3-8-89
Vol. 54 No. 44
Pages 9753-9978

federal register

Wednesday
March 8, 1989

Briefings on How To Use the Federal Register—
For information on briefings in Washington, DC, Philadelphia, PA, and Salt Lake City, UT, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 54 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202-783-3238
Magnetic tapes	275-3328
Problems with public subscriptions	275-3054

Single copies/back copies:

Paper or fiche	783-3238
Magnetic tapes	275-3328
Problems with public single copies	275-3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523-5240
Magnetic tapes	275-3328
Problems with Federal agency subscriptions	523-5240

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

PHILADELPHIA, PA

WHEN: March 30, at 1:00 p.m.
WHERE: 841 Chesnut Street, Room 705, Philadelphia, Pa
RESERVATIONS: Call the Philadelphia Federal Information Center
Philadelphia: **215-597-1709**
New Jersey: **609-396-4400**

WASHINGTON, DC

WHEN: April 11, at 9:00 a.m.
WHERE: Office of the Federal Register, 1100 L Street NW., Washington, DC
RESERVATIONS: 202-523-5240

SALT LAKE CITY, UT

WHEN: April 12, at 9:00 a.m.
WHERE: State Office Building Auditorium, Capitol Hill, Salt Lake City, UT
RESERVATIONS: Call the Utah Department of Administrative Services, 801-548-3010

Contents

Federal Register
Vol. 54, No. 44
Wednesday, March 8, 1989

ACTION
PROPOSED RULES
Nondiscrimination on basis of handicap in federally-conducted programs and activities, 9966

Agency for International Development
PROPOSED RULES
Nondiscrimination on basis of handicap in federally-conducted programs and activities, 9966

Agricultural Marketing Service
RULES
Spearmint oil produced in Far West, 9766
PROPOSED RULES
Snap beans; grade standards, 9824

Agriculture Department
See also Agricultural Marketing Service; Animal and Plant Health Inspection Service; Commodity Credit Corporation; Federal Crop Insurance Corporation
PROPOSED RULES
Nondiscrimination on basis of handicap in federally-conducted programs and activities, 9966
NOTICES
Agency information collection activities under OMB review, 9865

Air Force Department
NOTICES
Meetings:
Scientific Advisory Board, 9878
(4 documents)

Animal and Plant Health Inspection Service
RULES
Exportation and importation of animals and animal products:
Harry S Truman Animal Import Center—
Special use in 1989 by Agricultural Research Service, 9768
PROPOSED RULES
Exportation and importation of animals and animal products:
Swine from China, 9836
Poultry improvement:
National Poultry Improvement Plan and auxiliary provisions, 9842

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Disease Control
NOTICES
Passenger cruise ships; sanitation inspection:
Reporting method; change, 9894

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Arizona, 9866

Coast Guard
RULES
Ports and waterways safety:
Lost Harbor, Akun Isl, AK; safety zone, 9775
Marcus Hook Range ship channel, Delaware River, Philadelphia, PA; safety zone, 9778
Old River and Cuyahoga River, Cleveland, OH; safety zone, 9776
NOTICES
Meetings:
Houston/Galveston Navigation Safety Advisory Committee, 9960, 9961
(3 documents)

Commerce Department
See also Export Administration Bureau; International Trade Administration; National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities under OMB review, 9866
(2 documents)

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Brazil, 9875
Costa Rica, 9876, 9877
(2 documents)
Czechoslovakia, 9876

Commodity Credit Corporation
NOTICES
Loan and purchase programs:
Price support levels—
Cotton, 9865

Customs Service
NOTICES
Customhouse broker license cancellation, suspension, etc.:
Maki International Inc., 9962
Maki, Walter Bruno, 9962

Defense Department
See also Air Force Department; Navy Department
RULES
Acquisition regulations:
Small business competitiveness demonstration program, 9807
NOTICES
Meetings:
Defense Acquisition Regulatory Council, 9877

Education Department
PROPOSED RULES
Nondiscrimination on basis of handicap in federally-conducted programs and activities, 9966
NOTICES
Grants and cooperative agreements; availability, etc.:
College facilities loan program, 9879
Handicapped special studies program, 9977
(2 documents)

Employment and Training Administration
NOTICES
Federal-State unemployment compensation program:
Extended benefit periods—
Alaska, 9911

Energy Department
See also Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department
RULES
Acquisition regulations:
Prompt payment policies, procedures, and contract clauses, 9807
PROPOSED RULES
Nondiscrimination on basis of handicap in federally-conducted programs and activities, 9966

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Colorado, 9780
Connecticut, 9781
Louisiana, 9783
Louisiana; correction, 9796
Utah, 9796
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Sodium chlorate, 9799
PROPOSED RULES
Nondiscrimination on basis of handicap in federally-conducted programs and activities, 9966
NOTICES
Agency information collection activities under OMB review, 9885
Pesticide, food, and feed additive petitions:
American Cyanamid Co., 9886
Pesticide programs:
Pesticide assessment guidelines—
Data reporting addenda, 9886
Pesticide registration, cancellation, etc.:
ICI Americas, Inc., 9887
Superfund program:
Toxic release inventory reporting package; community right-to-know; guidance materials, brochures, and electronic files availability, etc., 9888

Executive Office of the President
See Presidential Documents

Export Administration Bureau
RULES
Export licensing:
Commodity control list—
Chlorendic anhydride, 9770
NOTICES
Domestic crude oil export study; request for comments, 9867

Federal Communications Commission
RULES
Radio broadcasting:
FM broadcast stations—
Short-spaced station assignments; directional antennas use, 9800
Televison broadcasting:
Deregulatory review of technical and operational regulations, 9804
NOTICES
Common carrier services:
Joint board decisions; monitoring program establishment, 9889

Federal Crop Insurance Corporation
RULES
Crop insurance regulations:
General provisions, etc., 9766
PROPOSED RULES
Crop insurance regulations:
General provisions, etc.:, 9825
Crop insurance; various commodities:
Dry beans, 9831
Grapes, 9827
Hybrid seed, 9835
Peanuts, 9830
Peas, 9828
Potatoes, 9829
Raisins, 9826
Sugar beets, 9831
Sweet corn, 9834
Tobacco, 9832, 9833
(2 documents)

Federal Emergency Management Agency
NOTICES
Agency information collection activities under OMB review, 9889

Federal Energy Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Algonquin Gas Transmission Co., 9879
(2 documents)
Beebee Island Corp., 9880
Granite State Gas Transmission, Inc., 9880
Great Lakes Gas Transmission Co., 9883
James River-New Hampshire Electric, Inc., 9881
(2 documents)
Midwestern Gas Transmission Co., 9881
Northwest Pipeline Corp., 9881
Tennessee Gas Pipeline Co., 9882
Texas Eastern Transmission Corp., 9884
(2 documents)
TOC-Rocky Mountains Inc., 9882
Upper Peninsula Power Co., 9883

Federal Home Loan Bank Board
NOTICES
Conservator appointments:
Alamo Savings Association of Texas, 9889
Barber County Savings & Loan Association, 9889
Bexar Savings Association, 9890
Colonial Savings Association of America, 9890
First State Savings Association, 9890
First State Savings Bank, F.S.B., 9890
Home Federal Savings & Loan Association, 9890
Home Savings Bank, 9890
La Hacienda Savings Association, 9889
Madison Guaranty Savings & Loan Association, 9890
Permian Savings & Loan Association, 9889
San Antonio Savings Association, 9891
Southmost Savings & Loan Association, 9890
Suburban Savings Association, 9890
Topeka Savings, A FS&LA, 9891
Vision Banc Savings Association, 9891

Federal Maritime Commission
NOTICES
Agreements filed, etc., 9891
(3 documents)

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
Golden Isles Financial Holdings, Inc., et al., 9892
Lunsford, Philip J., et al., 9892
NCNB Corp. et al., 9893
Southeast Banking Corp. et al., 9893

Food and Drug Administration
RULES
Food additives:
Adjuvants, production aids, and sanitizers—
Di-tert-butylphenyl phosphonite, etc., 9774
NOTICES
Animal drugs, feeds, and related products:
Ray Batchelor Livestock; approval withdrawn, 9896
Food additive petitions:
Stork Friesland B.V., 9897
GRAS or prior-sanctioned ingredients:
Diamond Crystal Salt Co., 9897
Medical devices; premarket approval:
POLYCON HDK (Silafocon B) gas permeable contact lens for extended wear (clear and tinted), 9898

Health and Human Services Department
See also Centers for Disease Control; Food and Drug Administration; Health Resources and Services Administration
PROPOSED RULES
Nondiscrimination on basis of handicap in federally-conducted programs and activities, 9966

Health Resources and Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Human immunodeficiency virus services planning program, 9898

Hearings and Appeals Office, Interior Department
PROPOSED RULES
Hearings and appeals procedures:
Surface coal mining; special rules, 9852

