 30, 1993
Description: Application of Air Wisconsin Airlines Corporation pursuant to section 401(d)(1) of the Act and subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing it to engage in interstate and overseas air transportation of persons, property and mail.

Docket Number: 49114
Date filed: September 3, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 1, 1993
Description: Application of Continental Micronesia, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, requests renewal of the Guam/Saipan-Naha authority in its Route 171 certificate for a period of five years.

Docket Number: 48001
Date filed: September 3, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 20, 1993
Description: Application of Evergreen International Airlines, Inc., pursuant to Rule 410 of the Rules of Practice of the Department, applies for an emergency exemption from the condition on its certificate for Route 638, as amended by DOT Notices dated May 10, 1993, June 9, 1993, July 7, 1993 and August 5, 1993, that requires it to commence service between New York, New York, and Beijing, China, on or before September 8, 1993.

Docket Number: 46352
Date filed: August 31, 1993
Due Date for Answers, Conforming Applications, Motion to Modify Scope: September 28, 1993
Description: Fifth Amendment to Application of Air Aruba, N.V., pursuant to section 402 of the Act and subpart Q of the Regulations, moves to amend the foreign air carrier permit to serve Baltimore, Maryland.

Phyllis T. Kaylor,
Chief, Documentary Services Division.

[FR Doc. 93–22550 Filed 9–14–93; 8:45 am]
BILLING CODE 4910–62–P

Office of the Secretary

[Notice 93–19]

Senior Executive Service Performance Review Boards (PRB); Membership

AGENCY: Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: DOT publishes the names of the persons selected to serve on the various Departmental Performance Review Boards (PRB) established by DOT under the Civil Service Reform Act.

FOR FURTHER INFORMATION CONTACT: Glenda M. Tate, Director of Personnel, and Executive Secretary, DOT Executive Resources Board, (202) 366–4088.

SUPPLEMENTARY INFORMATION: Title 5 U.S.C. 4312 requires that each agency implement a performance appraisal system making senior executives accountable for organizational and individual goal accomplishment. As part of this system, 5 U.S.C. 4314(c) requires each agency to establish one or more PRBs, the function of which is to review and evaluate the initial appraisal of a senior executive's performance by the supervisor and to make recommendations to the final rating authority relative to the performance of the senior executive.

The persons named below have been selected to serve on one or more Departmental PRBs.

Issued in Washington, DC, on September 3, 1993.

Jon H. Seymour,
Assistant Secretary for Administration.

Nominations for Performance Review Boards Fiscal Year 1993 Performance Appraisal Cycle

Office of the Secretary

Roberta D. Gabel, Assistant General Counsel for Environmental, Civil Rights and General Law, Office of the Secretary
Donald H. Horn, Assistant General Counsel for International Law, Office of the Secretary
Paul M. Geier, Assistant General Counsel for Litigation, Office of the Secretary
George W. McDonald, Director, Office of Programs and Evaluation, Office of the Secretary
Shelton Jackson, Deputy Director, Office of Economics, Office of the Secretary
Edward P. Oppler, Deputy Director, Office of International Aviation, Office of the Secretary
Angelo P. Picillo, Deputy Director, Office of Administrative Services and Property Management, Office of the Secretary
Linda M. Higgins, Director, Office of Acquisition and Grant Management, Office of the Secretary
Cynthia C. Rand, Director, Office of Information Resource Management, Office of the Secretary
Jerry Hawkins, Director of Personnel and Training, Federal Highway Administration
John C. Horsley, Deputy Assistant Secretary for Governmental Affairs, Office of the Secretary.

United States Coast Guard

RADM James M. Loy, Chief, Office of Personnel & Training, United States Coast Guard
RADM David E. Ciancaglini, Chief, Office of Command, Control and Communications, United States Coast Guard
RADM William J. Ecker, Chief, Office of Navigation Safety and Waterway Safety, United States Coast Guard
RADM Gerald F. Woolever, Chief, Office of Acquisition, United States Coast Guard
Diana L. Zeidel, Deputy Associate Administrator for Administration, Federal Highway Administration
John P. Eicher, Director, Office of Program Management Support, Federal Highway Administration
Linda M. Higgins, Director, Office of Acquisition and Grant Management, Office of the Secretary
Jerry Hawkins, Director of Personnel and Training, Federal Highway Administration
Jane Garvey, Deputy Administrator, Federal Highway Administrator.

Federal Aviation Administration

Thomas C. Accardi, Director, Flight Standards Service, Federal Aviation Administration
Arnold Aquilano, Associate Administrator for Airway Facilities, Federal Aviation Administration
Joaquin Archilla, Deputy Director, System Maintenance Service, Federal Aviation Administration
Joan W. Bauerlein, Director, Office of International Aviation, Federal Aviation Administration
Theodore R. Beckloff, Regional Administrator, Southern Region, Federal Aviation Administration
Dorothy H. Berry, Deputy Assistant Administrator for Human Resource Management, Federal Aviation Administration
Carolyn C. Blum, Associate Administrator for Contracting and Quality Assurance, Federal Aviation Administration
Rodman D. Bourne, Manager, Automation Software Division, Federal Aviation Administration
Anthony J. Broderick, Jr., Associate Administrator for Regulation and Certification, Federal Aviation Administration
John H. Cassady, III, Deputy Chief Counsel, Federal Aviation Administration
Marcos Costilla, Jr., Manager, Airway Facilities Division, New England Region, Federal Aviation Administration
Lawrence Covington, Deputy Director, Office of Budget, Federal Aviation Administration
Loni R. Czekalski, Deputy Director, FAA Technical Center, Federal Aviation Administration
Clyde M. DeHart, Jr., Regional Administrator, Southwest Region, Federal Aviation Administration
James S. Dillman, Assistant Chief Counsel Litigation Division, Federal Aviation Administration
Kay Frances Dolan, Director, Office of Personnel, Federal Aviation Administration
Arlene I. Feldman, Regional Administrator, New England Region, Federal Aviation Administration
Garrome P. Franklin, Deputy Regional Administrator, Central Region, Federal Aviation Administration
Darlene Freeman, Associate Administrator for Aviation Safety, Federal Aviation Administration
Norman T. Fujisaki, Deputy Director, Operations Research Service, Federal Aviation Administration
Margaret M. Gilligan, Chief of Staff, Federal Aviation Administration
Brooks C. Goldman, Deputy Associate Administrator, for Aviation Standards, Federal Aviation Administration
Theron A. Gray, Assistant Administrator for Information Technology, Federal Aviation Administration
Jackie L. Gregory, Deputy Assistant Administrator for Civil Aviation Security, Federal Aviation Administration
James E. Haight, Regional Administrator, Central Region, Federal Aviation Administration
Charles H. Huettner, Deputy Associate Administrator for Aviation Safety, Federal Aviation Administration
Frederick M. Isaac, Regional Administrator, Northwest Mountain Region, Federal Aviation Administration
DeWitte T. Lawson, Jr., Regional Counsel, Western Pacific Region, Federal Aviation Administration
Ruth A. Leverenz, Director, Office of Budget, Federal Aviation Administration
Louise E. Maillett, Director, Office of Environment and Energy, Federal Aviation Administration
Duane J. Mason, Manager, Airway Facilities Division, Great Lakes Region, Federal Aviation Administration
Homer C. McClure, Associate Administrator, Aeronautical Center, Federal Aviation Administration
Herbert R. McLure, Assistant Administrator for Human Resource Management, Federal Aviation Administration
Lynne A. Osmus, Director, Office of Civil Aviation, Security Operations, Federal Aviation Administration
Michael E. Perie, Program Manager for Advanced Automation, Federal Aviation Administration
Daniel J. Peterson, Regional Administrator, Eastern Region, Federal Aviation Administration
Edward J. Phillips, Regional Administrator, Great Lakes Region, Federal Aviation Administration
Charles R. Pinkerton, Manager, Airway Facilities Division, Southern Region, Federal Aviation Administration
William H. Pollard, Associate Administrator for Air Traffic, Federal Aviation Administration
Martin T. Pozesky, Associate Administrator for System Engineering and Development, Federal Aviation Administration
Carol S. Rayburn, Manager, Flight Standards Division, New England Region, Federal Aviation Administration
Fanny Rivera, Deputy Assistant Administrator for, Information Technology, Federal Aviation Administration
Stanley Rivers, Director, Systems Maintenance Service, Federal Aviation Administration
H. Ann Rosenwald, Director, Office of Human Resource Development, Federal Aviation Administration
Raymond A. Salazar, Manager, FAA Center for Management, Federal Aviation Administration
Carl B. Schellenburg, Regional Administrator, Western-Pacific Region, Federal Aviation Administration
Jacqueline L. Smith, Regional Administrator, Alaskan Region, Federal Aviation Administration
Quentin S. Taylor, Deputy Associate Administrator for Airports, Federal Aviation Administration
George W. Terrell, Manager, Maintenance Engineering Division, Federal Aviation Administration
Alvin L. Thomas, Program Director for Weather and Flight, Service Systems, Federal Aviation Administration
John E. Turner, Associate Administrator for National, Airspace System Development, Federal Aviation Administration
Leon C. Watkins, Assistant Administrator for Civil Rights, Federal Aviation Administration
James W. Whitlow, Assistant Chief Counsel General Legal, Services Division, Federal Aviation Administration
William H. Williams, Jr., Director, Office of Aviation Systems Standards, Federal Aviation Administration
Winifred Woodward, Deputy Regional Administrator, Southern Region, Federal Aviation Administration
Melvin M. Yoshikami, Manager, Airway Facilities Division, Northwest Mountain Region, Federal Aviation Administration
Jane H. Bachner, Director, Office of Economic Analysis, Federal Railroad Administration
Nan K. Harlee, Associate Administrator for Marketing, Maritime Administration
Jerry A. Hawkins, Director, Office of Personnel and Training, Federal Highway Administration
Mark L. Gerchick, Chief Counsel, Federal Aviation Administration.

Federal Highway Administration,

George S. Moore, Jr., Associate Administrator for Administration, Federal Highway Administration
Thomas J. Ptak, Regional Administrator, San Francisco, California, Federal Highway Administration
Madeleine S. Bloom, Director, Office of Policy Development, Federal Highway Administration
John P. Eicher, Director of Program Management Support, Federal Highway Administration
Dorothy H. Berry, Deputy Assistant Administrator for, Human Resource Management, Federal Aviation Administration
Theodore A. McConnell, Chief Counsel, Federal Highway Administration.

Federal Railroad Administration

S. Mark Lindsey, Chief Counsel, Federal Railroad Administration

Raymond J. Rogers, Associate Administrator for Administration, Federal Railroad Administration
Philip Olekszyk, Deputy Associate Administrator for Safety, Federal Railroad Administration
James T. McQueen, Associate Administrator for Railroad Development, Federal Railroad Administration
Rosalind A. Knapp, Deputy General Counsel, Office of the Secretary
Sally Hill Cooper, Associate Administrator for Policy, Federal Railroad Administration.

National Highway Traffic Safety Administration

Barry I. Felrice, Associate Administrator for Rulemaking, National Highway Traffic Safety Administration
Adele L. Derby, Associate Administrator for Regional Operations, National Highway Traffic Safety Administration
William A. Boehly, Associate Administrator for Enforcement, National Highway Traffic Safety Administration
John Womack, Senior Assistant Chief Counsel, National Highway Traffic Safety Administration
Jerry Hawkins, Director of Personnel and Training, Federal Highway Administration
Jane Garvey, Deputy Administrator, Federal Highway Administration.

Federal Transit Administration

Kevin E. Heanue, Director, Office of Environment and Planning, Federal Highway Administration
Rosalind A. Knapp, Deputy General Counsel, Office of the Secretary
Rose A. McMurray, Associate Administrator for Management and Administration, Research and Special Programs Administration
Philip Olekszyk, Deputy Associate Administrator for Safety, Federal Railroad Administration
Thomas R. Hunt, Associate Administrator for Administration, Federal Transit Administration
Peter G. Halpin, Director of Communications and External Affairs, Federal Transit Administration
Michael P. Huerta, Associate Deputy Secretary, Office of the Secretary.