Indian Affairs Bureau
NOTICES
International labor affairs:
Indigenous and Tribal Populations Convention; partial revision (**Editorial Note:** For a document on this subject matter see the entry under the Labor Department in this issue)

Interior Department
See Indian Affairs Bureau; Land Management Bureau; National Park Service; Surface Mining Reclamation and Enforcement Office

International Development Cooperation Agency
See Agency for International Development

International Trade Administration
NOTICES
Antidumping and countervailing duties:
Administrative review requests, 9868
Short supply determinations:
Hot-rolled steel sheet and strip for bi-metal band saws, 9869
Applications, hearings, determinations, etc.:
UMDNJ-RWJ Medical School et al., 9869

International Trade Commission
NOTICES
Import investigations:
Carbonated candy products, methods of making, 9903
Cryogenic ultramicrotome apparatus and components, 9904
Insulated security chests, 9904
Mechanical transfer presses from Japan, 9905
Recombinant erythropoietin, 9905
Track lighting system components, including plugboxes, 9906
Wire electrical discharge machining apparatus and components, 9906

Interstate Commerce Commission
RULES
Practice and procedure:
Environmental compliance; out-of-service rail line exemptions, 9822
PROPOSED RULES
Tariffs and schedules:
Rail carrier cost recovery tariffs, 9863

Labor Department
See also Employment and Training Administration
NOTICES
International labor affairs:
Indigenous and Tribal Populations Convention; partial revision, 9907

Land Management Bureau
NOTICES
Meetings:
Craig District Advisory Council, 9902
Richfield District Grazing Advisory Board, 9902
Realty actions; sales, leases, etc.:
California, 9902
Survey plat filings:
Idaho, 9903

National Aeronautics and Space Administration
PROPOSED RULES
Nondiscrimination on basis of handicap in federally-conducted programs and activities, 9966

National Foundation on the Arts and the Humanities
PROPOSED RULES
National Endowment for the Arts:
Nondiscrimination on basis of handicap in federally-conducted programs and activities, 9966
National Endowment for the Humanities:
Nondiscrimination on basis of handicap in federally-conducted programs and activities, 9966

National Highway Traffic Safety Administration
RULES
Odometer disclosure requirements, 9809, 9816
(2 documents)
PROPOSED RULES
Motor vehicle safety standards:
Fuel system integrity; fuel spillage limits, 9855
Odometer disclosure requirements, 9858

National Institute for Occupational Safety and Health
See Centers for Disease Control

National Labor Relations Board
NOTICES
Meetings; Sunshine Act, 9964

National Oceanic and Atmospheric Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Marine Fisheries Initiative funds; Gulf of Mexico fishery resources use, research and development projects, 9870
Meetings:
Pacific Fishery Management Council, 9875

National Park Service
NOTICES
Concession contract negotiations:
Barren Island Marina, Inc., 9903

National Science Foundation
PROPOSED RULES
Nondiscrimination on basis of handicap in federally-conducted programs and activities, 9966
NOTICES
Meetings:
Interagency Arctic Research Policy Committee, 9912

National Transportation Safety Board
NOTICES
Meetings; Sunshine Act, 9964

Navy Department
NOTICES
Meetings:
Naval Research Advisory Committee, 9878

Nuclear Regulatory Commission
PROPOSED RULES
Nondiscrimination on basis of handicap in federally-conducted programs and activities, 9966
NOTICES
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 9912
Applications, hearings, determinations, etc.:
General Public Utilities Nuclear Corp. et al., 9945
Gulf States Utilities Co., 9945

Personnel Management Office
RULES
Medical qualification determinations, 9761
Senior Executive Service:
Appointment, reassignment, transfer, and reinstatement, 9755

Postal Rate Commission
PROPOSED RULES
Practice and procedure rules:
Statistical and volume evidence documentation, 9488
NOTICES
Post office closings; petitions for appeal:
Crawford, WV, 9945

Presidential Documents
ADMINISTRATIVE ORDERS
Defense Department drug interdiction reports; authority delegation (Memorandum of Feb. 14, 1989), 9753

Public Health Service
See Centers for Disease Control; Food and Drug Administration; Health Resources and Services Administration

Securities and Exchange Commission
RULES
Securites:
Disclosure requirements; Regulation S-K and Form 8-K; changes in accountants and resignations of directors, filing provisions, 9770
PROPOSED RULES
Investment companies:
Registered management investment companies; independent public accountant, selection time period, 9843
Securities:
Net capital requirements for brokers and dealers, 9842
NOTICES
Meetings; Sunshine Act, 9964
Securities:
Securities laws, uniformity; conference, 9948
Self-regulatory organizations; proposed rule changes:
Boston Stock Exchange, Inc., 9952
Depository Trust Co., 9954
MBS Clearing Corp., 9955
National Association of Securities Dealers, Inc., 9946, 9955
(2 documents)
National Securities Clearing Corp., 9958
Self-regulatory organizations; unlisted trading privileges:
Boston Stock Exchange, Inc., 9954
Midwest Stock Exchange, Inc., 9955
Philadelphia Stock Exchange, Inc., 9959
Applications, hearings, determinations, etc.:
First City Industries, Inc., 9959
Public utility holding company filings, 9947, 9960
(2 documents)

Small Business Administration
PROPOSED RULES
Nondiscrimination on basis of handicap in federally-conducted programs and activities, 9966

State Department
PROPOSED RULES
Nondiscrimination on basis of handicap in federally-conducted programs and activities, 9966

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Initial and permanent regulatory programs:
Underground coal mining surface impacts; prohibitions applicability
Reopening of comment period, 9847

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Coast Guard; National Highway Traffic Safety Administration

Treasury Department
See also Customs Service

NOTICES
Agency information collection activities under OMB review, 9961
(2 documents)

Veterans Administration
PROPOSED RULES
Nondiscrimination on basis of handicap in federally-conducted programs and activities, 9966
NOTICES
Meetings:
Career Development Committee, 9962
Cooperative Studies Evaluation Committee, 9963
Special Medical Advisory Group, 9963
Structural Safety of Veterans Administration Facilities Advisory Committee, 9963

Separate Parts In This Issue

Part II
Nondiscrimination on basis of handicap in federally-conducted programs and activities (15 departments and agencies), 9966

Part III
Department of Education, 9977

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Administrative Orders:
Memorandums:
Feb. 14, 1989 9753

5 CFR
317 9755
339 9761

7 CFR
401 9766
985 9766
Proposed Rules:
15b 9966
51 9824
401 9825
402 9826
411 9827
416 9828
422 9829
425 9830
430 9831
433 9831
435 9832
436 9833
437 9834
443 9835

9 CFR
92 9768
Proposed Rules:
92 9836
145 9842
147 9842

10 CFR
Proposed Rules:
4 9966
1040 9966

13 CFR
Proposed Rules:
113 9966

14 CFR
Proposed Rules:
1251 9966

15 CFR
799 9770

17 CFR
229 9770
249 9770
Proposed Rules:
240 9842
270 9843

21 CFR
178 9774

22 CFR
Proposed Rules:
142 9966
217 9966

30 CFR
Proposed Rules:
761 9847

33 CFR
165 (3 documents) 9775, 9776, 9778

34 CFR
Proposed Rules:
104 9966

38 CFR
Proposed Rules:
18 9966

39 CFR
Proposed Rules:
3001 9848

40 CFR
52 (5 documents) 9780, 9781, 9783, 9796
180 9799
Proposed Rules:
7 9966

43 CFR
Proposed Rules:
4 9852

45 CFR
Proposed Rules:
84 9966
605 9966
1151 9966
1170 9966
1232 9966

47 CFR
73 (2 documents) 9800, 9804

48 CFR
204 9807
219 9807
252 9807
932 9807
952 9807

49 CFR
580 (2 documents) 9809, 9816
1105 9822
1152 9822
Proposed Rules:
571 9855
580 9858
1312 9863
1314 9863

Federal Register
Vol. 54, No. 44
Wednesday, March 8, 1989

Presidential Documents

Title 3—

The President

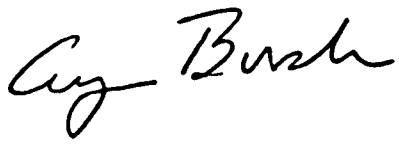
Memorandum of February 14, 1989

Reports Concerning Department of Defense Support for Drug-Interdiction Efforts Required by the FY 1989 National Defense Authorization Act

Memorandum for the Secretary of Defense

By virtue of the authority vested in me by the Constitution and the laws of the United States, including Section 301 of Title 3 of the United States Code, I authorize you to submit to the Congress the reports concerning drug-interdiction efforts by the Department of Defense as specified in Sections 1103(a)(2), 1105(c), and 1107(a) of the National Defense Authorization Act, Fiscal Year 1989, Public Law No. 100–456, September 29, 1988.

This memorandum shall be published in the **Federal Register.**



THE WHITE HOUSE,
Washington, February 14, 1989.

[FR Doc. 89–5521
Filed 3–6–89; 4:03 pm]
Billing code 3195–01–M

Rules and Regulations

Federal Register
Vol. 54, No. 44
Wednesday, March 8, 1989

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 317

Appointment, Reassignment, Transfer, and Reinstatement in the Senior Executive Service

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations on procedures governing Senior Executive Service (SES) appointment and staffing actions, including (1) qualifications standards; (2) agency recruitment and selection procedures for initial career appointment to the SES; (3) the 1-year probationary period for career appointees; (4) reinstatement to the SES; (5) reassignment and transfers; and (6) details within, into, and out of SES positions. The reinstatement regulations are a revision of current regulations. The other regulations are new. The regulations are intended to ensure compliance with merit staffing provisions and to implement statutory requirements for regulation by OPM.

EFFECTIVE DATE: April 7, 1989.

FOR FURTHER INFORMATION CONTACT: Neal Harwood, (202) 632-4486.

SUPPLEMENTARY INFORMATION: On July 22, 1988, OPM published proposed regulations (53 FR 27695) on staffing actions in the Senior Executive Service (SES). The comment period, which was 60 days from the date of publication, ended on September 20, 1988. Comments were received from 16 agencies, one executive organization, and one member of Congress.

Subpart D—Qualifications Standards

One agency recommended that § 317.402(a) not require that a qualifications standard identify the "breadth and depth" of the knowledges, skills, and abilities required for successful performance on the basis that such a requirement is more appropriate to developing a crediting plan. We have retained this provision since the standard sets out the "breadth and depth" of the qualifications factors, and the crediting plan then shows how to measure these factors.

One agency recommended that § 317.402(b), which states that the standard must be specific enough to enable applicants to be rated and ranked according to their degree of qualifications, be deleted to avoid confusing examination factors with qualfications factors. We do not believe this provision will cause confusion. The standard has to be specific enough so that a crediting or examining plan can be developed by the agency that will make qualitative distinctions among the applicants for ranking purposes.

One agency recommended deletion of the provision in § 317.402(d)(1) that a standard may not contain a minimum length of experience requirement. The agency argued that such a requirement may be useful in predicting successful performance in certain situations. We have revised the provision to allow agencies to use a minimum length of experience requirement if they believe it is appropriate, but the requirement may not exceed that for a similar position in the General Schedule.

One agency recommended deletion of § 317.404, which provides that agencies have to keep copies of old qualifications standards for 2 years. The provision has been retained to assure that adequate documentation exists in case a question is raised or an audit is conducted.

Subpart E—Career Appointments

(1) Recruitment and Selection of Initial SES Career Appointment

One agency recommended that § 317.501(a) be revised to state that the agency Executive Research Board (ERB) will "oversee" rather than "conduct" the merit staffing process for career appointees so as to indicate that the ERB has authority to delegate its functions. The term "conduct" is used in 5 U.S.C. 3393(b) and therefore is retained. The authority of the ERB to delegate certain of its functions is specified in § 317.501(c)(2).

Two agencies objected to the provision in § 317.501(b)(2) that agencies must list in OPM's biweekly publication of SES vacancies any vacancy they intended to fill by career appointment. One of the agencies stated that there may be occasions when an expedited announcement is required. The provision has been retained to assure that notice of all SES vacancies is made available as a minimum to all groups of qualified individuals within the civil service, as required by 5 U.S.C. 3393(a), and that notice of SES vacancies open to individuals outside the civil service is made available to the U.S. Employment Service, as required by 5 U.S.C. 3327. The provision has been clarified, however, to indicate agencies only have to list those vacancies which are being filled by initial career appointment to the SES. Positions being filled by reassignment, transfer, or reinstatement of career SES appointees do not have to be listed. The minimum period of listing is 14 calendar days, which should still allow agencies to expedite the filling of their jobs when necessary.

One agency commented that under § 317.501(c)(1) all candidates responding to a vacancy announcement would have to be rated and ranked on the same basis. It recommended that the rating and ranking of current career SES members and reinstatement eligibles should be at the option of the agency since competitive requirements for entry into the SES have already been met and these individuals could be placed noncompetitively. We agree, and the regulations have been revised accordingly.

One agency objected to the provision in § 317.501(c)(2) that the ERB is required to consider the qualifications only of those candidates who meet the requirements of the vacancy announcement (i.e., are within the area of consideration and meet the minimum qualifications requirements.) The agency noted that 5 U.S.C. 3393(b) provides that the ERB is responsible for "reviewing the executive qualifications of each candidate * * *." We do not believe it was the intent of the law to prohibit the ERB from using subject matter specialists to screen out unqualified candidates before the ERB considered

the candidates, and the provision has been retained.

One agency recommended that in § 317.502(c)(5) the ERB not be required to provide written recommendations to the appointing authority on all eligible candidates, but be allowed instead to provide a statement that it had reviewed the applications of the eligible candidates and was referring "X" number for selection consideration. This section implements 5 U.S.C. 3393(b)(2), which states that the ERB is responsible for "making written recommendations to the appropriate appointing authority concerning such candidates." We believe that the intent of the law is that the appointing authority be made aware of the ERB determinations on all the eligible candidates, and therefore the provision has been retained.

One agency commented that in § 317.502(c)(5) it appears that rating sheets could be used to satisfy the requirement that written recommendations be provided by the ERB to the appointing authority only when there was a large number of candidates. The section has been clarified to state that rating sheets may be used at any time. The section has also been revised to indicate that although rating sheets may be used for the written recommendation on individual candidates, the ERB still has to certify in writing the list of candidates provided to the appointing authority.

Two agencies objected to the provision in § 317.501(c)(6) that the appointing authority certify that appropriate merit staffing procedures were followed. They both noted that the ERB is charged by law with conducting the merit staffing process and recommended that the ERB be allowed to make the certification. The provision has been revised to allow either the appointing authority or the ERB to make the certification (§ 317.501(c)(7)).

(2) Qualifications Review Board (QRB) Certification

One agency objected to the provision in § 317.502(b) that agencies must submit their case to a QRB within 9 months of the closing date of a vacancy announcement or the completion of an OPM approved SES candidate development program. It noted that the provision removed any flexibility for OPM to waive the requirement in extreme circumstances. We agree and have revised the section to state that OPM may set the length of time during which a case must be received, and we will provide the length in the *Federal Personnel Manual.* In the meantime, the 9-month limitation will be applicable unless OPM provides a waiver in a specific case for good cause.

One agency recommended that § 317.502(c) be revised to provide that QRB certifications, including those for graduates of SES candidate development programs, will be good for 5 years rather than 3 years. The provision has been retained to assure that the qualifications are sufficiently recent.

Five agencies objected to § 317.502(d), which provides that OPM may determine the disposition of agency QRB cases between the time an agency head leaves office and the time a new agency head is confirmed and appointed. One agency stated that action should not be taken by OPM without consulting the agency. One agency stated that it might be appropriate to return the few cases involving positions reporting directly to the agency head, but not other cases. One agency stated that although such a provision might be appropriate during a Presidential transition, it would not be appropriate at other times. Two agencies stated that the provision would not be appropriate at any time. Generally, the attitude of the agencies responding was, as stated by one agency, that the provision was "an unwarranted intrusion into an agency's management of its SES resources."

When we issued the proposed regulations, we stated that this authority was needed to assure that the new agency head will be able to make his or her own selections for key positions. We still hold this view and therefore have retained the provision. As we also pointed out when we issued the proposed regulations, however, cases will not be automatically returned to agencies. We stated then that OPM may return cases to agencies, hold them pending appointment of a new agency head, or submit them for QRB review depending on the circumstances, such as the organizational level of the position being filled, the degree to which the imcumbent would be involved in policy matters, and how long before a new agency head is likely to take office. Criteria will be included in the *Federal Personnel Manual,* and we will consult with agencies when possible before making a decision on what to do in an individual case.

(3) Probationary Period

Section 317.503(d) of the proposed regulations provided that if a career appointee left the SES before completing the probationary period, the appointee need not be recertified by a QRB if selected for another SES position within 3 years of the previous QRB certification. The section has been clarified to indicate that recertification is required if the individual was removed from the SES for performance or disciplinary reasons.

One agency recommended that the regulations also state that once an SES member completes an SES probationary period, the member need not receive QRB certification to enter another SES position following a break in SES service. We do not believe this statement is necessary in the regulations since the QRB is responsible only for review of initial career appointments, but will make clear in the *Federal Personnel Manual* that QRB action is not required for an individual who completed the probationary period and is reinstated to the SES.

Subpart G—Reinstatement

Section 317.702(a)(2) lists separation actions following which a career appointee is not eligible for reinstatement to the SES. The Office of Special Counsel, Merit Systems Protection Board (MSPB), provided clarifying language, which we have adopted, regarding removals directed by the MSPB resulting from disciplinary actions initiated by the Special Counsel.