Maritime Administration

Reginald A. Bourdon, Associate Administrator for Policy, and International Affairs, Maritime Administration
Richard E. Bowman, Associate Administrator for Maritime Aids, Maritime Administration
Harlan T. Haller, Associate Administrator for Shipbuilding and Ship Operations, Maritime Administration
Nan K. Harlee, Associate Administrator for Marketing, Maritime Administration
John L. Mann, Jr., Deputy Associate Administrator for Administration, Maritime Administration
Robert J. Patton, Deputy Chief Counsel, Maritime Administration
James McQueen, Associate Administrator for Railroad Development, Federal Railroad Administration
Jerry Hawkins, Director of Personnel and Training, Federal Highway Administration
Sharon Brooks, Director, Office of External Affairs, Maritime Administration.

Research and Special Programs Administration

Katherine E. Collins, Director, Office of Budget, Office of the Secretary
Philip S. Coonley, Director, Office of Administration, Volpe National Transportation Systems Center, Research and Special Programs Administration
Arnold L. Levine, Director, Office of International Transportation and Trade, Office of the Secretary
Rose A. McMurray, Associate Administrator for Management and Administration, Research and Special Programs Administration
Patricia D. Parrish, Director, Office of Management Planning, Office of the Secretary
Cynthia C. Rand, Director, Office of Information Resource Management, Office of the Secretary
Alan I. Roberts, Associate Administrator for Hazardous Materials Transportation, Research and Special Programs Administration
George W. Tenley, Jr., Associate Administrator for Pipeline Safety, Research and Special Programs Administration
Frank F.C. Tung, Deputy Director, Volpe National Transportation Systems Center, Research and Special Programs Administration
Jane F. Garvey, Deputy Administrator, Federal Highway Administration.

Office of the Inspector General

Katherine Briffin, Assistant Inspector General for Inspections, Department of Defense
Eileen Boyd, Assistant Inspector General for Civil and Administrative Remedies, Department of Health and Human Services
Joyce Fleischman, Deputy Inspector General, Department of Interior
Chris Greer, Assistant Inspector General for Audits, Department of Housing and Urban Development
Edward F. Hefferon, Deputy Inspector General, General Services Administration
Jacquelyn K. Howard, Assistant Inspector General for Management and Policy, Department of Housing and Urban Development
Steve McNamara, Acting Assistant Inspector General for Audit Services, Department of Education
Everett Mosely, Deputy Assistant Inspector General for Auditing, Department of Agriculture
Jane Tebutt, Assistant Inspector General for Management and Policy, Department of Health and Human Services
Michael Zimmermen, Deputy Inspector General, Department of Commerce.

[FR Doc. 93–22482 Filed 9–14–93; 8:45 am]
BILLING CODE 4910–62–P

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on General Aviation and Business Airplane Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss general aviation and business airplane issues.

DATES: The meeting will be held on October 19, 1993 at 9 a.m. Arrange for oral presentations by October 12, 1993.

ADDRESSES: The meeting will be held at the Air Line Pilots Association Headquarters, rooms 804/805, 1625 Massachusetts Avenue, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Mr. John Colomy, Aircraft Certification Service (ACE–110), 601 East 12th Street, Kansas City, Missouri, telephone (816) 426–6930.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on October 19, 1993, at the Air Line Pilots Association Headquarters, 1625 Massachusetts Avenue, NW., Washington, DC 20036. The agenda for the meeting will include:

- Opening Remarks.
- Review of Action Items.
- Status Reports from the Accelerated Stalls, Fuel Indicators, and FAR/JAR Harmonization Working Groups.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by October 12, 1993, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director or by bringing copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

Issued in Washington, DC, on September 3, 1993.

John R. Colomy,

Assistant Executive Director for General Aviation and Business Airplane Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 93–22549 Filed 9–14–93; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; Lucas County, OH

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 project in Lucas County, Ohio.

FOR FURTHER INFORMATION CONTACT: Herman Rodrigo, Planning and Program Development Manager, Federal Highway Administration, 200 N. High Street, room 328, Columbus, Ohio 43215, Telephone: (614) 469–2408.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Ohio Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to replace the I–280 bascule bridge, also known as the Craig Memorial Bridge, over the Maumee River in Lucas County, Ohio.

Replacement of this bridge is considered necessary to reduce traffic congestion and modal conflicts. The replacement structure needs to provide connectivity to the area highway system, as well as provide access to area industrial activities.

Alternatives under consideration include: (1) Taking no action; (2) constructing a new bridge or tunnel on the existing alignment; and (3) constructing a new bridge or tunnel on a new alignment.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings will be held at various sites in the project area in February and October of 1994. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned at this time.

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 the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: September 2, 1993.

Fred J. Hempel,

Division Administrator, Columbus.

[FR Doc. 93–22542 Filed 9–14–93; 8:45 am]

BILLING CODE 4910–22–M

Federal Railroad Administration

[Emergency Order No. 15, Notice No. 4]

Amendment of Emergency Order No. 15

The Federal Railroad Administration (FRA) issues this notice to amend Emergency Order No. 15 (Order) in response to comments received from petitioners who have requested an administrative review of the Order and FRA's further study of alternative remedial measures.

The Emergency Order was issued July 26, 1991, published in the **Federal Register** on July 31, and required that trains operated by the Florida East Coast Railway Company sound trainborne audible warning devices when approaching highway-rail grade crossings.

On August 6, FRA received the first petition requesting review of the Order and began an informal conference process with affected parties. That process permitted petitioners to submit arguments for modification or withdrawal of the Order. See 49 CFR 211.47. As part of that process, FRA provided petitioners a set of proposed remedial options, which, if implemented, would result in exemption from the requirements of the Order. The comment period on those options ended on January 15, 1993. Issuance of this notice concludes the conference process.

After review of the comments, FRA has decided to amend the performance specifications for various of the proposed remedial options in certain respects. This notice explains how FRA is responding to the comments offered by petitioners and amends the "Relief" section of the Order accordingly.

I. Discussion of Comments

In September of 1992, FRA issued draft performance specifications for full highway-rail grade crossing barriers, traffic divisional islands, and temporary crossing closures. FRA announced its intention that, once the specifications were finalized, compliance with these standards would exempt a grade crossing from the requirements of the Order.

By the end of the comment period on January 15, 1993, FRA had received responses from eight petitioners: The cities of Hollywood, Jupiter, North Miami Beach and West Palm Beach; Martin County; Project Whistle Stop (PWS); John A. Cavalier, Jr.; and the Florida East Coast Railway (FEC).

Funding

The most common concern among the petitioners was funding the remedial measures. Four commenters raised this issue. Martin County estimated that the cost per crossing would be approximately $85,000. As a result of this expense, they argued the "* * * proposed restrictions are too severe and do not represent the stated intent of providing an avenue for relief * * *." FRA consulted with Federal and State highway officials when it prepared the specifications. Retaining the level of safety afforded by the use of train horns was the central issue discussed. Protecting lives was given more consideration than cost. FRA hoped that less expensive alternatives would be available, and is still hopeful that less costly means of implementing these measures will develop as experience is gained.

Other petitioners addressed the question of who should pay. Hollywood rejected the remedial measures "until such time as the FRA identifies a proper and acceptable funding source other than the City of Hollywood and other affected cities * * *."

West Palm Beach mistakenly interpreted Federal and State statutes as requiring that such improvements "* * * be paid from federal and state funds." Federal statutes do not require that highway-rail crossing safety improvements be paid with Federal or State funds. Whether Federal highway safety or other State funds are used is a decision to be made by the Florida Department of Transportation. The use of Federal highway safety funds would require the concurrence of the Federal Highway Administration (FHWA).

Similarly, the Town of Jupiter argued that Federal law requires that the Federal government "significantly participate with the costs for upgrading

crossings." FRA is not familiar with such a requirement. FRA has no funds which could be used for such purposes.

Jupiter suggested that FEC participate in the funding of necessary remedial measures other than closings. This is a decision which can only be made by FEC.

Quiet Zones

The issue of "quiet zones" was addressed by two petitioners, FEC and PWS. FEC opposes quiet zones, asserting it would be too complicated for locomotive engineers to keep track of zone limits. However, one reason FRA proposed quiet zones was a concern for the difficulty engineers would have if exemptions to the Emergency Order were granted by individual crossing. As explained in Conference Notice No. Seven, a zone of sufficient length would assure that the locality would in fact realize an absence of train horns. Conversely, to establish quiet zones only at political boundaries, as FEC proposed, would unnecessarily impact crossings where train horns are not a problem, for example, in rural locations. We believe the half mile minimum to be a compromise between what is reasonable and what is practical. It is not reasonable to require more, nor is it practical to settle for less.

PWS stated that quiet zones were not needed, but provided no rationale. PWS went on to state that some jurisdictions are so small they would not have control over a track segment long enough to establish a zone. FRA recognizes that jurisdictions may need to coordinate to create zones, but sees no other option.

Finally, PWS argued that if quiet zones are established the use of train horns should be banned for the full day, and not just 10 p.m. to 6 a.m. The concept of a 24-hour ban in designated zones is reasonable. If the remedial measures are properly implemented for four-quadrant gates, median barriers or one-way streets fully gated, FRA believes that a 24-hour ban could be consistent with the intent of the Emergency Order. FRA notes, however, that there may need to be a change in Florida law before local jurisdictions have the authority to establish 24-hour bans.

Four-quadrant Gates

PWS and FEC also opposed four-quadrant gates. The addition of exit gates is designed to prevent circumvention of the entrance gates by impatient or misinformed motorists.

PWS questioned the need for a median barriers if four-quadrant gates are to be used. Medians are specified to deter attempts to circumvent the entrance gates before the descent of the exit gates. The exit gates are delayed to allow motorists on the crossing to move clear before all the gates descend. FRA agrees that four-quadrant gates are unnecessary if the standard gates with medians, as detailed in the performance specifications FRA is adopting, are installed.

PWS has suggested leaving unpaved the space between opposing highway lanes over the tracks to prevent motorists from driving around downed gates. FRA is not convinced it would be any less costly to remove the pavement between lanes than to erect median barriers. In addition, this space is often too narrow to serve as a barrier to deter motorists from driving around the gate. Since an unpaved gap would also not be as easy to see as a median barrier, it could trap motorists if the gap was inadvertently entered.

The FEC opposed four-quadrant gates as an alternative to train horns, because they believed that "without the intimidation factor provided by an audible warning device, they [intoxicated or speeding motorists] are much more likely to crash through them [lowered gates] and into the path of an oncoming train." Available data do not support the FEC's statement. FRA reviewed 82 reports prepared by Florida law enforcement officers regarding FEC nighttime crossing accidents, including 63 cases where the driver either drove around or through the gates. Five of the 50 accidents (10 percent) occurred when the motorist drove through a gate while bans were in effect. In the remaining 45 cases the driver drove around the gates. Of the 13 no-ban incidents, three (23 percent) resulted from the driver going through a gate. The percentage of drivers involved in accidents going through gates, versus around them, did not increase during the ban period. Most drivers who have had accidents at crossings have slowed sufficiently to negotiate the crossing without going through the gates. The percentage of drivers failing to stop, or oblivious to the gates, did not increase. FRA therefore believes that additional gates with a median barrier would prevent the vast majority of motorists from attempting to beat the train.

In a related communication, the Florida Department of Transportation has suggested that "loop detectors" be used to preclude the closure of exit gates if a highway vehicle is present in the exit lanes. The FRA concurs in this suggestion and the specification for Alternative Remedial Measure #3 was therefore rewritten.

Longer Gate Arms

One petitioner proposed "that where there is a two lane road * * * that the two gates be extended, no more than forty feet, which would have the effect of completely blocking traffic from entering the crossing." The petitioner suggested that, "[t]his would have the same effect as a four-quadrant crossing * * * and would be far less expensive." Engineering personnel worry that that approach could trap motorists on the tracks when gates close. Four-quadrant gates are designed to close the entrance lane(s), and then, after a delay allowing motorists on the crossing to exit, to close the exit lane(s).

In a related suggestion, PWS proposes that "the street should be made one way and the arm long enough to prevent vehicles from going around from the incoming side." This is a valid suggestion. The FRA and the Florida Department of Transportation have prepared a set of specifications, similar to those already presented in Conference Notice #7, addressing this additional option. See the Performance Specifications.