Section 317.703 covers reinstatement of former career appointees who have taken Presidential appointments. One agency recommended that § 317.703(b), which provides that a Presidential appointee may apply to OPM for directed reinstatement only after the appointee's resignation is requested or submitted, be amended to allow application also when the resignation is "projected." We have not adopted the recommendation because OPM needs to know definitely that a resignation is to occur before directing reinstatement in the SES, which may occur in another agency. Once a resignation is requested or submitted, however, OPM will initiate action even though the effective date of the resignation is not until later.

One agency recommended that § 317.703(c)(2), which states the agency order of precedence in directing reinstatement, be revised to provide that each precedence-ordered group of agencies be used only if it is not possible to place the Presidential appointee in an agency in any higher ranking group. Although OPM will attempt to follow the order of precedence whenever possible, we want to maintain sufficient flexibility to assure the most appropriate placement. Therefore, we have not changed the provision.

One agency recommended that § 317.703(c)(5), which provides that an

agency may place a Presidential appointee on a limited term appointment pending reinstatement to avoid a break in service, be revised to provide that a limited emergency appointment may be used instead, particularly since most appointments will be of a short term nature. We have revised the section to allow use of either a limited term or emergency appointment, as appropriate, for this purpose.

Subpart I—Reassignments, Transfers, and Details

(1) Reassignments

Two sets of comments were received on § 317.901(c), concerning the 120-day moratorium on the involuntary reassignment of a career appointee following the appointment of a new agency head or the appointee's most immediate noncareer supervisor who has the authority to reassign the appointee. One of the comments was from the Chairwoman of the House Subcommittee on Civil Service. The other comment was from an executive organization.

Both comments disagreed with the interpretation expressed in the Supplementary Information portion of the proposed regulations that although a noncareer supervisor could not personally involuntarily reassign any subordinate career appointee during the 120 days following appointment, the appointee could be reassigned by the agency head during that period if the agency head had been in office 120 days. The commenters contended that the purpose of the moratorium was to allow the noncareer supervisor to become familiar with the talents of career subordinates prior to their being reassigned, but that under the OPM interpretation the supervisor could just request the agency head to take the action during the period the supervisor was subject to the moratorium.

It should be noted that under 5 U.S.C. 3359(e)(1), the moratorium is only applicable to a noncareer supervisor who "has the authority to reassign the career appointee." If the agency head has retained the reassignment authority for all career appointees in the agency, it is clear that the agency head could reassign any career appointee once the agency head had been in office for 120 days even if the noncareer supervisor of the appointee has not served 120 days. Therefore, the only matter at issue is whether when the reassignment authority had been delegated by the agency head to the noncareer supervisor, the agency head may reclaim that authority and direct an involuntary reassignment before the noncareer supervisor has served 120 days.

The interpretation stated in the proposed regulations is one that OPM has made since 1979. We do not believe that Congress intended to pyramid moratorium periods. Under the interpretation proposed by the commenters, the moratorium could last for 240 days if the noncareer supervisor was appointed just as the 120-day moratorium on the agency head was ending. A new agency head often brings in his or her own top subordinates. If each time a noncareer supervisor who had reassignment authority changed, a new 120-day moratorium was initiated that also applied to the agency head, there could be an exceedingly long time before reassignments could be effected and the agency head could exercise control over the agency. We do not believe that the agency head will automatically honor every request from a noncareer supervisor since the agency head will be looking at the situation from the perspective of the whole agency and often will have had the opportunity personally to observe the appointee.

Therefore, it continues to be OPM's interpretation that the moratorium is not applicable to the agency head once the agency head has been in office 120 days if the agency head is the actual decision maker for the reassignment.

The executive organization also contended that details are used to circumvent the moratorium on involuntary reassignments and urged that details of career appointees be prohibited during the moratorium period, unless the detail was agreed to in writing, or that time spent on detail not count against the moratorium period. There is no statutory prohibition on the use of details during the moratorium period. While reassignment is a permanent change of positions, a detail is temporary; and the individual continues to occupy the position from which detailed. OPM is as concerned as the executive organization that details not be used improperly. Agency management, however, must have the flexibility to accomplish the work of the agency; and there may be times when a detail is necessary for this purpose during the moratorium period. Therefore, we have not adopted the recommendation. Agencies are cautioned, however, that any detail during the moratorium period should be made judiciously and only when there is a bona fide need for the individual to serve temporarily in the position. It should be noted that career SES members have recourse to the Special Counsel of the Merit Systems Protection Board if they believe a detail has been used improperly to circumvent the 120-day moratorium period.

(2) Transfers

Two agencies recommended that § 317.902(b), which states that transfers may not occur without the appointee's consent except in a transfer of function, should be amended to indicate that the gaining agency must also consent. The section has been revised accordingly.

One agency recommended that § 317.902(a) also be amended to state that a transfer between major components of the Department of Defense (e.g., between the Departments of Army and Navy or between the Office of the Secretary of Defense and the Department of Navy) need not be voluntary if specifically directed by the Secretary of Defense. The agency noted that 10 U.S.C. 113(b) provides that the Secretary "has authority, direction, and control over the Department of Defense." This matter pertains to only one Department and is based on statutory provisions outside title 5 of the U.S. Code, for which OPM is responsible. Therefore, rather than amending the regulations, we will put an explanatory statement in the Federal Personnel Manual discussion of this provision that it is not intended to restrict the statutory authority of the Secretary of Defense under title 10 of the U.S. Code in the matter of transfers between major components of the Department specifically directed by the Secretary.

(3) Details

Several agencies commented on the provision in § 317.903(b) that states OPM may set limits on the total length of details and the length of details that may be made without competition. Two agencies opposed allowing OPM to set any limits. One agency recommended that the current 240-day limitation, without prior OPM approval, of a General Schedule or competitive service employee to an SES position (FPM Letter 300–32) be changed to one year. One agency recommended setting limits only when an individual is being detailed from a non-SES position to an SES position. One agency recommended that in using competitive procedures, agencies not be bound by the competitive promotion requirements in FPM Chapter 335.

The authority of OPM to place limitations on details has been retained to ensure that details which extend a significant period of time are used properly. The section has been revised

to make clear that the limitations intended are not on the overall length of details, but on the length that may be made without the prior approval of OPM. The section has also been revised to indicate that the limitation on details without competition applies only to details from outside the SES. The specific limitations will be set out in the *Federal Personnel Manual.*

Subpart J—Corrective Action

One agency recommended that § 317.1001 be revised to state that when OPM finds that an agency has taken an action contrary to law or regulation, "it may require the agency to take appropriate corrective action" rather than "whatever corrective action OPM deems necessary." The recommendation has been adopted.

E.O. 12291, Federal Regulation

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

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it deals with the SES of the executive branch of the Federal Government.

List of Subjects in 5 CFR Part 317

Government employees.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending 5 CFR Part 317 by revising the authority citation for the part and removing the authority citation for Subpart G; adding Subpart D, §§ 317.401 through 317.404; adding Subpart E, §§ 317.501 through 317.503; revising Subpart G, §§ 317.701 through 317.703; adding Subpart I, §§ 317.901 through 317.904; and adding Subpart J, § 317.1001, to read as follows:

PART 317—APPOINTMENT, REASSIGNMENT, TRANSFER, AND REINSTATEMENT IN THE SENIOR EXECUTIVE SERVICE

* * * * *

Subpart D—Qualifications Standards

Sec.
317.401 General.
317.402 Career reserved positions.
317.403 General positions.
317.404 Retention of qualifications standards.

Subpart E—Career Appointments

317.501 Recruitment and selection for initial SES career appointment.
317.502 Qualifications Review Board certification.
317.503 Probationary period.

* * * * *

Subpart G—SES Career Appointment by Reinstatement

317.701 Agency authority.
317.702 General reinstatement: SES career appointees.
317.703 Guaranteed reinstatement: Presidential appointees.

* * * * *

Subpart I—Reassignments, Transfers, and Details

317.901 Reassignments.
317.902 Transfers.
317.903 Details.
317.904 Change in type of SES appointment.

Subpart J—Corrective Action

317.1001 OPM authority for corrective action.

Authority: 5 U.S.C. 3392, 3393, 3395, 3397, 3593, and 3595.

Subpart D—Qualifications Standards

§ 317.401 General.

The head of each agency is responsible for establishing qualifications standards for Senior Executive Service (SES) positions in accordance with the procedures described in this subpart.

§ 317.402 Career reserved positions.

(a) The qualifications standard must be in writing and identify the breadth and depth of the professional/technical and executive/managerial knowledges, skills, and abilities, or other qualifications, required for successful performance in the position.

(b) The standard must be specific enough to enable applicants to be rated and ranked according to their degree of qualifications when the position is being filled on a competitive basis.

(c) Each qualifications criterion in the standard must be job related. The standard may not emphasize agency-related experience, however, to the extent that it precludes otherwise well-qualified condidates from outside the agency from appointment consideration.

(d) The standard may not include—

(1) A minimum length of experience requirement beyond that authorized for similar positions in the General Schedule;

(2) A minimum education requirement beyond that authorized for similar positions in the General Schedule; or

(3) Any criterion prohibited by law or regulation.

§ 317.403 General positions.

An agency may apply the criteria in § 317.402 when developing qualifications standards for general positions. If it does not, OPM must be consulted before the agency develops the standard.

§ 317.404 Retention of qualifications standards.

If a qualifications standard is changed, or a position is cancelled, the former standard shall be retained for 2 years.

Subpart E—Career Appointments

§ 317.501 Recruitment and selection for initial SES career appointment.

(a) *Executive Resources Board (ERB).* The head of each agency shall appoint one or more ERBs from among employees of the agency or commissioned officers of the uniformed services serving on active duty in the agency. The ERB shall, in accordance with requirements established by OPM, conduct the merit staffing process for initial SES career appointment.

(b) *Recruitment.* (1) As a minimum, the source of recruitment to fill a SES position by career appointment must include all groups of qualified individuals within the civil service (as defined by 5 U.S.C. 2101). It may also include qualified individuals outside the civil service.

(2) Announcements of SES vacancies to be filled by initial career appointment must be listed in OPM's publication of SES vacancies for such time as prescribed by OPM.

(c) *Merit staffing requirements.* As a minimum, agencies must—

(1) Provide that competition be fair and open, that all candidates compete and be rated and ranked on the same basis, and that selection be based solely on qualifications and not on political or other non-job-related factors. If a candidate is a current SES career appointee or an SES reinstatement eligible, an agency may consider the candidate either competitively or noncompetitively.

(2) Provide that the ERB consider the qualifications of each candidate, other than those found ineligible because they do not meet the requirements of the vacancy announcement. Preliminary qualifications screening, rating, and ranking of candidates may be delegated by the ERB.

(3) Provide that the rating and ranking procedures sufficiently differentiate among eligible candidates on the basis of the knowledges, skills, abilities, and other job-related factors in the qualifications standard for the position, so as to enable the appointing authority to adequately determine those most qualified. For this purpose, eligible

candidates may be grouped into broad categories, such as best qualified, well qualified, and qualified. Numerical rating and ranking are not required.

(4) Provide that the record be adequately documented to show the basis of qualifications, rating, and ranking determinations.

(5) Provide that the ERB make written recommendations to the appointing authority on the eligible candidates. Rating sheets may be used to satisfy the written recommendation requirement for individual candidates, but the ERB must certify in writing the list of candidates to the appointing authority.

(6) Provide that the appointing authority certify in writing that the candidate selected meets the qualifications requirements of the position.

(7) Provide that the appointing authority or the ERB certify in writing that appropriate merit staffing procedures were followed.

(d) *Retention of documentation.* Agencies must keep such documentation as OPM prescribes for 2 years to permit reconstruction of merit staffing actions.

(e) *Applicant inquiries and appeals.* Individuals are entitled to obtain information from an agency regarding the process used to recruit and select candidates for career appointment to SES positions. Upon request, applicants must be told whether they were considered qualified for the position and whether they were referred for appointment consideration. Also, they may have access to questionnaires or other written material regarding their own qualifications, except for material that would identify a confidential source. There is no right of appeal by applicants to OPM on SES staffing actions taken by ERBs, Qualifications Review Boards, or appointing authorities.

§ 317.502 Qualifications Review Board certification.

(a) A Qualification Review Board (QRB) convened by OPM must certify the executive/managerial qualifications of a candidate before initial career appointment may be made to an SES position. More than one-half of the members of a QRB must be SES career appointees.

(b) Agency requests for certification of a candidate by a QRB must contain such information as prescribed by OPM, including evidence that merit staffing procedures were followed and that the appointing authority has certified the candidate's qualifications for the position. Requests must be received within the time period prescribed by OPM.

(c) QRB certification must be based on demonstrated executive experience; successful completion of an OPM-approved candidate development program; or possession of special or unique qualities that indicate a likelihood of executive success. A QRB certification is valid for 3 years from the date of certification.

(d) OPM may determine the disposition of agency QRB requests if the agency head leaves office before QRB action.

§ 317.503 Probationary period.

(a) An individual's initial appointment as an SES career appointee becomes final only after the individual has served a 1-year probationary period as a career appointee.

(b) The probationary period begins on the effective date of the personnel action initially appointing the individual to the SES as a career appointee and ends one calendar year later. Service as a probationer that is interrupted is creditable toward completion of the probationary period as prescribed by OPM.

(c) Removal of a career appointee during the probationary period is covered by subpart D of Part 359 of this chapter.

(d) A career appointee who resigns or is removed from the SES before completion of the probationary period may not receive another SES career appointment unless selected under SES merit staffing procedures. The individual, however, need not be recertified by a QRB within 3 years of the previous QRB certification, unless the individual was removed for performance or disciplinary reasons.

Subpart G—SES Career Appointment by Reinstatement

§ 317.701 Agency authority.

As provided for in §§ 317.702 and 317.703, an agency may reinstate a former SES career appointee without regard to the merit staffing requirements established by OPM in § 317.501(c).

§ 317.702 General reinstatement: SES career appointees.

(a) *Eligibility for general reinstatement.* A former SES career appointee who meets the following conditions is eligible for reinstatement under this section:

(1) The individual completed an SES probationary period under a previous SES career appointment or was exempted from that requirement; and

(2) The individual's separation from his or her last SES career apointment was not a removal under subpart E of Part 359 of this chapter for less than fully successful executive performance; or under 5 U.S.C. 1207 by order of the Merit Systems Protection Board as a result of a disciplinary action initiated by the Special Counsel under 5 U.S.C. 1206; or under 5 U.S.C. 7532 (National Security); or under subpart F of Part 752 of this chapter for misconduct, neglect of duty, or malfeasance; or a resignation after receipt of a notice proposing or directing removal under any of the above conditions. Removal for failure to accept a directed reassignment to another commuting area, or to accompany a position in a transfer of function to another commuting area, does not preclude reinstatement to the SES unless the appointment to the original position included acceptance of a written nationwide mobility agreement or policy.

(b) *Applying for reinstatement; time limit.* Application for reinstatement under this section shall be made directly to the agency in which SES employment is sought. There is no time limit for reinstatement under this section.

(c) *Qualifications.* The individual must meet the qualification requirements of the position to which reinstated. The agency makes this determination.

(d) *Tenure upon reinstatement.* An individual who is reinstated under § 317.702 becomes an SES career appointee.

§ 317.703 Guaranteed reinstatement: Presidential appointees.

(a) *Eligibility for reinstatement.* A former SES career appointee who was appointed by the President to a civil service position outside the SES without a break in service, and who left the Presidential appointment for reasons other than misconduct, neglect of duty, or malfeasance, is entitled by law to be reinstated to the SES.

(b) *Applying for reinstatement; time limit.* Except as provided in paragraph (d) of this section, an application in writing for reinstatement under this section must be made to OPM within 90 days after separation from the Presidential appointment. An application may be submitted as soon as the Presidential appointee's resignation is requested or submitted.

(c) *Directing reinstatement.* (1) To the extent practicable, OPM will direct reinstatement within 45 days of the date of receipt by OPM of the application for reinstatement or the date of separation from the Presidential appointment, whichever is later.

(2) OPM will use the following order of precedence in directing reinstatement of a former Presidential appointee:

(i) The agency in which the individual last served as an SES career appointee before accepting the Presidential appointment;

(ii) The successor agency to the one in which the individual last served as an SES career appointee;

(iii) The agency or agencies in which the individual served as a Presidential appointee; or

(iv) Any other agency in the Executive branch with positions under the SES.

(3) The agency being directed to take the reinstatement action is responsible for assigning the individual to a position for which he or she meets the qualifications requirements.

(4) When directing the reinstatement of a Presidential appointee, OPM may, as appropriate, allocate an additional SES space authority to the agency.

(5) When a Presidential appointee tenders his or her resignation, voluntarily or upon request, the agency in which the Presidential appointment was held, upon approval by OPM, may place the appointee as an interim measure on an SES limited term or limited emergency appointment as appropriate, pending reinstatement, to preclude a break in service after the Presidential appointment has terminated.

(6) To preserve reinstatement rights under this section, an individual who has been serving in a presidential appointment, if selected by the President for another appointment in the same or a new agency, must be reinstated to an appropriate position as an SES career appointee before the effective date of the new Presidential appointment, unless service as a Presidential appointee would be continuous.

(d) *Reinstatement following direct negotiations with an agency.* (1) A Presidential appointee who qualifies under paragraph (a) of this section may initiate direct negotiations with an agency regarding reinstatement under this section.

(2) An agency may voluntarily reinstate a former Presidential appointee without an order from OPM directing such action.

(3) The agency is responsible for assigning the individual to a position for which he or she meets the qualification requirements.

(4) Direct negotiations with an agency do not extend the time limit stated in paragraph (b) of this section for making application to OPM.