Terminating Rail Service

PWS suggested another remedial measure, *i.e.*, shutting down rail operations on tracks where less than seven trains per week operate. However, no alternatives for moving freight were offered. Under most circumstances, rail transport is safer and more economical than moving freight over our nation's highways. Increased highway congestion would also put added wear on public roads. Further, by definition, this measure would eliminate train horns at a particular crossing less than once per day, obviously not the problem which these proceedings are attempting to address. Lastly, 80 percent of the FEC highway-rail crossings which were impacted by whistle bans in 1989 were on the FEC mainline with considerably more than one train per day. Substantially more than half of the remaining 20 percent, though not mainline, have more than one train per day. The impact of this alternative on the "whistle problem" would be minimal. The legal, logistical and transportation problems it would create would be out of proportion.

Pedestrian Traffic

FEC recommends that "any signs indicating * * * closure should clearly indicate that the crossing is closed to both vehicular and pedestrian traffic." FRA agrees and will accordingly modify Note #2 of the Implementation Notes. See Performance Specifications.

FEC also recommends that "the specifications should ensure adequate safeguards to prevent pedestrians * * * from entering the railroad's right of way." FEC offers no suggestion as to what would be "adequate." FRA would have no objection to the establishment of further safeguards for pedestrians. However, it appears that current arrangements are adequate. All potential whistle ban crossings on the FEC are equipped with gates, lights and a bell. The bell is intended to warn pedestrians of the impending presence of a train.

From 1980 through 1992, the FEC reported 19 pedestrian incidents at highway-rail crossings. Of these, six occurred while bans were effective. (Three of the six resulted in a death.) The following table shows the number of such incidents, by year.

'80	'81	'82	'83	'84	'85	'86	'87	'88	'89	'90	'91	'92
1	4	1	0	1	1*	1	2*	1/1*	1/1*	1*	1	2

Ban in effect (1/1 indicates one with ban in effect, one without).

These data neither support nor refute the effectiveness of train horns as a pedestrian warning device. Pedestrian incidents have occurred before, during and after the whistle bans. The use of a second audible warning device (a train's horn), has not made an appreciable difference for pedestrians. The bell, flashing lights and gates, provide adequate warning for pedestrians.

Signs

One individual recommends that signs be placed at each crossing notifying motorists of the $1,500 fine for violating a state statute by going around lowered gates. The FRA supports this concept, though we will not require such a sign in the revised specifications. This should remain a local option. We would caution that any traffic control sign is of little value unless the statute is enforced. If it is enforced, experience shows word will spread quickly.

Whistle Boards

PWS recommends that the FEC "install ground markers for the engineer to know when to blow the train horn." Such markers are commonly referred to as "whistle boards," and in Florida, because of State statutes, would be installed 1,500 feet from each crossing on each approach to the crossing. It has not been alleged that FEC locomotive engineers are forgetting to sound their trains' horns. Should this become a problem, this option would remain open to the FEC.

Excessive Use of Train Horn

PWS has implied that locomotive engineers continue to sound the horn even after the locomotive has entered upon the highway-rail crossing, and that this practice should be curtailed, unless "the engineer thinks it will do some good." Most railroad operating rules, and FRA's Order, require that the last sounding of the train's horn for each crossing be "prolonged until the lead locomotive has passed through the crossing." This practice was established, and is continued, in an effort to reduce the number of incidents in which a highway motor vehicle runs into the side of the train. (More than a quarter of all crossing collisions occur when the highway user strikes the train.) In most of these, 67 percent, the lead unit (usually the locomotive) is struck. Overlooked in PWS's assertion is that many FEC crossings are closer together than 1,500 feet. As an engineer crosses over one crossing, he frequently is already sounding the horn for the next. Closing crossings is the best solution to this problem.

Highway Intersection, Defined

PWS has suggested that the definition of an intersection, whether major or minor, be predicated on the number of traffic lanes. The proposed specifications distinguished intersections based on the presence or absence of turn lanes. PWS provided no rationale for its recommended change. FRA defers to the State and Federal engineering personnel with whom we consulted in preparing those specifications and retains the original definitions.

The Manual on Uniform Traffic Control Devices (MUTCD)

PWS recommends that the MUTCD "develop plans for placement of gates at all types of crossings." The MUTCD, in accordance with Part 1A–2 of the MUTCD:

> * * * sets forth the basic principles that govern the design and usage of traffic control devices.
>
> * * * * *
>
> The Manual presents traffic control device standards for all streets and highways open to public travel regardless of type or class or the governmental agency having jurisdiction.

However, the Manual specifically leaves design and placement to local engineering personnel:

> The responsibility for the design, placement, operation and maintenance of traffic control devices rests with the governmental body or official having jurisdiction. 1A–3
>
> Traffic control devices shall be placed only by the authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic. 1A–3.1
>
> The decision to use a particular device at a particular location should be made on the basis of an engineering study of the location. Thus, while this Manual provides standards for design and application of traffic control devices, the Manual is not a substitute for engineering judgment. 1A–4

The MUTCD is not a design manual. The PWS recommendation that the MUTCD predefine all possible scenarios and site plans is not within the scope of the MUTCD, nor is it realistic.

Implementation Not Always Possible

PWS accurately observes that some highway-rail grade crossings are configured in ways that make it impossible to implement the provisions of the proposed specifications, short of crossing closure. This is especially true when the road and track closely parallel, resulting in a short entrance road into the crossing. Certainly, prohibiting use of a train's horn would only exacerbate an already dangerous situation.

Exceptions

One individual requested that exception criteria be defined which would allow "local authorities to resolve problems with certain crossings that require special measures." This is too vague and open-ended to include in the specifications or remedial options. However, FRA will remain open to requests for exceptions which are forwarded with the positive endorsement of the Florida Department of Transportation.

Low Highway Traffic

Another commenter requested that exceptions be granted for crossings with low highway traffic. In most cases, such a crossing should be closed. However, the FRA will remain open to requests for exceptions which are forwarded with the positive endorsement of the Florida Department of Transportation.

Automated Horn System (AHS)

Two cities have expressed an interest in installing automated horns at grade crossings. A mid-west firm known as Railroad Consulting Services, Inc. is experimenting with a prototype Automated Horn System. It is presently working with the Union Pacific Railroad and the city of Gering, Nebraska. The AHS consists of horns permanently mounted at the crossing facing each direction of highway approach. The horns are activated by trains as they enter upon track circuits, as are flashing lights and gates, and continue to sound a set pattern until the train reaches the highway.

The effort underway in Nebraska is innovative and experimental. FRA has encouraged this initiative and is formally monitoring progress, though no FRA sanction is needed. There are some technical difficulties with the devices and some questions still remain unanswered, in the opinion of the FRA, but none so far appear insurmountable.

FRA is not yet prepared to endorse the use of the AHS along the FEC right-of-way until further results have been received from the Nebraska experiment.

Availability of Data

One commenter stated that they have not been able to obtain the data used in FRA's analysis. All the data used in the original analysis and in subsequent reviews are available to the public on request. We are aware of no unfilled requests for data. Summary data were made available during and immediately following the opening meeting of the conference process, September 13, 1991. Subsequent publications, *e.g.*, Conference Notice #3, Florida's Train Whistle Ban, 2nd Edition, September 1992, included a variety of summary and detail data. Other requesters, including some of those responding to Conference Notice #7, have received massive listings of data from FRA's accident files. Requests for specific data should be addressed to the Federal Railroad Administration, RRS–23, 400 7th Street SW., Washington, DC, 20590. There may be a nominal fee. It is recommended that a requester call, (202) 366–0533, to discuss a request prior to writing.

Indemnification

FEC has stated their opposition "to the substitution of audible warning devices with unproven alternatives. * * * FRA should not permit the substitution of any alternative unless it is shown through adequate study to be equally effective." FEC's comments are without force; the proffered alternatives are adaptations of measures whose effectiveness is well known. Indeed, most of the alternatives will improve crossing safety during daytime and twilight operations, as well as during the night.

Regarding the proposed alternative of nighttime closure of a crossing, the community would assume the responsibility for closing each crossing so configured each evening. FEC locomotive engineers would have to assume from 10 p.m. to 6 a.m. that each crossing was closed. FEC has requested that communities "be required to indemnify FEC for any liability resulting from accidents at such crossings during the hours in question." Such an action by FRA would be well beyond the safety mission of this agency and the scope of this proceeding.

Unrelated Issues

PWS raised a myriad of rail related issues that are not affected by, nor do they impact on, whistle bans. These included the adequacy of current crossing installations, speed of trains, blockage of crossings by trains, rail car covers and hazardous materials shipments. We have not responded to these concerns. PWS may address them separately to the FRA outside the confines of this proceeding.

Also, a few commenters, including PWS, have again challenged original data and arguments which were addressed in FRA's original report, the Order, Conference Notices #3 and #7, and the 2nd Edition. The FRA is not willing to reargue these points.

Two commenters cited a newspaper story which reports a rise in crossing-related accident statistics of 28 percent since the bans were lifted. The FRA is not aware of the basis for this number. This number does not reconcile with information available to the FRA. In fact, in the year prior to the Order, the FEC reported 23 nighttime accidents at "impacted" crossings. In the year following, through July 25, 1992, FEC experienced only 10 nighttime accidents at the same crossings. This is a reduction of 57 percent.

Preliminary data for the State of Florida indicate that the state enjoyed a reduction of 16.4 percent in accidents and 74 percent in fatalities in 1992 versus 1991. This reduction is largely attributable to the gains achieved along the FEC right-of-way.

A Technical Meeting

Two commenters have requested that a technical representative of the FRA attend an "informational hearing." The purpose would be to have "an open discussion of the alternative remedial measures" so that "residents" will develop a better understanding of "the technicalities involved in order to stop whistle blowing * * *."

The FRA believes that the remedial measures are sufficiently detailed. The sort of discussion proposed would more appropriately involve State, County and City transportation planners and engineering personnel.

II. Amendment to Emergency Order No. 15

The "Relief" section of Emergency Order No. 15 is amended as follows:

Relief

The FEC has indicated that it does not intend to seek relief from this Order. However, the local jurisdictions impacted by this Order have indicated that they desire a mechanism whereby they can take action that would ensure that the Order's effectiveness would be lifted with regard to particular crossings where certain alternative measures are adopted. Some of those jurisdictions petitioned for review of the Order, which triggered a conference process under 49 CFR 211.47. As a result of that conference process, FRA has decided that a local jurisdiction may obtain relief from the impact of this Order by properly adopting one or more remedial measures (as set forth in the specifications below) at a highway-rail crossing or, where required, at a number of highway-rail crossings in a "quiet zone," and so notifying the Florida Department of Transportation (FDOT)[1] and the FEC in writing. FDOT must then certify whether the requirements of the relevant performance specifications have been met. Fourteen days after written notification has been sent from FDOT to the Docket Clerk, FRA, and to FEC, the impacted crossings may be considered exempt from the requirements of this Order.

Performance Specifications for Alternative Remedial Measures

Definitions

The following definitions pertain to these specifications:

Low Traffic Volume Streets: Any street carrying less than 2,000 vehicles per day.

[1] Notification to FDOT should be sent to: Manager, Rail Office, Florida Department of Transportation, 605 Suwannee St., Tallahassee, FL., 32399–0450. Notification to the FEC should be sent to: Vice President-Transportation, Florida East Coast Railway Co., P.O. Drawer 1048, St Augustine, FL, 32084. Notification to FRA's docket clerk should be sent to: Docket Clerk, Federal Railroad Administration, 400 Seventh St., SW., room 8201, Washington, DC, 20590.

Major intersection: Any intersection where traffic volume justifies the use of separate turn lanes.

Median barrier: Any device designed to prevent the intentional or accidental incursion of a vehicle into opposing lanes, *e.g.*, a Jersey Barrier.

Median curb: A curb, either mountable or non-mountable, which defines a median.

Minor intersection: An intersection where traffic volumes do not require the use of separate turn lanes.

MUTCD: Manual on Uniform Traffic Control Devices (1988 Edition), Federal Highway Administration, U.S. Department of Transportation.