(5) OPM may, when appropriate and upon request by the agency, allocate an additional SES space authority to an agency that voluntarily reinstates a former Presidential appointee under this paragraph.

(6) An individual who is reinstated under this paragraph because of direct negotiations with an agency is not entitled to further assistance by OPM.

(e) *Tenure upon reinstatement.* (1) An individual reinstated under § 317.703 becomes an SES career appointee.

(2) An individual reinstated under § 317.703 who was serving an SES probationary period at the time of his or her Presidential appointment is required to complete the 1-year SES probationary period upon reinstatement.

(f) *Compliance.* (1) An agency must comply with an order to reinstate issued by OPM under this section as promptly as possible, but not more than 30 calendar days from the date of the order.

(2) The agency will notify OPM of a reinstatement action taken under this section within 5 workdays of the effective date of the reinstatement.

(3) An individual who declines a reinstatement ordered by OPM is not entitled to further placement assistance by OPM under this section.

Subpart I—Reassignments, Transfers, and Details

§ 317.901 Reassignments.

(a) In this section, "reassignment" means a permanent assignment to another SES position within the employing executive agency or military department. (See 5 U.S.C. 105 for a definition of "executive agency" and 5 U.S.C. 102 for a definition of "military department.")

(b) A career appointee may be reassigned to any SES position for which qualified in accordance with the following conditions:

(1) *Reassignment within a commuting area.* For reassignment within a commuting area, the appointee must receive a written notice at least 15 days before the effective date of the reassignment. This notice requirement may be waived only when the appointee consents in writing.

(2) *Reassignment outside of a commuting area.* For reassignment outside of a commuting area, (i) the agency must consult with the appointee on the reasons for, and the appointee's preferences with respect to, the proposed reassignment; and (ii) following such consultation, the agency must provide the appointee a written notice, including the reasons for the reassignment, at least 60 days before the effective date of the reassignment. This notice requirement may be waived only when the appointee consents in writing.

(c) A career appointee may not be involuntarily reassigned within 120 days after the appointment of the head of an agency, or within 120 days after the appointment of the career appointee's most immediate supervisor who is a noncareer appointee and who has the authority to take the reassignment action.

(1) In this paragraph—

(i) "Head of an agency" means the head of an executive or military department or the head of an independent establishment.

(ii) "Noncareer appointee" includes an SES noncareer or limited appointee, an appointee in a position filled by Schedule C or noncareer executive assignment, or an appointee in an Executive Schedule or equivalent position that is not required to be filled competitively.

(2) These restrictions are not applicable to a reassignment resulting from an unsatisfactory performance rating under 5 U.S.C. 4314(b)(3) that was issued before the appointment of the person taking the reassignment action.

(3) A voluntary reassignment during the 120-day period is permitted, but the appointee must agree in writing before the reassignment.

§ 317.902 Transfers.

(a) *Definition.* In this section, "transfer" means a permanent assignment or appointment to another SES position in a different executive agency or military department.

(b) *Requirements.* Transfers are voluntary and cannot occur without the consent of the appointee and the gaining agency, except transfers connected with a transfer of functions to another agency.

§ 317.903 Details.

(a) *Definition.* In this section, "detail" means the temporary assignment of an SES member to another position (within or outside of the SES) or the temporary assignment of a non-SES member to an SES position, with the expectation that the employee will return to the official position of record upon expiration of the detail. For purposes of pay and benefits, the employee continues to encumber the position from which detailed. The provisions of this section cover details within or outside of the employing agency.

(b) *Time limits.*

(1) Details within an executive agency or military department must be made in no more than 120-day increments.

(2) OPM may set limits on the total length of details that may be made without prior OPM approval and on the length of details from outside the SES that may be made without competition.

(c) *SES career reserved positions.* Only a career SES appointee or a career-type non-SES appointee may be detailed to a career reserved position.

(d) *SES general positions.* Any SES appointee or non-SES appointee may be detailed to a general position.

§ 317.904 Change in type of SES appointment.

An agency may not require a career SES appointee to accept a noncareer or limited SES appointment as a condition of appointment to another SES position. If a career appointee elects to accept a noncareer or limited appointment, the voluntary nature of the action must be documented in writing before the effective date of the new appointment. A copy of such documentation must be retained permanently in the appointee's Official Personnel Folder.

Subpart J—Corrective Action

§ 317.1001 OPM authority for corrective action.

If OPM finds that an agency has taken an action contrary to law or regulation under this part, it may require the agency to take appropriate corrective action.

[FR Doc. 89-5285 Filed 3-7-89; 8:45 am]

BILLING CODE 6325-01-M

---

5 CFR Part 339

Medical Qualification Determinations

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations governing medical qualification determinations to allow agencies greater flexibility in setting appropriate medical standards and requirements without OPM approval, and to ensure treatment of applicants and employees consistent with Federal law and policy requiring nondiscrimination and affirmative action in Federal employment of individuals with handicaps. These regulations are being issued together with a comprehensive revision of chapter 339 of the Federal Personnel Manual (FPM).

EFFECTIVE DATE: April 7, 1989.

FOR FURTHER INFORMATION CONTACT: Raleigh M. Neville, (202) 632-6817.

SUPPLEMENTARY INFORMATION: On March 21, 1988, OPM published (at 53 FR 9121) proposed regulations to amend 5 CFR Part 339 governing medical qualification determinations. At the same time, the corresponding FPM chapter was sent to agencies, unions, and professional organizations for comment, and was made available to the general public. We received comments from 28 agencies, 7 professional organizations, 3 unions and 1 individual. Key aspects of the final regulations are summarized below, followed by a discussion of the more significant comments received on both the regulations and the FPM, as well as OPM's responses.

Key Provisions of the Final Regulations

1. Delegate to agencies authority to establish medical standards for occupations that predominate in one agency (i.e., a single agency standard), as well as authority to establish appropriate physical requirements for individual positions in accordance with OPM-prescribed criteria. (5 CFR 339.202 and 203)

2. Clarify the authority for agencies to establish medical evaluation programs necessary for safeguarding employee health. (5 CFR 339.205)

3. Clarify an agency's authority to require medical examinations for employees occupying positions subject to medical standards, medical evaluation programs, or physical requirements. (5 CFR 339.301)

4. Allow agencies specific authority to examine employees injured on the job, but only for the purpose of determining employees' qualifications for reemployment, not for entitlement to compensation. (5 CFR 339.301)

5. Clarify that routine pre-appointment examinations are not allowed for positions that are not subject to specific medical standards, physical requirements, or a medical evaluation program (in other words, where health status is not an important component of a position, there is no authority to require a medical examination). (5 CFR 339.301)

6. Establish that agencies have the right to designate the examining physician when they order or offer an examination. (5 CFR 339.303)

7. Allow the agency to order psychiatric examinations (or psychological assessments) when specifically required by medical standards or a medical evaluation program, or when a general medical examination which the agency is otherwise authorized to order under these regulations rules out of physical cause to explain actions or behavior causing performance or conduct problems on the job. The examinations may be performed by a licensed practitioner authorized to conduct such examinations, in accordance with accepted professional standards. (5 CFR 339.301)

8. Clarify that the agency pays for all examinations that it orders or offers. The employee pays for all other examinations. (5 CFR 339.304)

9. Provide a regulatory basis for the existing agency authority to disqualify nonpreference eligibles for medical reasons, and for OPM review of the medical disqualification of 30 percent or more compensably disabled veterans by the U.S. Postal Service. Require agencies to provide a higher level review within the organization for medically disqualified nonveterans. (5 CFR 339.306)

10. Provide that all actions under this regulation must comply with Rehabilitation Act requirements and EEOC regulations governing the employment of individuals with handicaps. (5 CFR 339.103)

Comments Received and OPM Response

Relationship to Drug Testing Program

Comment: One agency asked that the relationship between these regulations and Executive Order 12564, "Federal Drug Free Workforce," be clarified.

Response: We have clarified the relationship in the FPM.

Coverage

Comment: One agency asked that we make it clear that these regulations do not restrict an agency from conducting, under independent authority, medical examinations to determine an individual's eligibility for a security clearance.

Response: OPM recognizes that certain laws or executive orders may authorize an agency to conduct medical examinations as part of its security program and the regulations do not intend to preclude such actions. However, OPM sees no reason to amend the regulations based on this agency's comment. Agencies that believe they have independent authority to conduct medical examinations under their security clearance programs are in the best position to make and defend such determinations.

Establishing Physical Requirements

Comment: Several agencies questioned the provision that physical requirements be approved by agency headquarters, citing the burden this would impose, particularly on large agencies with a wide range of jobs having physical requirements.

Response: Upon further review, we agree this could prove burdensome. We have therefore changed this provision in the chapter to provide for periodic

review by agency headquarters of physical requirements established by individual components. This should be sufficient to ensure consistency and fairness.