Non-mountable (barrier) curb: A steep-faced curb 9–12 inches high intended to prevent intentional incursion by a vehicle into a defined area.

Quiet zone: A segment of railroad of not less than one-half mile (2,640 feet) in length on which all at-grade crossings are, in keeping with these specifications, closed during nighttime hours (10 p.m. to 6 a.m.), equipped with four-quadrant gates, equipped with gates with median barriers, or located on one-way streets are fully gated.

Traffic separator: A traffic island or median designed to guide traffic around an obstacle or to direct traffic in a particular direction.

Specifications

1. Permanent Closure of the Highway-Rail Crossing: Eliminate the at-grade crossing through permanent closure of the street or highway or through grade separation (overpass or underpass).

2. Nighttime Closure of the Highway-Rail Crossing: Close the crossing to highway traffic during nighttime hours subject to the following conditions:

a. The closure system must completely block highway traffic from entering the crossing.

b. Activation and deactivation of the system will be the responsibility of the county or municipality responsible for the street or highway, which must undertake to reliably discharge this duty such that the crossing is closed continuously during the hours of 10 p.m. to 6 a.m.

c. The crossing must be part of a quiet zone, as defined in these specifications.

d. The system must be reasonably tamper and vandal proof.

e. MUTCD standards must be met for any barricades and signing used in the nighttime closure of the facility. Signing for alternate routes must also be included.

3. Four-Quadrant Gate System: Install sufficient gates at a crossing to fully block highway traffic from entering a crossing when the gates are lowered, subject to the following conditions:

a. Approaches on both sides of the highway-rail crossing will be separated with medians with non-mountable curbs or traffic separators. Such median construction will include energy dissipaters and median striping as required by MUTCD.

b. Any median construction will extend at least 200 feet or to a major intersection, which ever is less. All major intersections must be a minimum of 100 feet from the highway-rail crossing. Any minor intersections within 200 feet of the crossing will be closed to crossing traffic.

c. At low traffic volume streets, median curbs with vertical delineators (rubber pipes and low curbing) between opposing lanes may be used in place of non-mountable curbs or traffic separator.

d. The maximum length of a gate arm will not exceed 40 feet.

e. Gate timing for full closure systems should be based on these suggested times:

Step	Inc.	Time
Lights start flashing	0	Sec.
Entrance gates start down.	3–5	Do.
Entrance gates fully lowered.	9–15	Do.
Exit gates start down	4–6	Do.
Exit gates fully lowered.	9–15	Do.

Exit gates will be equipped with a presence detection loop located between the outside track and the exit gate arm. This loop will raise or prevent the lowering of the exit gate arm if an automobile is detected within the loop. The loop or loops will be of sufficient size and number to detect an automobile in all exit lanes.

f. The gap between the end of a lowered gate and the median will be less than one foot.

g. Four-quadrant gates will not be an option where traffic signal pre-emption exists.

h. The crossing must be part of a quiet zone, as defined in these specifications.

i. The system must be reasonably tamper and vandal proof.

j. General principles of the AASHTO Roadside Design Guide regarding median barrier construction will be adopted where applicable.

4. Gates with Median Barriers: Install median barriers at a crossing which prevent highway traffic from driving around lowered gates subject to the following conditions:

a. Approaches on both sides of the highway-rail crossing will be separated with median barriers. Any barrier so constructed will include markers as required by the MUTCD, and also energy dissipaters.

b. Median barriers will extend at least 200 feet or to a major intersection, whichever is less. All major intersections must be a minimum of 100 feet from the highway-rail crossing. Any minor intersections within 200 feet of the crossing will be closed to crossing traffic.

c. The maximum length of a gate arm will not exceed 40 feet.

d. The gap between the end of a lowered gate and the median barrier will be less than one foot.

e. The crossing must be part of a quiet zone, as defined in these specifications.

f. The system must be reasonably tamper and vandal proof.

g. General principles of the AASHTO Roadside Design Guide regarding median barrier construction will be adopted where applicable.

5. One-Way Pairing of Adjacent Streets: Adjacent streets would be made into one-way pairs and gates modified or relocated to completely block he approaching lanes of traffic, subject to the following conditions:

a. Streets to be made into one-way pairs should ideally be no more than one city block (300'–500') apart. Cross streets connecting the one-way pairs should be no more than one city block from each side of the crossings in Central Business Districts, nor more than one-quarter mile from each side of the crossings in suburban areas.

b. Lane capacities of both streets should be approximately the same.

c. Preferably, the gate arms on the approach side of the crossings should be extended to within one foot of the left edge of pavement. The left edge of the pavement on the approach side in this configuration will include a non-mountable curb extending at least 200 feet or to a major intersection, whichever is less. Alternatively, the gate mechanisms on the far side of the crossings may be relocated to the left side of the approach lanes, and the gate arms sized to provide a maximum of one foot between the tips of the gate arms when in the lowered position.

d. The maximum length of a gate arm will not exceed 40 feet.

e. Two two-lane roadways one-way in the same direction may be paired with a single intervening multi-lane undivided roadway in the opposite direction provided all other conditions are met.

f. Both crossings of a one-way pair must be part of a quiet zone, as defined in these specifications.

g. Signing for one-way streets shall be in conformance with the MUTCD.

Implementation Notes

The following statements reflect the desire and intent of parties to the conference with respect to application of the above specifications.

1. In regard to the full closure of highway-rail crossings, the FDOT and the FEC have expressed a willingness to discuss financial assistance for closing any highway-rail crossing impacted by this Emergency Order.

2. If a crossing is selected for nighttime closing, alternate highway traffic routes should be identified, and signs erected in accordance with the MUTCD and applicable FDOT and local standards informing pedestrians and the motoring public that the streets will be closed from 10:00 pm until 6:00 am and that alternate routes must be used.

3. Any crossing equipped with a four-quadrant gate system or with gates and median barriers should also be equipped with constant warning time devices.

4. All gate arms should be equipped with strobe lights located on the centerline of each driving lane when the gates are lowered. The strobe lights will be activated when the gates begin to lower. Florida DOT and local jurisdictions should carefully monitor the effect of these strobe lights on vehicle drivers after the gates have been lowered.

5. Illumination (street lighting) of these highway-rail crossings is encouraged.

This amendment is effective from the date of issue of this notice.

Issued in Washington, DC, on August 31, 993.

Jolene M. Molitoris,

Administrator.

[FR Doc. 93–22535 Filed 9–14–93; 8:45 am]

BILLING CODE 4910–06–P

Federal Transit Administration

FTA Sections 3 and 9 Grant Obligations

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation and Related Agencies Appropriations Act, 1993, Public Law 102–338, contains a provision requiring the Federal Transit Administration (FTA) to publish an announcement in the **Federal Register** every 30 days of grants obligated pursuant to sections 3 and 9 of the Federal Transit Act, as amended. The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant. This notice provides the information as required by statute.

FOR FURTHER INFORMATION CONTACT: Janet Lynn Sahaj, Chief, Resource Management and State Programs Division, Office of Capital and Formula Assistance, Department of Transportation, Federal Transit Administration, Office of Grants Management, 400 Seventh Street, SW., room 9305, Washington, DC 20590, (202) 366–2053.

SUPPLEMENTARY INFORMATION: The Section 3 program provides capital assistance to eligible recipients in three categories: Fixed guideway modernization, construction of new fixed guideway systems and extensions, and bus purchases and construction of bus related facilities. The section 9 program apportions funds on a formula basis to provide capital and operating assistance in urbanized areas. Section 9 grants reported may include flexible funds transferred from the Federal Highway Administration to the FTA for use in transit projects in urbanized areas. These flexible funds are authorized under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) to be used for highway or transit purposes. Pursuant to the statute FTA reports the following grant information.

SECTION 3 GRANTS

Transit property	Grant No.	Grant amount	Obligation date
Washington Metropolitan Area Transit Authority (WMATA), Washington, DC–MD–VA.	DC–03–0026–00	$14,110,772	08/27/93
Tri-County Commuter Rail Authority, West Palm Bch-Boca Raton-Delray Bch, FL ..	FL–03–0123–00	4,639,938	08/06/93
Indiana Department of Transportation, Indiana	IN–03–0064–00	4,204,687	08/19/93

SECTION 9 GRANTS

Transit property	Grant No.	Grant amount	Obligation date
Santa Barbara Metropolitan Transit District, Santa Barbara, CA	CA–90–X571–00	$1,928,359	08/10/93
Greater Bridgeport Transit District, Bridgeport-Milford, CT	CT–90–X230–00	888,496	08/19/93
Washington Metropolitan Area Transit Authority (WMATA), Washington, DC–MD–VA.	DC–90–X019–01	27,752,100	08/27/93
Tri-County Commuter Rail Authority, West Palm Bch-Boca Raton-Delray Bch, FL ..	FL–90–X211–01	4,242,276	08/06/93
City of High Point, High Point, NC	NC–90–X151–00	468,412	08/18/93
City of Greensboro, Greensboro, NC	NC–90–X154–00	1,218,331	07/28/93
Capital District Transportation Authority, Albany-Schenectady-Troy, NY	NY–90–X256–00	1,400,000	08/20/93
City of Rome, V.I.P. Transportation, Utica-Rome, NY	NY–90–X265–00	142,976	08/19/93
Capital Metropolitan Transportation Authority, Austin, TX	TX–90–X271–00	4,683,082	07/30/93
Potomac and Rappahannock Transportation Commission, Virginia	VA–90–X098–00	920,000	08/25/93

Issued on: September 10, 1993.

Edward R. Fleischman,

Director, Office of Capital and Formula Assistance.

[FR Doc. 93–22551 Filed 9–14–93; 8:45 am]

BILLING CODE 4910–57–M

National Highway Traffic Safety Administration

[Docket No. 93–39; Notice 2]

General Motors Corp.; Grant of Petition for Temporary Exemption From Federal Motor Vehicle Safety Standards

General Motors Corporation ("GM") of Warren, Michigan, petitioned for a temporary exemption from four Federal motor vehicle safety standards for a passenger car that is electrically powered ("GMEV"). The basis of the petition was that an exemption would facilitate the development and field evaluation of low-emission motor vehicles.

Notice of receipt of the petition was published on June 4, 1993, and an opportunity afforded for comment (58 FR 31784). This notice grants the petition.

Petition was made on behalf of the GMEV, a 2-passenger vehicle based upon the design of the recent GM Impact experimental car. GM asked for an exemption of 1 year (October 1993–94) so that it may manufacture and distribute a fleet of 50 GMEVs for field evaluation. This evaluation is necessary to obtain data related to customer usage patterns and field experience with electric vehicles, and to obtain technical data related to vehicle performance under real world conditions. The GMEVs will not be sold, but will be "provided to private individuals for use and evaluation, and demonstrated to public officials, utility companies and the media * * *."

GM has designed the GMEV to comply with all Federal motor vehicle safety standards, but will be unable to conduct all the testing necessary to confirm compliance of the GMEV to certain aspects of some standards. Thus, GM argued that the exemptions it requested would not unreasonably degrade the safety of the vehicles.

The standards for which GM requested exemption were:

Standard No. 108, Lamps, Reflective Devices, and Associated Equipment. GM originally petitioned for temporary exemption from the photometric requirements for headlamps and rear lamp assemblies. However, on August 11, 1993, it informed NHTSA that further testing indicated full compliance with the requirements, and that a temporary exemption would not be needed.

Standard No. 201, Occupant Protection in Interior Impact. Although the GMEV has been designed to conform to this standard, GM has not conducted testing to determine whether the requirements of S3.1 *Instrument panels* will be met at the right designated seating position. GM believes that testing would confirm compliance, and notes that if a noncompliance was indicated, "there would be no unreasonable degradation in safety especially because the GMEV will have a passenger side air bag to provide protection in this area of the instrument panel."

Standard No. 203, Impact Protection for the Driver From the Steering Control System.

Standard No. 208, Occupant Crash Protection. The GMEV will have a crash protection system comprised of a 3-point manual lap and shoulder belt restraint and a supplemental restraint system of air bags for both seating positions. This system has been designed to comply to Standard No. 208, but because of the limited fleet of vehicles, GM will not be able to perform all the barrier crash testing necessary to evaluate all occupant restraint system performance requirements. Limited barrier impact testing indicates conformance. If complete testing should indicate a noncompliance, GM believes that it would be "slight in degree and would not be a level of safety degradation that approaches unreasonableness."