Establishing Medical Standards

Comment: One agency and a union questioned the criterion of a "reasonable relationship" between a medical standard and the duties of the job as being too loose, and not consistent with the criteria for establishing physical requirements.

Response: We have amended this section to require a "direct relationship" to the actual requirements of the position.

Comment: One agency and a union believed medical standards should only be established by OPM.

Response: Consistent with the Administration's policy of delegating maximum operating authority to individual agencies, OPM has allowed agencies to establish selective factors, according to their own individual needs, which have the effect of amending the qualification standards for a position. This has worked well. Allowing agencies to establish modified medical standards in accordance with OPM-prescribed requirements is a logical extension of this authority. However, we plan to monitor agency use of this authority carefully.

Medical Evaluation Programs

Comment: One agency recommended that medical evaluation programs be authorized only for jobs that expose employees to significant health hazards. Where the purpose of the medical examination is to detect impairments that could interfere with an individual's performance on the job (rather than injuries to the employee's health *caused* by the job), the agency suggested that the position should be covered by "medical standards" rather than a "medical evaluation program."

Response: We generally agree and have revised this section accordingly. However, the nature of the job could pose a risk to others (for example, hospital workers who may have an infectious disease), so there is a need to allow examinations not only because of potential injury to the employee, but to others as well.

Comment: One agency suggested we make clear that the authority to establish medical evaluation programs includes immunization programs for certain health care workers.

Response: We have clarified this as suggested.

Comment: One union commented that the proposed standard for allowing a medical evaluation program was too broad.

Response: We have tightened the criteria by providing that the need for a medical evaluation program must be clearly supported by the nature of the position.

Medical Examinations

Comment: One union commented that when an agency orders or offers an examination, the employee must be allowed to choose the doctor to protect privacy interests.

Response: OPM believes it is appropriate for the agency to designate the physician—both when it orders an examination (given that the employee must also be given an opportunity to submit additional information from his or her own physician), and when the agency offers (and pays for) the examination. The agency may, of course, decide to designate the employee's physician. However, since the employee has ample opportunity to submit additional information, and since the agency has a reasonable interest in controlling the source of the information in those circumstances where an agency-ordered or offered examination is appropriate, no change in the proposed regulations is warranted. It is important to emphasize, in this context, that the regulations do not contemplate that personnel management decisions would be made by the physician, be it an employee or agency-identified physician. The deciding official is a supervisor or manager who uses available medical information from any source as one component influencing his or her decision. Finally, privacy is not the issue here, because any medical information obtained by the agency—whether from the individual's own doctor or from an agency-designated physician—is subject to the same Privacy Act requirements.

Comment: One union expressed concern about a change in the existing regulations which would allow an agency to refer an employee for psychiatric evaluation rather than requiring that such exams be ordered by a physician. It believed this might allow a supervisor to refer an employee for a psychiatric examination because of harmless, idiosyncratic behavior. The union also asked that this provision be tightened to allow such examinations only when the employee fails to perform "in a safe and efficient manner" rather than when there are "performance or conduct problems," as proposed.

Response: We have tightened the language as suggested by the union. If any event, this change would not permit an employee to be referred for a psychiatric evaluation because of harmless, idiosyncratic behavior. Before any employee can be referred for a psychiatric evaluation, two factors must be present:

1. The employee's performance or conduct must be such that it may affect safe and efficient performance, *and*

2. A general medical examination which *the agency has the authority to order under these regulations* does not indicate a physical explanation for the performance or conduct problems. Since in this context the general medical examination would leave unanswered from a *physical* standpoint the reason for the performance or conduct deficiencies, the examining physician in effect would be recommending that a psychiatric examination is indicated. The agency, then, using the results of the general medical examination along with its own day-to-day knowledge of the employee, is authorized under the regulations to order a psychiatric examination.

Comment: One union also advocated that OPM set detailed and strictly confined guidelines for the permissible scope of required examinations and limit medical inquiries to those areas that have been specifically pinpointed as posing a problem.

Response: OPM and EEOC regulations already restrict the basis on which an agency can make any inquiry into a individual's medical status to those issues which are directly related to safe and efficient performance. We have, nevertheless, included a specific reminder in the FPM that agencies may not request medical information which is not pertinent to the decision at hand.

Comment: A professional association urged that only board certified psychiatrists, not psychologists, be allowed to conduct mental status examinations, primarily out of concern for proper diagnosis and treatment.

Response: Psychologists are licensed by all 50 states and the District of Columbia to provide a wide range of mental health services, including psychological testing, evaluation, and treatment. They can testify in court as to a person's mental competence. The purpose of these regulations is simply to allow mental health professionals (psychologists and psychiatrists) to conduct general screening to determine a person's qualifications for employment; it is typically not to prescribe a treatment regimen. Such examinations are well within the psychologist's professional qualifications and licensure requirements.

Payment for Examinations

Comment: Several agencies wanted the flexibility to require applicants to pay for their own pre-employment examinations, citing the financial burden that a requirement to pay for these examinations would impose. On the other hand, one union insisted that the agency should pay for all examinations by a non-agency doctor, even those where the employee chooses the physician in lieu of being examined by the agency's physician.

Response: Given the conflicting views about who should pay for a medical examination and when, the many and varied situations in which an examination might be indicated, and the concern that candidates may be required to undergo expensive pre-employment medical examinations even when they are not under serious consideration for a position, we believe the most appropriate and clearest approach is to require the agency to pay when it orders or offers the examination, and to require the employee to pay when the employee seeks a specific benefit or accommodation. (This is also the current policy.)

Medical Documentation

Comment: One union suggested that the scope of medical documentation required under these regulations should be specifically limited to items that directly affect safe and efficient performance.

Response: The definition of medical documentation in the proposed regulations was unchanged from the definition in the current regulations—and the clear intent was alway to limit medical documentation to material which was "relevant and necessary" to make personnel determinations under this title. To ensure that there is no misunderstanding on this point, we have included a clarifying statement to this effect in the FPM.

Comment: One union strongly opposed the provision allowing agencies to require medical documentation (under penalty of disciplinary action for refusal) whenever there is evidence of a health problem which may affect safe and efficient performance. The union believed this amounted to requiring the employee to prove he or she was medically qualified, and would be subject to abuse by allowing an agency to remove an employee without having to prove the individual's performance or conduct was unsatisfactory.

Response: This authority was intended to allow agencies to directly address questions about an employee's health status where safe and efficient performance was at issue, without having to take disciplinary action based on performance or conduct. However, upon further consideration, we are persuaded that the current regulatory framework, which places the burden on employees to come forward with medical information if they wish agencies to consider a medical condition in connection with agency actions based on performance or conduct, is the preferable way of resolving these issues. We have therefore deleted this provision. When health status is believed to be an issue, an agency can still *offer* an employee the opportunity to resolve it through submission of medical documentation or by examination with an agency physician.

E.O. 12291, Federal Regulation

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

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only Federal employees.

List of Subjects in 5 CFR Part 339

Civil rights, Government employees, Handicapped, Health.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is revising Part 339 of Title 5, Code of Federal Regulations, as follows:

PART 339—MEDICAL QUALIFICATION DETERMINATIONS

Subpart A—General

Sec.
339.101 Coverage.
339.102 Purpose and effect.
339.103 Compliance with EEOC regulations.
339.104 Definitions.

Subpart B—Physical and Medical Qualifications

339.201 Disqualification by OPM.
339.202 Medical standards.
339.203 Physical requirements.
339.204 Waiver of standards and requirements.
339.205 Medical evaluation programs.
339.206 Disqualification on the basis of medical history.

Subpart C—Medical Examinations

339.301 Authority to require an examination.
339.302 Authority to offer examinations.
339.303 Examination procedures.
339.304 Payment for examination.
339.305 Records and reports.
339.306 Processing medical eligibility determinations on certificates of eligibles.

Authority: 5 U.S.C. 3301, 3302, 5112; E.O. 9830, February 24, 1947.

Subpart A—General

§ 339.101 Coverage.

This part applies to all applicants for and employees in competitive service positions; and to excepted service employees when medical issues arise in connection with an OPM regulation which governs a particular personnel decision, for example, removal of a preference eligible employee in the excepted service under Part 752.

§ 339.102 Purpose and effect.

(a) This part defines the circumstances under which medical documentation may be acquired and examinations and evaluations conducted to determine the nature of a medical condition which may affect safe and efficient performance.

(b) Personnel decisions based wholly or in part on the review of medical documentation and the results of medical examinations and evaluations shall be made in accordance with appropriate parts of this title and corresponding Federal Personnel Manual instructions.

(c) Failure to meet a properly established medical standard or physical requirement under this part means that the individual is not qualified for the position unless a waiver or reasonable accommodation is indicated, as described in §§ 339.103 and 339.204. An employee's refusal to be examined in accordance with a proper agency order authorized under this part is grounds for appropriate disciplinary or adverse action.

§ 339.103 Compliance with EEOC regulations.