If conformance with Standard No. 208 is demonstrated, the GMEV would not be subject to Standard No. 203. However, since GM cannot yet demonstrate conformance to Standard No. 208, it requested exemption from Standard No. 203 as well.

Petitioner argued that granting the exemption would be in the public interest and consistent with the National Traffic and Motor Vehicle Safety Act because the data derived "would facilitate the development of vehicles which would fully comply with FMVSS and satisfy the numerous requirements of potential buyers." It noted that the production and sale of zero-emission vehicles "is widely believed to be desirable as a means to potentially improve the air quality in many areas of the United States."

No comments were received on the petition.

With the advent of legislation in California and elsewhere that mandate sales of zero-emission vehicles beginning in the 1998 model year, it is desirable that government support the efforts of manufacturers to produce products that meet requirements intended to improve air quality. The petitioner's belief that it may already conform to Standard Nos. 201 and 208 supports a temporary exemption from these standards, particularly since GM has requested an exemption for a period of time that is less than the maximum authorized by law. The dual air bags afford assurance that a reasonable degree of protection has been provided. As for Standard No. 203, petitioner initially made no argument, but on August 11, 1993, submitted its views that the GMEV driver air bag in the steering hub ought to provide protection equivalent to that afforded by compliance with Standard No. 203. As this is the basis of NHTSA's exemption from Standard No. 203 for those vehicles meeting the automatic protection requirements of Standard No. 208, the agency concurs with this argument. The petition for exemption from Standard No. 108 has been mooted by petitioner's letter informing NHTSA that compliance has been achieved.

Accordingly, in consideration of the foregoing, NHTSA finds that a temporary exemption will facilitate the development and field evaluation of a low-emission motor vehicle, be in the public interest and consistent with the objectives of the National Traffic and Motor Vehicle Safety Act, and will not unreasonably degrade the safety of the vehicle that it covers. General Motors Corporation is hereby granted NHTSA Exemption No. 93–4, expiring October 1, 1994, for its GMEV only, from S3.1 of 49 CFR 571.201 Motor Vehicle Safety Standard No. 201 *Occupant Protection in Interior Impact*, S5.1 of 49 CFR 571.203 *Impact Protection for the Driver from the Steering Control System*, and S5 of 49 CFR 571.208 Motor Vehicle Safety Standard No. 208 *Occupant Crash Protection.*

Authority: 15 U.S.C. 1410; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 9, 1993.

Howard M. Smolkin,

Executive Director.

[FR Doc. 93–22502 Filed 9–14–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service

AGENCY: Department Offices, Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice announces the date of the next meeting and the agenda for consideration by the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service.

DATES: The next meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service will be held on Friday, October 1, 1993, at 9 a.m. at the Hyatt Regency Hotel, 2 Fountain Plaza, Buffalo, New York 14202.

FOR FURTHER INFORMATION CONTACT:

Dennis M. O'Connell, Director, Office of Tariff and Trade Affairs, Office of the Assistant Secretary (Enforcement), room 4004, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington DC 20220. Tel.: (202) 622–0220.

SUPPLEMENTARY INFORMATION: The preliminary agenda to be considered at the meeting is as follows:

1. The Customs Modernization Act and Informed Compliance Legislation.

2. The Commissioner's August 30, 1993 memorandum to broker/entry filers.

3. Status of the North American Free Trade Agreement.

4. Customs budget, staffing and resources.

5. The Committee recommendations to Secretary of the Treasury Bentsen.

6. Formation of the Customs reorganization team and development of a work plan for restructuring.

7. Report from the Customs Trade Ombudsman.

8. Enforcement Update.

9. Other new business.

The agenda may be supplemented or otherwise amended prior to the meeting date.

The meeting is open to the public; however, it is necessary for any person other than an Advisory Committee member who wishes to attend the meeting to give advance notice. In order to be admitted to the meeting, contact Ms. Theresa Manning at (202) 622–0220 no later than Friday, September 24, 1993.

John W. Mangels,

Acting Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 93–22515 Filed 9–14–93; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF VETERANS AFFAIRS

Cooperative Studies Evaluation Committee; Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 (Federal Advisory Committee Act) as amended, by section 5(c) of Public Law 94–409 that a meeting of the Cooperative Studies Evaluation Committee will be held at the Boston Park Plaza Hotel and Towers, 64 Arlington Street, Boston, MA, October 19–20, 1993. The session on October 19 is scheduled to begin at 7:30 a.m. and end at 5:30 p.m. and on October 20 from 7:30 a.m. to 5 p.m. The meeting will be for the purpose of reviewing six new clinical trials, two on cardiovascular diseases; one on chronic obstructive pulmonary disease; one on dysphagia from stroke; one on tardive dyskinesia; one on prostate cancer and the progress of two on-going studies on immunization for pneumonia and on epilepsy.

The Committee advises the Director, Medical Research Service, through the Chief of the Cooperative Studies Program on the relevance and feasibility of the studies, the adequacy of the protocols, and the scientific validity and propriety of technical details, including protection of human subjects.

The meeting will be open to the public up to the seating capacity of the room from 7:30 a.m. to 8 a.m. on both days to discuss the general status of the program. To assure adequate accommodations, those who plan to attend should contact Dr. Ping Huang, Coordinator, Cooperative Studies Evaluation Committee, Department of Veterans Affairs, Washington, DC (202–535–7154), prior to October 12, 1993.

The meeting will be closed from 8 a.m. to 5:30 p.m. on October 19, 1993 and from 8 a.m. to 5 p.m. on October 20, 1993, for consideration of specific proposals in accordance with provisions set forth in section 10(d) of Public Law 92–463, as amended by section 5(c) of Public Law 94–409, and 5 U.S.C. 552b(c)(6). During this portion of the meeting, discussions and recommendations will deal with qualifications of personnel conducting the studies, staff and consultant critiques of research protocols, and similar documents, and the medical records of patients who are study subjects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dated: August 26, 1993.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 93–22537 Filed 9–14–93; 8:45 am]

BILLING CODE 8320–01–M

Wage Committee; Meetings

The Department of Veterans Affairs (VA), in accordance with Public Law 92–463, gives notice the meetings of the VA Wage Committee will be held on:

Wednesday, October 13, 1993, at 2 p.m.
Wednesday, October 27, 1993, at 2 p.m.
Wednesday, November 10, 1993, at 2 p.m.
Wednesday, November 24, 1993, at 2 p.m.
Wednesday, December 8, 1993, at 2 p.m.
Wednesday, December 22, 1993, at 2 p.m.

The meetings will be held in room 1161, Veterans Affairs Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.

The Committee's purpose is to advise the Under Secretary for Health on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

All portions of the meetings will be closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Department of Veterans Affairs and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be held in confidence. Closure of the meetings is in accordance with subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, and as cited in U.S.C. 552b(c) (2) and (4).

However, members of the public are invited to submit material in writing to the Chairperson for the Committee's attention.

Additional information concerning these meetings may be obtained from the Chairperson, VA Wage Committee, room 1161, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: August 26, 1993.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 93–22538 Filed 9–14–93; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 177
Wednesday, September 15, 1993

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).

UNITED STATES INTERNATIONAL TRADE COMMISSION
[USITC SE–93–27]

TIME AND DATE: September 21, 1993 at 9:30 a.m.

PLACE: Room 101, 500 E Street S.W. Washington, DC 20436.

STATUS: Open to the public.

1. Agenda for future meeting
2. Minutes
3. Ratification List
4. Certain Recombinantly Produced Human Growth Hormones (Docket Number 1750).
5. Outstanding action jackets—
   1. GC–93–101, APO breach in an investigation under Title VII of the Tariff Act of 1930.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

CONTACT PERSON FOR MORE INFORMATION: Donna R. Koehnke, Secretary, (202) 205–2000.

Issued: September 11, 1993.

Donna R. Koehnke,
Secretary.

[FR Doc. 93–22709 Filed 9–13–93; 4:28 pm]
BILLING CODE 7020–02–P

Corrections

Federal Register
Vol. 58, No. 177
Wednesday, September 15, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ACTION

45 CFR Parts 1207 and 1208

Senior Companion/Foster Grandparent Income Eligibility

Correction

In proposed rule document 93-21374 beginning on page 46602 in the issue of Thursday, September 2, 1993, make the following corrections:

1. On page 46602, in the third column, in **DATES**, in the second line, "October 18, 1994" should read "October 18, 1993".

2. On page 46603, in the third column, in paragraph 4, after the first bullet, "income with" should read "income when".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

33 CFR Parts 323 and 328

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 110, 112, 116, 117, 122, 230, 232 and 401

Clean Water Act Regulatory Programs

Correction

In rule document 93-20530 beginning on page 45008 in the issue of Wednesday, August 25, 1993, make the following corrections:

1. On page 45008, in the first column, in **EFFECTIVE DATE:**, in the second line, "[Insert 30 days from the publication in the **Federal Register**]." should read "September 24, 1993."

§ 323.2 [Corrected]

2. On page 45036, in the second column, in § 323.2(d)(3)(iii), in the last line, "August 25, 1993." should read "August 25, 1996."

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER93-907-000, et al.]

Pennsylvania Electric Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Correction

In notice document 93-21949 beginning on page 47439 in the issue of Thursday, September 9, 1993, on page 47439, in the third column, in **4. Portland General Electric Co.**, docket number "EL93-133-000" should read "ER93-133-000".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-930-4210-06; MTM 82330]

Proposed Withdrawal and Opportunity for Public Meeting; Montana

Correction

In notice document 93-18447 beginning on page 41289 in the issue of Tuesday, August 3, 1993, on page 41290, in the first column, in land description T. 37 N., R. 1 E., in Sec. 2, "5 to 8" should read "5 and 6".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

RIN 3150-AD30

Day Firing Qualification Courses for Tactical Response Team Members, Armed Response Personnel, and Guards at Category I Licensees

Correction

In rule document 93-21129 beginning on page 45781 in the issue of Tuesday, August 31, 1993, make the following corrections:

1. On page 45781, in the first column in **EFFECTIVE DATE**, "February 28, 1993" should read "February 28, 1994".

§ 73.46 [Corrected]

2. On page 45785, in § 73.46(i)(1), in the first line, "November 29, 1993" should read "May 31, 1994".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 24

[T.D. ATF-338; Re: Notice No. 746]

Change in the Frequency of Filing Reports of Bonded Wine Premises Operations and Wine Excise Tax Returns (92F030P)

Correction

In rule document 93-8420 beginning on page 19062 in the issue of Monday, April 12, 1993, make the following corrections:

§ 24.273 [Corrected]

1. On page 19064, in the second column, in § 24.273(a)(1), in the third line, insert ")" after "May 12, 1993,".

2. On the same page, in the same column, in § 24.273(a)(2), in the fourth line, insert ",)" after "May 12, 1993".

BILLING CODE 1505-01-D

federal register

Wednesday
September 15, 1993

Part II

Department of the Interior

Bureau of Indian Affairs

Mission Valley Power Utility; Power Rate Adjustments; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Mission Valley Power Utility, Montana; Power Rate Adjustments

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs has been informed that the Bonneville Power Administration (BPA) has raised its wholesale power rates by 15.7 percent (preference customer priority firm rate). The increase, which will go into effect October 1, 1993, for a two year period, is applicable to BPA's utility customers purchasing wholesale power. Accordingly, the Bureau of Indian Affairs (BIA) is giving final Notice that local rates at Mission Valley Power (MVP) will be adjusted to reflect the increased costs of power purchased from the BPA. Currently, BPA supplies the MVP's wholesale power requirements. The rate increase will impact the energy rate of the various rate classes, including demand rate for the small commercial and large commercial rate classes, and the horsepower charge for the irrigation class. The $11.00 basic charge for the residential and the #2 general class will remain unchanged, but the kilowatt hours included in the basic charge will decline slightly.

DATES: The effective date of the BPA rate increase is October 1, 1993. MVP will adjust its rates effective on the date of this publication, or on October 1, 1993, which ever date occurs last.

ADDRESSES: Written comments on the rates should be sent to Stanley Speaks, Portland Area Director, Portland Area Office, Bureau of Indian Affairs, 911 NE. 11th Avenue, Portland, Oregon 97232–4169.

FOR FURTHER INFORMATION CONTACT: Bureau of Indian Affairs; Attention: Stanley Speaks, Area Director, Portland Area Office, 911 NE. 11th Avenue, Portland, Oregon 97232–4169, (503) 231–6178; or Bill Rauch, General Manager of Mission Valley Power, P.O. Box 890, Polson, Montana 59860–0890, (406) 833–5361, or 1–800–832–3758 (In-State Watts).

SUPPLEMENTARY INFORMATION: The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301; the Act of August 7, 1946, c. 802, section 3 (60 Stat. 895; 25 U.S.C. 385c); the Act of May 25, 1948, (62 Stat. 269); and the Act of December 23, 1981, section 112 (95 Stat. 1404).

This notice of power rate adjustment and related information is published under the authority delegated to the Commissioner of Indian Affairs and the Deputy Commissioner of Indian Affairs, by the Secretary of the Interior in Secretarial Order No. 3150, Section 7b, and in accordance with 25 CFR 175.13, which provides for the adjustment of electric power rates to reflect changes in the cost of purchased power or energy.

The Notice of the rate increase was published in the **Federal Register** (Volume 58, Number 102, Friday, May 28, 1993). The affected public and interested parties were provided the opportunity to submit written comments during the 30-day period subsequent to May 28, 1993. No comments were received during this comment period.

On July 2, 1993, the BPA announced a 15.7 percent increase in its preference customer priority firm rate. More than a third of the increase is due to BPA's increased obligation for fish and wildlife under the Endangered Species Act and the Northwest Power Planning and Conservation Act. Other factors cited by BPA as the cause for the increase include the need to add new power resources in the Northwest and the need to replace revenues drained by severe and unusual events, such as the drought and low aluminum prices. The previous MVP rate increase, published in the **Federal Register,** Volume 58, No. 12, January 21, 1993, reflected a power rate adjustment based on the increased cost of power from Montana Power Company (MPC). The MPC cost increase was authorized under the company's FERC license.

The BPA last raised its rates in 1991 by 2.7 percent. In the 10-year period since 1983, BPA rates have increased by less than 9 percent. The BPA rate also provides a mechanism for further rate adjustment of up to 10 percent if, during the next two years, the agency's financial reserves fall below the level needed to assure full payment on its debt.

The newly declared 15.7 percent increase in wholesale power rates represents an increase of approximately $759,000 in revenue, necessary to cover the increased wholesale costs. The increase will be distributed among MVP's various rate classes and will take effect on October 1, 1993.

Table No. 1 shows the new retail rates by class.

TABLE NO. 1.—CHANGES TO RETAIL RATES BY RATE CLASSES

	Present	New	Increase in charge
Residential:			
Basic Charge	$11.00	$11.00	$0.00
(Includes KWH)	137	127	.....
Energy Charge/KWH	$0.04385	$0.04709	$0.003240
#2 General	$11.00	$11.00	$0.00
(Includes KWH)	116	109	.....
Energy Charge/KWH	$0.05170	$0.05495	$0.003250
Irrigation:			
Horsepower Charge (/HP)	$10.30	$10.84	$0.54
Energy Charge/KWH	$0.03450	$0.03590	$0.00140
Small & Large Commercial:			
Basic Charge	None	None	.....
Minimum Charge/Month	$38.00	$38.00	$0.00
Demand Charge/Month	3.80	4.34	$0.54
Energy Charge/KWH:			
First 18,000 KWH	$0.04155	$0.04255	$0.001000
Over 18,000 KWH	$0.03338	$0.03538	$0.002000

Notice of the final rate, along with a table illustrating the rate increases and their impact on retail rates, will be published in local newspapers within the MVP service area. A household mailer to each MVP customer will detail the specific rate impacts per rate class.

Dated: September 8, 1993.

James D. Cain, Jr.,

Acting Deputy Commissioner of Indian Affairs.

[FR Doc. 93–22500 Filed 9–14–93; 8:45 am]

BILLING CODE 4310–02–P

federal register

Wednesday
September 15, 1993

Part III

Department of the Interior

Bureau of Indian Affairs

Flathead Indian Irrigation Project; Operation and Maintenance Charges; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Flathead Indian Irrigation Project, Montana; Operation and Maintenance Charges

AGENCY: Bureau of Indian Affairs, Department of Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs has established an increase of $.65 per acre in the assessment rate for operating and maintaining the Flathead Indian Irrigation Project. The new assessment rate is $18.45 per acre.

DATES: The operation and maintenance rate will become effective upon publication of this final Notice in the **Federal Register**, and will remain in effect until changed by further notice.

ADDRESSES: Written comments on the rates should be sent to Stanley Speaks, Portland Area Director, Portland Area Office, Bureau of Indian Affairs, 911 NE. 11th Avenue, Portland, Oregon 97232–4169.

FOR FURTHER INFORMATION CONTACT: Stanley Speaks, Portland Area Director, Portland Area Office, Bureau of Indian Affairs, 911 NE. 11th Avenue, Portland, Oregon 97232–4169. Telephone number (503) 231–6702.

SUPPLEMENTARY INFORMATION: This notice sets forth final changes to the irrigation operation and maintenance charges and a proposed special assessment for the Flathead Indian Irrigation Project, St. Ignatius, Montana. These charges are made pursuant to the authority contained in the Act of April 4, 1910, c. 140, sections 1 and 2 (36 Stat. 272), as amended, 25 U.S.C. 385; 25 CFR part 171.

This final Notice of change in the irrigation operation and maintenance rates is published under the authority delegated to the Commissioner of Indian Affairs and the Deputy Commissioner of Indian Affairs by the Secretary of the Interior in Secretarial Order Number 3150, Section 7b, and in accordance with 25 CFR, title 25, § 171.1, which authorizes the Area Director to fix and announce irrigation operation and maintenance assessment rates for the Flathead Indian Irrigation Project for calendar year 1994 and subsequent years.

The purpose of this final Notice is to announce an increase in the assessment rate commensurate with estimates of the normal irrigation operation and maintenance costs on the Flathead Indian Irrigation Project. Normal irrigation operation and maintenance is defined as all routine activities involved in delivering irrigation water. The assessment increases from $17.80 to $18.45 per acre, an approximate 3.7 percent increase. The rate applies to all irrigated lands served by the Flathead Irrigation Project during the 1994 irrigation season and subsequent years.

The Notice of the proposed operation and maintenance assessment rate, and a proposed special assessment, was published in the **Federal Register** (Volume 59, Number 107, Monday, June 7, 1993). Interested parties were provided 30 days to submit comments on the proposed changes. No comments were received.

The proposed special assessment was not adopted after consideration at local meetings held specifically to discuss the special assessment.

Payment

The irrigation operation and maintenance charges on the trust and non-District lands become due on April 1 of each year. The lands within an Irrigation District will be billed bi-annually, May 31 and November 30 of each year.

Interest and Penalty Fees

Interest and penalty fees will be assessed, where required by law, on all delinquent irrigation operation and maintenance assessment charges as prescribed in the Code of Federal Regulations, title 4, part 102, Federal Claims Collection Standards; and 42 BIAM Supplement 3, § 3.8, Debt Collection Procedures. Interest and a penalty for each month, or fraction thereof, will added to all assessments on lands in non-Indian ownership which remain unpaid 60 days after the due date. (Indian lands will not be assessed a penalty.) No water shall be delivered to any farm unit until all irrigation charges have been paid.

Dated: September 8, 1993.

James D. Cain, Jr.,

Acting Deputy Commissioner of Indian Affairs.

[FR Doc. 93–22498 Filed 9–14–93; 8:45 am]

BILLING CODE 4310–02–M

federal register

Wednesday
September 15, 1993

Part IV

Department of the Interior

Bureau of Indian Affairs

Mission Valley Power Utility, MT; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Mission Valley Power Utility, Montana

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (Bureau) has been informed that the Montana Power Company (MPC) is proposing to raise its wholesale power rates from 2.5 percent to 5.0 percent. Accordingly, the Bureau is giving notice that it proposes that local retail power rates at Mission Valley Power (MVP) will be adjusted to reflect the increased costs of wholesale power purchased from MPC's Kerr Dam Hydroelectric Facility. The MPC increase will go into effect on September 1, 1993. It is the Bureau's intent to increase MVP retail rates on, or as soon as possible, after that date.

DATES: The effective date of the adjusted MPC wholesale power rate increase is September 1, 1993. The Bureau proposes that MVP adjust its retail power rate to account for increased power costs on September 1, 1993, or upon the date of publication of final Notice in the **Federal Register**, whichever is later.

ADDRESSES: Interested parties may submit comments to BIA; Attention: Stanley Speaks, Area Director, Portland Area Office, 911 NE. 11th Avenue, Portland, Oregon 97232–4169. Comments should be submitted within 30 days of the date of this publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Indian Affairs; Attention: Mr. Stanley Speaks, Area Director, Portland Area Office, 911 NE., 11th Avenue, Portland, Oregon 97232–4169, (503) 231–6702; Bill Rauch, General Manager of Mission Valley Power, P.O. Box 890, Polson, Montana 59860–0890, (406) 833–5361, or 1–800–823–3758 (In-State Watts).

SUPPLEMENTARY INFORMATION: The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301; the Act of August 7, 1946, c. 802, section 3 (60 Stat. 895; 25 U.S.C. 385c); the Act of May 25, 1948 (62 Stat. 269); and the Act of December 23, 1981, section 112 (95 Stat. 1404).

This Notice of proposed retail power rate adjustment and related information is published under the authority delegated to the Commissioner of Indian Affairs and the Deputy Commissioner of Indian Affairs by the Secretary of the Interior in Secretarial Order No. 3150, section 7b, and in accordance with 25 CFR 175.13, which provides for the adjustment of electric power rates to reflect changes in the cost of purchased power or energy. This adjustment is the result of an increase in the wholesale electric power rates charged by MPC, one of three sources of electric power marketed by MVP. Pursuant to the Federal Energy Regulatory Commission license for the Kerr Dam Hydroelectric Facility, MPC is allowed to adjust its wholesale electric power rates annually based on the Consumer Price Index (CPI–U). The MPC wholesale proposed rate increase is anticipated to fall between 2.5 percent and 5.0 percent. Therefore, the Bureau is considering a range of potential rate increases pending MPC's release of the final wholesale rate on August 3, 1993.

The following table illustrates potential CPI–U increases, mills/kwh increases, and the potential increase in annual cost of wholesale power purchased from MPC.

PROJECTED EFFECT OF MONTANA POWER COMPANY WHOLESALE POWER RATE INCREASE ON MISSION VALLEY POWER RETAIL POWER RATES BASED ON 1992 POWER PURCHASES

Projected percent increase in CPI–U		2.5%	3.0%	4.0%	5.0%
1992 MPC Purchase (Mwh)	81,793				
9/92 MPC Rate (mills/kwh)	14.57				
9/93 MPC Rate = 3.5 + (8.5 (Index/Base)) Mills/kwh		14.85	14.90	15.01	15.12
Mills/kwh Increase in MPC Rate		0.28	0.33	0.44	0.55
Dollar Increase (Mills Increase Net MPC kwh available)		$18,956	$22,341	$29,788	$37,234

Depending on the CPI–U adjustment implemented, the increased revenue necessary to cover the wholesale cost of purchased power will be allocated to the various MVP retail rate classes.

FUTURE ACTION: The Bureau and MVP will publish a final retail power rate Notice once MPC has issued its final wholesale power rate increase. Notice of the final retail rate will be placed in the **Federal Register** and also in local newspapers within the MVP service area. A household mailer to each MVP customer will detail the specific rate impacts per rate class.

Dated: September 8, 1993.

James D. Cain, Jr.,

Acting Deputy Commissioner of Indian Affairs.

[FR Doc. 93–22499 Filed 9–14–93; 8:45 am]

BILLING CODE 4310–02–M

federal register

Wednesday
September 15, 1993

Part V

Department of Transportation

Coast Guard

33 CFR Part 156
Requirements for Cargo Lightering Operations; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 156

[CGD 90–052]

RIN 2115–AD68

Requirements for Cargo Lightering Operations

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the applicability sections of its safety and pollution prevention regulations to make it clear that regulations issued under section 311(j) of the Federal Water Pollution Control Act (FWPCA) apply to offshore lightering operations. This rulemaking also establishes what constitutes acceptable evidence of compliance with these requirements. This rule will clarify the applicability of Coast Guard pollution prevention regulations to offshore lightering.

EFFECTIVE DATE: October 15, 1993.

ADDRESSES: Unless otherwise indicated, documents referenced in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street, SW., room 3406, Washington, DC 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: LT Jonathan Burton, Office of Marine Environmental Protection (G–MEP), (202) 267–0426.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal person involved in drafting this document is Ms. Joan Tilghman, Project Manager and Project Counsel, Oil Pollution Act (OPA 90) Staff.

Regulatory History

In 1984, the Coast Goard promulgated a lightering rule which required both the delivering and receiving vessels engaged in an offshore lightering operation, where the lightering cargo was destined for a port or place subject to the jurisdiction of the U.S., to have a valid Certificate of Inspection (COI) or, alternatively, either a Certificate of Compliance or a Tank Vessel Examination Letter (TVEL) (49 FR 11170, March 26, 1984). The intended effect of this rule was to impose the same regulatory requirements on offshore lightering as those imposed on vessels and facilities engaged in similar operations in the navigable waters of the U.S. and the contiguous zone.

On January 5, 1993, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Requirements for Cargo Lightering" in the **Federal Register** (58 FR 452), proposing to amend 33 CFR parts 151, 155, and 156 to make it clear that regulations issued under section 311(j) of the FWPCA (33 U.S.C. 1321(j)) apply to offshore lightering operations. The NPRM also proposed to establish standards for compliance with the regulations. The Coast Guard received 12 letters commenting on the proposal. A public hearing was not requested, and one was not held.

After careful review of the NPRM and the comments, the Coast Guard has determined that the scope of the NPRM was broader than required. In this final rule, the Coast Guard is amending only 33 CFR part 156, subpart B. Section 156.200 specifically will require vessels lightering offshore to comply with lightering rules in 33 CFR part 156, subpart A, and by reference, the applicable sections of parts 151, 153, 155, 156, and 157.

Background and Purpose

Section 3715(a) of 46 U.S.C. authorizes the Coast Guard to regulate lightering operations occurring in the marine environment involving oil or hazardous material, if the lightered cargo is destined for a port or place subject to the jurisdiction of the U.S. Section 4115(d) of OPA 90 (Pub. L. 101–380) amended 46 U.S.C. 3715(a) by adding three new requirements for these lightering operations. As amended, 46 U.S.C. 3715(a) requires the delivering and receiving lightering vessels to meet five conditions.

The old requirements, which remain in effect, are that the transfer be conducted consistent with regulations prescribed by the Secretary; and that, at the time of transfer, both the delivering and receiving vessel have on board a COI, Certificate of Compliance, or TVEL as would have been required under 46 U.S.C. 3710 or 3711 had the transfer taken place in a port or place subject to the jurisdiction of the U.S.

The OPA 90 provisions add three more conditions for transfers. First, at the time of transfer, each vessel must have on board a Certificate of Financial Responsibility (COFR) as would have been required under section 1016 of OPA 90 (33 U.S.C. 2716) had the transfer taken place in a port or place subject to the jurisdiction of the U.S.

Second, at the time of transfer, each vessel must have on board evidence that it is operating in compliance with section 311(j) of the FWPCA. Section 311(j) requires, in part, the owner or operator of a tank vessel to prepare and submit a vessel response plan (VRP). Also, the Coast Guard issues removal and pollution prevention regulations under authority of this provision.

Third, each vessel must operate in compliance with 46 U.S.C. 3703a concerning tank vessel construction standards. Section 3703a requires double hulls on most newly built tankers, and sets out a phase-in schedule for implementing this requirement.

The purpose of this rule is to clarify the applicability provisions of the pollution prevention regulations, to reflect the COFR requirements, and to define what constitutes "evidence" that the vessel is operating in compliance with section 311(j). Title 46 U.S.C. 3715(a) and 33 CFR 156.210(a)(3) add requirements for vessels engaged in lightering to have a COFR and a VRP on board at the time of transfer.

The rules establishing the requirements for COFRs, VRPs, and double hulls are the subjects of separate rulemakings. The VRP interim final rule (IFR), requiring response plans for certain vessels which carry oil in bulk as cargo and additional requirements for certain vessels operating in Prince William Sound, Alaska, was published by the Coast Guard on February 5, 1993 (58 FR 7376). The IFR to implement the double hull requirements was published on August 12, 1992 (57 FR 36222). An NPRM covering vessel COFR requirements was published on September 26, 1991 (56 FR 49006). Until a final rule is published, vessels engaged in lightering must hold a COFR, as would have been required had the transfer taken place in the navigable waters of the U.S., meeting the existing requirements in 33 CFR part 130. It should be noted that a delivering vessel not actually entering the navigable waters of the U.S., but conducting offshore lightering operations where the cargo is to be offloaded in a port or place subject to the jurisdiction of the U.S., is required to obtain a COFR under existing part 130 because that vessel is viewed as if it were using the navigable waters of the U.S.

Discussion of Comments and Changes

The Coast Guard received five comments supporting the proposed rule. One of these five comments agreed with the rule, but also indicated that the Coast Guard not only must require vessels engaged in lightering to have

VRPs on board as evidence of compliance with section 311(j), but also must require them to be in compliance with the VRP requirements for transfer operations. The Coast Guard agrees that certain vessels conducting lightering operations must be in compliance with VRP requirements for transfer operations, but believes this matter has been addressed under the VRP IFR. The IFR establishes shipboard spill mitigation planning requirements for vessels carrying oil as cargo. (See 33 CFR 155.1035(c), 155.1040(d), and 155.1045(d).) These procedures must include planning for mitigating or preventing a discharge or substantial threat of a discharge resulting from ship-to-ship and internal ship transfers.

Another comment disagreed with the new definition of "marine environment" in part 156, subpart B because the definition omits the clause "beyond the baseline from which the territorial sea is measured." The comment indicated that as proposed, barge-to-ship transfers of oil and hazardous materials, while the ship is tied up at a dock, would be subject to the lightering requirements for pre-arrival notices. The language to which the comment refers does not appear in the definition of "marine environment," but rather in the "Applicability" provision of 33 CFR part 156, subpart B (§ 156.200). The Coast Guard did not intend to alter the applicability of subpart B by removing that language and has replaced it in this final rule.

Another comment indicated that the new definition of marine environment in § 156.205 includes waters superadjacent to the Outer Continental Shelf (OCS), parts of which go beyond 200 miles, and requested clarification on whether and under what authority the Coast Guard intends to regulate lightering operations beyond 200 miles. The authority to regulate activities in the marine environment arises from 46 U.S.C. 3715. The definition of "marine environment" used in this rulemaking was taken directly from 46 U.S.C. 2101(15) and is consistent with the existing regulatory definition.

Since 1984, § 156.200 has stated specifically that it applies in the marine environment beyond the baseline from which the territorial sea is measured. Section 156.205(b) has defined "marine environment" to include the waters over the OCS of the U.S., which encompasses the waters superadjacent to the OCS beyond the baseline from which the territorial sea is measured. This rulemaking does not change the application of the lightering requirements regarding the OCS.

This comment also stated that the rule is not clear on whether the pre-arrival notification requirement in § 156.215 should be made to the nearest Captain of the Port (COTP) or the COTP in control of the port of destination. The Coast Guard did not print the full text of § 156.215 in the NPRM. Reading the amendment with the existing text, it is clear that the pre-arrival notice must be to the COTP nearest to the location of the lightering operation.

The same comment indicated that the provision prohibiting the receiving vessel from bringing its cargo ashore unless both the delivering and receiving vessels meet all of the regulatory requirements will place a burden on the receiving vessel to ensure that the delivering vessel is in compliance. Under 46 U.S.C. 3715(a), both the delivering and receiving vessels must be in compliance with section 311(j) of the FWPCA and the regulations issued under it as a condition of allowing the oil to be discharged in a port or place under the jurisdiction of the U.S. Thus, in order to unload the oil in port, the receiving vessel should ensure that the delivering vessel is in compliance. The Coast Guard is without authority to delete or alter this statutory requirement.

One comment stated that the Coast Guard should issue regulations under the Port and Tanker Safety Act of 1978 regarding minimum safe operating conditions, the prevention of spills, and equipment for responding to a spill. The comment further indicated that although the U.S. Coast Guard published an NPRM in 1979 regarding wave height, wind speed, and minimum visibility, it did not publish another notice on lightering until 1983. In 1983, the Coast Guard published a supplemental notice of proposed rulemaking (SNPRM), which the comment stated was "radically reduced in scope" from the NPRM.

According to this comment, the SNPRM did not address sea state, wave height, weather, and other similar factors, as the statute required. The comment claims that, in effect, the Coast Guard left offshore lightering beyond the territorial sea largely unregulated. The comment concluded that even if the Coast Guard reduced the regulation of lightering because of the decrease in lightering levels since 1979, this reason is no longer applicable because the volume of oil lightered off the coast of the U.S. has increased dramatically since 1984. The comment argued that the dangers posed by the volume of oil lightered today create similar risks and warrant similar regulations as the dangers posed by the amount of oil lightered in 1979.

The Coast Guard agrees that sea state, wave height, weather, and other similar factors are important considerations for the regulation of offshore lightering. However, the purpose of this rulemaking is to clarify the applicability of existing lightering regulations, and the comment's concerns are beyond the scope of the rulemaking. The Coast Guard will consider the suggestions raised in the comment and may proceed with a separate rulemaking at a later date.

Two comments questioned the applicability of an exemption from these rules. Specifically, the comments asked whether the public vessel exemption would be available to any vessels participating in transfer operations involving public vessels, or only to the public vessel engaged in a transfer operation. The Coast Guard intended to leave undisturbed the exemption for operations involving public vessels already in 33 CFR part 156, subpart B.

One comment said that the proposed rule was inapplicable to supply vessels engaged in oil and gas extractive operations, reasoning that section 5209(b) of the Coast Guard Authorization Act of 1992 declared offshore supply vessels (OSVs) not to be "tank vessels" for the purposes of any law. The Coast Guard agrees. This rule will not apply to OSVs exempted under the Coast Guard Authorization Act.

Three comments stated that lightering requirements should not apply to vessels and barges or "vessels of opportunity" engaged in oil spill response that transfer recovered oil as part of their response operations. Another comment said that the regulations should not apply to emergency lightering operations to secure the safety of a ship "in marine peril."

Under § 156.217, the delivering and receiving vessel in a lightering operation each would have to maintain an approved VRP on board, if the VRP IFR requires. However, the Coast Guard's VRP IFR excludes the owner or operator of a vessel defined as a "vessel of opportunity" from submitting a written plan and exempts other vessels under specified conditions. Therefore, the Coast Guard is revising § 156.217(a)(2) of this rule to make it clear that if a vessel is exempt from the VRP requirements, it does not have to have a VRP to satisfy the lightering requirements. However, most vessels engaged in oil lightering operations in the marine environment beyond the baseline from which the territorial sea is

measured will be required to have a VRP under Coast Guard regulations.

Two comments also requested an exemption for vessels engaged in lightering as part of a spill response or in an emergency. The Coast Guard recognizes that unforeseen circumstances sometimes may make it necessary to seek exceptions from the application of these rules. Therefore, it is adding a paragraph to these rules (33 CFR 156.210(c)) to provide for requesting an exception in appropriate circumstances.

Regulatory Evaluation

This rule is not major under Executive Order 12291 and not significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary.

Vessels currently lightering in the marine environment already are required by 33 CFR 156.210 to have a COI or a TVEL. To receive and maintain a valid COI or TVEL, vessels must be in compliance with 33 CFR parts 151, 155, 156, and 157. Because lightering vessels already must document, with a Declaration of Inspection, that they comply with operating requirements applicable to lightering, and tank vessels are required by a separate rulemaking to have a VRP, the Coast Guard anticipates no new costs associated with showing evidence of compliance with section 311(j) of the FWPCA. The requirement to have a COFR is imposed by statute. Therefore, this rule will not result in annual costs of $100 million or more; will have no significant adverse effects on competition, employment, or other aspects of the economy; and will not result in a major increase in costs and prices.

Small Entities

This rule imposes no new requirements on businesses, whether small or large entities. The purpose of these rules is to clarify the applicability of existing provisions in the CFR which contain ambiguous language regarding offshore lightering operations; and also to establish what constitutes acceptable evidence of compliance with these lightering provisions. The requirements and their enforcement will remain unchanged, although the Coast Guard believes that the regulated community will find the amended regulations easier to understand. The evidence of compliance consists of documents that are already required under existing regulations or statutes. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains collection of information requirements. However, it only adds the submission of a new piece of data to a report required by 33 CFR 156.215, "Prearrival notices." This required report is incorporated into an approved collection of information (Office of Management and Budget (OMB) control number 2115–0539).

Federalism

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

This rule clarifies that pollution prevention regulations do apply to vessels lightering in the marine environment when the cargo lightered is destined for a port or place subject to the jurisdiction of the U.S. The Coast Guard intends these regulations to provide uniform, national standards for conducting lightering operations throughout the marine environment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rule will not result in significant impact on the quality of the human environment, as defined by the National Environmental Policy Act, because the rule is administrative in nature. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 156

Hazardous substances, Oil pollution, Reporting and recordkeeping requirements, Water pollution control.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 156 as follows:

PART 156—OIL AND HAZARDOUS MATERIAL TRANSFER OPERATIONS

1. The authority citation for part 156 is revised to read as follows:

Authority: 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3715(b); sec. 2, E.O. 12777, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

2. Section 156.200 is revised to read as follows:

§ 156.200 Applicability.

This subpart applies to each vessel to be lightered and the service vessel engaged in a lightering operation in the marine environment beyond the baseline from which the territorial sea is measured when the oil or hazardous material lightered is destined for a port or place subject to the jurisdiction of the U.S. This subpart does not apply to lightering operations involving public vessels. These rules are in addition to the rules of subpart A of this part, as well as the rules in the applicable sections of parts 151, 153, 155, 156, and 157 of this chapter.

3. In paragraph (b) of § 156.205, the definition for *marine environment* is revised to read as follows:

§ 156.205 Definitions.

* * * * *

Marine environment means—

(1) The navigable waters of the United States;

(2) The waters of an area over which the United States asserts exclusive fishery management authority; and

(3) The waters superadjacent to the Outer Continental Shelf of the United States.

4. In § 156.210, paragraph (a)(3) is redesignated as paragraph (a)(4), and paragraphs (a)(3) and (c) are added to read as follows:

§ 156.210 General.

(a) * * *

(3) The delivering and receiving vessels have on board at the time of transfer, evidence that each vessel is operating in compliance with section 311(j) of the Federal Water Pollution Control Act (33 U.S.C. 1321(j)) and applicable regulations issued under the authority of section 311(j) in the form of a Declaration of Inspection as required by § 156.150 and a vessel response plan if required under part 155 of this chapter.

Note: Under 46 U.S.C. 3715, the delivering and receiving vessels must have on board at the time of transfer, a Certificate of Financial Responsibility that would be required if the transfer had taken place in a location subject to the jurisdiction of the U.S. Regulations concerning Certificates of Financial Responsibility for vessels using the navigable waters of the U.S. are in part 130 of this chapter.

* * * * *

(c) In an emergency, the COTP, upon request, may authorize a deviation from any rule in this part if the COTP

determines that its application will endanger persons, property, or the environment.

5. In § 156.215, paragraph (a)(3) is revised to read as follows:

§ 156.215 Pre-arrival notices.

(a) * * *

(3) The number of transfers expected and the amount of cargo expected to be transferred during each transfer;

* * * * * *

Dated: July 28, 1993.

A.E. Henn,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 93–22443 Filed 9–14–93; 8:45 am]

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federal register

Wednesday
September 15, 1993

Part VI

The President

Executive Order 12863—President's Foreign Intelligence Advisory Board

Federal Register
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Wednesday, September 15, 1993

Presidential Documents

Title 3—

The President

Executive Order 12863 of September 13, 1993

President's Foreign Intelligence Advisory Board

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to enhance the security of the United States by improving the quality and effectiveness of intelligence available to the United States, and to assure the legality of activities of the Intelligence Community, it is ordered as follows:

PART I. ASSESSMENT OF INTELLIGENCE ACTIVITIES

Section 1.1. There is hereby established within the White House Office, Executive Office of the President, the President's Foreign Intelligence Advisory Board (PFIAB). The PFIAB shall consist of not more than 16 members, who shall serve at the pleasure of the President and shall be appointed by the President from among trustworthy and distinguished citizens outside the Government who are qualified on the basis of achievement, experience and independence. The President shall establish the terms of the members upon their appointment. To the extent practicable, one-third of the PFIAB at any one time shall be comprised of members whose term of service does not exceed 2 years. The President shall designate a Chairman and Vice Chairman from among the members. The PFIAB shall utilize full-time staff and consultants as authorized by the President. Such staff shall be headed by an Executive Director, appointed by the President.

Sec. 1.2. The PFIAB shall assess the quality, quantity, and adequacy of intelligence collection, of analysis and estimates, and of counterintelligence and other intelligence activities. The PFIAB shall have the authority to review continually the performance of all agencies of the Federal Government that are engaged in the collection, evaluation, or production of intelligence or the execution of intelligence policy. The PFIAB shall further be authorized to assess the adequacy of management, personnel and organization in the intelligence agencies. The heads of departments and agencies of the Federal Government, to the extent permitted by law, shall provide the PFIAB with access to all information that the PFIAB deems necessary to carry out its responsibilities.

Sec. 1.3. The PFIAB shall report directly to the President and advise him concerning the objectives, conduct, management and coordination of the various activities of the agencies of the Intelligence Community. The PFIAB shall report periodically, but at least semiannually, concerning its findings and appraisals and shall make appropriate recommendations for the improvement and enhancement of the intelligence efforts of the United States.

Sec. 1.4. The PFIAB shall consider and recommend appropriate action with respect to matters, identified to the PFIAB by the Director of Central Intelligence, the Central Intelligence Agency, or other Government agencies engaged in intelligence or related activities, in which the advice of the PFIAB will further the effectiveness of the national intelligence effort. With respect to matters deemed appropriate by the President, the PFIAB shall advise and make recommendations to the Director of Central Intelligence, the Central Intelligence Agency, and other Government agencies engaged in intelligence and related activities, concerning ways to achieve increased effectiveness in meeting national intelligence needs.

PART II. OVERSIGHT OF INTELLIGENCE ACTIVITIES

Sec. 2.1. The Intelligence Oversight Board (IOB) is hereby established as a standing committee of the PFIAB. The IOB shall consist of no more than four members appointed from among the membership of the PFIAB by the Chairman of the PFIAB. The Chairman of the IOB shall be appointed by the Chairman of the PFIAB. The Chairman of the PFIAB may also serve as the Chairman of the IOB. The IOB shall utilize such full-time staff and consultants as authorized by the Chairman of the PFIAB.

Sec. 2.2. The IOB shall:

(a) prepare for the President reports of intelligence activities that the IOB believes may be unlawful or contrary to Executive order or Presidential directive;

(b) forward to the Attorney General reports received concerning intelligence activities that the IOB believes may be unlawful or contrary to Executive order or Presidential directive;

(c) review the internal guidelines of each agency within the Intelligence Community that concern the lawfulness of intelligence activities;

(d) review the practices and procedures of the Inspectors General and General Counsel of the Intelligence Community for discovering and reporting intelligence activities that may be unlawful or contrary to Executive order or Presidential directive; and

(e) conduct such investigations as the IOB deems necessary to carry out its functions under this order.

Sec. 2.3. The IOB shall, when required by this order, report to the President through the Chairman of the PFIAB. The IOB shall consider and take appropriate action with respect to matters identified by the Director of Central Intelligence, the Central Intelligence Agency or other agencies of the Intelligence Community. With respect to matters deemed appropriate by the President, the IOB shall advise and make appropriate recommendations to the Director of Central Intelligence, the Central Intelligence Agency and other agencies of the Intelligence Community.

Sec. 2.4. The heads of departments and agencies of the Intelligence Community, to the extent permitted by law, shall provide the IOB with all information that the IOB deems necessary to carry out its responsibilities. Inspectors General and General Counsel of the Intelligence Community, to the extent permitted by law, shall report to the IOB, at least on a quarterly basis and from time to time as necessary or appropriate, concerning intelligence activities that they have reason to believe may be unlawful or contrary to Executive order or Presidential directive.

PART III. GENERAL PROVISIONS

Sec. 3.1. Information made available to the PFIAB, or members of the PFIAB acting in their IOB capacity, shall be given all necessary security protection in accordance with applicable laws and regulations. Each member of the PFIAB, each member of the PFIAB's staff and each of the PFIAB's consultants shall execute an agreement never to reveal any classified information obtained by virtue of his or her services with the PFIAB except to the President or to such persons as the President may designate.

Sec. 3.2. Members of the PFIAB shall serve without compensation but may receive transportation expenses and per diem allowance as authorized by law. Staff and consultants to the PFIAB shall receive pay and allowances as authorized by the President.

Sec. 3.3. Executive Order No. 12334 of December 4, 1981, as amended, and Executive Order No. 12537 of October 28, 1985, as amended, are revoked.

William J. Clinton

THE WHITE HOUSE,
September 13, 1993.

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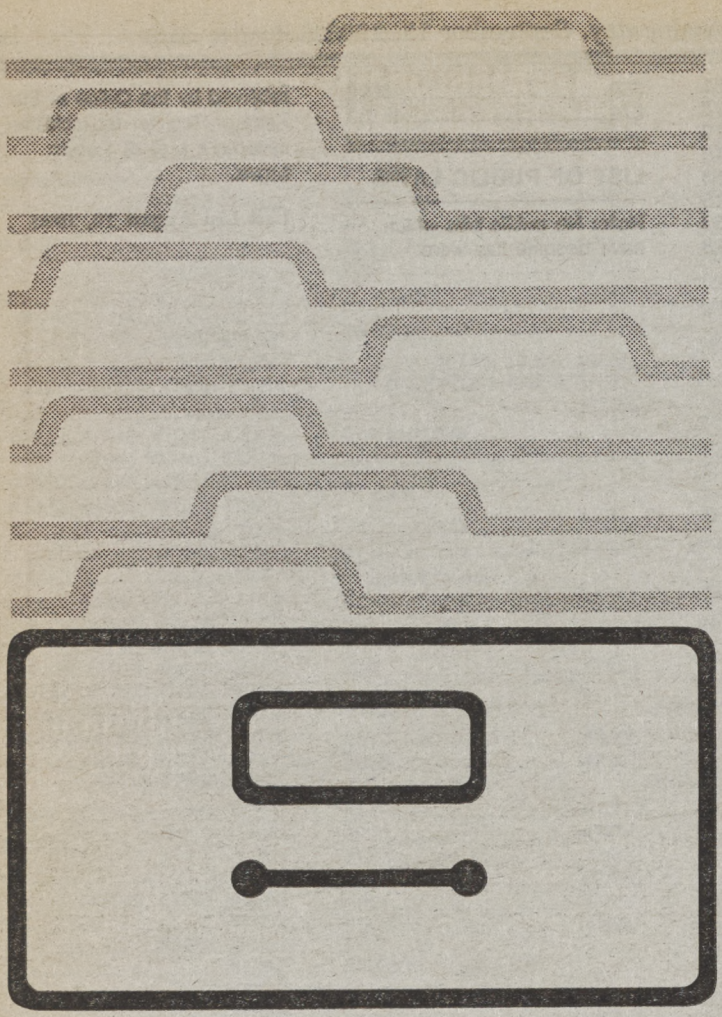

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in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1992

SUPPLEMENT: Revised January 1, 1993

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The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

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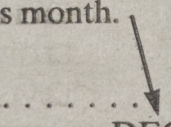

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