Actions under this part must be consistent with 29 CFR 1613. 701 *et seq.* Particularly relevant to medical qualification determinations are § 1613.704 (requiring reasonable accommodation of individuals with handicaps); § 1613.705 (prohibiting use of employment criteria that screen out individuals with handicaps unless shown to be related to the job in question) and § 1614.706 (prohibiting pre-employment inquiries related to handicap and pre-employment medical examinations, except under specified circumstances). In addition, use of the term "qualified" in these regulations shall be interpreted consistently with

§ 1613.702(f), which provides that a "qualified handicapped person" is a handicapped person "who, with or without reasonable accommodation, can perform the essential functions of the position in question without endangering the health and safety of the individual or others."

§ 339.104 Definitions.

For purposes of this part—

"Accommodation" means "reasonable accommodation" as described in 29 CFR 1613.704.

"Arduous of hazardous positions" means positions that are dangerous or physically demanding to such a degree that an incumbent's medical condition is necessarily an important consideration in determining ability to perform safely and efficiently.

"Medical condition" means health impairment which results from injury or disease, including psychiatric disease.

"Medical documentation" or "documentation of a medical condition" means a statement from a licensed physician or oher appropriate practitioner which provides information the agency considers necessary to enable it to make a employment decision. To be acceptable, the diagnosis or clinical impression must be justified according to established diagnostic criteria and the conclusions and recommendations must not be inconsistent with generally accepted professional standards. The determination that the diagnosis meets these criteria is made by or in coordination with a physician or, if appropriate, a practitioner of the same discipline as the one who issued the statement. An acceptable diagnosis must include the following information, or parts identified by the agency as necessary and relevant:

(a) The history of the medical conditions, including references to findings from previous examinations, treatment, and responses to treatment;

(b) Clinical findings from the most recent medical evaluation, including any of the following which have been obtained: findings of physical examination; results of laboratory tests; X-rays; EKG's and other special evaluations or diagnostic procedures; and, in the case of psychiatric evaluation of psychological assessment, the findings of a mental status examination and the results of psychological tests, if appropriate;

(c) Diagnosis, including the current clinical status;

(d) Prognosis, including plans for future treatment and an estimate of the expected date of full or partial recovery;

(e) An explanation of the impact of the medical condition on overall health and activities, including the basis for any conclusion that restrictions or accommodations are or are not warranted, and where they are warranted, an explanation of their therapeutic of risk avoiding value;

(f) An explanation of the medical basis for any conclusion which indicates the likelihood that the individual is or is not expected to suffer sudden or subtle incapacitation by carrying out, with or without accommodation, the tasks or duties of a specific position;

(g) Narrative explanation of the medical basis for any conclusion that the medical condition has or has not become static or well stabilized and the likelihood that the individual may experience sudden or subtle incapacitation as a result of the medical condition. In this context, "static or well-stabilized medical condition" means a medical condition which is not likely to change as a consequence of the natural progression of the condition, specifically as a result of the normal aging process, or in response to the work environment or the work itself. "Subtle incapacitation" means gradual, initially imperceptible impairment of physical or mental function whether reversible or not which is likely to result in performance or conduct deficiencies. "Sudden incapacitation" means abrupt onset of loss of control of physical or mental function.

"Medical evaluation program" means a program of recurring medical examinations or tests established by written agency policy or directive, to safeguard the health of employees whose work may subject them or others to significant health or safety risks due to occupational or environmental exposure or demands.

"Medical standard" is a written description of the medical requirements for a *particular occupation* based on a determination that a certian level of fitness of health status is required for successful performance.

"Physical requirement" is a written description of job-related physical abilities which are normally considered essential for successful performance in a *specific position*.

"Physician" means a licensed Doctor of Medicine or Doctor of Osteopathy, or a physician who is serving on active duty in the uniformed services and is designated by the uniformed service to conduct examinations under this part.

"Practitioner" means a person providing health services who is not a medical doctor, but who is certified by a national organization and licensed by a State to provide the service in question.

Subpart B—Physical and Medical Qualifications

§ 339.201 Disqualification by OPM.

Subject to Subpart C of Part 731 of this chapter, OPM may deny an applicant examination, deny an eligible appointment, and instruct an agency to remove an appointee by reason of physical or mental unfitness for the position for which he or she has applied, or to which he or she has been appointed. An OPM decision under this section is separate and distinct from a determination of disability under § 831.502, 844.103, 844.202, or Subpart L of Part 831 of this title, and does not necessarily entitle the employee to disability retirement under sections 8337 or 8451 of title 5, United States Code.

§ 339.202 Medical standards.

OPM may establish or approve medical standards for a Governmentwide occupation (i.e., an occupation common to more than one agency). An agency may establish medical standards for positions that predominate in that agency (i.e., where the agency has 50 percent or more of the positions in a particular occupation). Such standards must be justified on the basis that the duties of the position are arduous or hazardous, or require a certain level of health status or fitness because the nature of the positions involve a high degree of responsibility toward the public or sensitive national security concerns. The rationale for establishing the standard must be documented. Standards established by OPM or an agency must be:

(a) Established by written directive and uniformly applied,

(b) Directly related to the actual requirements of the position, and

(c) Consistent with OPM instructions published in FPM chapter 339.

§ 339.203 Physical requirements.

Agencies are authorized to establish physical requirements for individual positions without OPM approval when such requirements are considered essential for successful job performance. The requirements must be clearly supported by the actual duties of the position and documented in the position description.

§ 339.204 Waiver of standards and requirements.

Agencies must waive a medical standard or physical requirement established under this part when there is sufficient evidence that an applicant or employee, with or without reasonable accommodation, can perform the essential duties of the position without

endangering the health and safety of the individual or others.

§ 339.205 Medical evaluation programs.

Agencies may establish periodic examination or immunization programs by written policies or directives to safeguard the health of employees whose work may subject them or others to significant health or safety risks due to occupational or environmental exposure or demands. The need for a medical evaluation program must be clearly supported by the nature of the work. The specific positions covered must be identified and the applicants or incumbents notified in writing of the reasons for including the positions in the program.

§ 339.206 Disqualification on the basis of medical history.

A candidate may not be disqualified for any position solely on the basis of medical history. For positions with medical standards or physical requirements, or positions subject to medical evaluation programs, a history of a particular medical problem may result in medical disqualification only if the condition at issue is itself disqualifying, recurrence cannot medically be ruled out, and the duties of the position are such that a recurrence would pose a reasonable probability of substantial harm.

Subpart C—Medical Examinations

§ 339.301 Authority to require an examination.

(a) A routine preappointment examination is appropriate only for a position which has specific medical standards, physical requirements, or is covered by a medical evaluation program established under these regulations.

(b) Subject to § 339.103 of this part, an agency may require an individual who has applied for or occupies a position which has medical standards or physical requirements or which is part of an established medical evaluation program, to report for a medical examination:

(1) Prior to appointment or selection (including reemployment on the basis of full or partial recovery from a medical condition);

(2) On a regularly recurring, periodic basis after appointment; or

(3) Whenever there is a direct question about an employee's continued capacity to meet the physical or medical requirements of a position.

(c) An agency may require an employee who has applied for or is receiving continuation of pay or compensation as a result of an on-the-job injury or disease to report for an examination to determine medical limitations that may affect placement decisions.

(d) An agency may require an employee who is released from his or her competitive level in a reduction in force to undergo a relevant medical evaluation if the position to which the employee has reassignment rights has medical standards or specific physical requirements which are different from those required in the employee's current position.

(e)(1) An agency may order a psychiatric examination (including a psychological assessment) only when:

(i) The result of a current general medical examination which the agency has the authority to order under this section indicates no physical explanation for behavior or actions which may affect the safe and efficient performance of the individual or others, or

(ii) A phychiatric examination is specifically called for in a position having medical standards or subject to a medical evaluation program established under this part.

(2) A psychiatric examination or psychological assessment authorized under (i) or (ii) above must be conducted in accordance with accepted professional standards, by a licensed practitioner or physician authorized to conduct such examinations, and may only be used to make legitimate inquiry into a person's mental fitness to successfully perform the duties of his or her position without undue hazard to the individual or others.

§ 339.302 Authority to offer examinations.

An agency may, at its option, offer a medical examination (including a psychiatric evaluation) in any situation where the agency needs additional medical documentation to make an informed management decision. This may include situations where an individual requests for medical reasons a change in duty status, assignment, working conditions, or any other benefit or special treatment (including reasonable accommodation or reemployment on the basis of full or partial recovery from a medical condition) or where the individual has a performance or conduct problem which may require agency action. Reasons for offering an examination must be documented. An offer of an examination shall be carried out and used in accordance with 29 CFR 1613.706.

§ 339.303 Examination procedures.

(a) When an agency orders or offers a medical examination under this subpart, it must inform the applicant or employee in writing of its reasons for doing so and the consequences of failure to cooperate. (A single notification is sufficient to cover a series of regularly recurring or periodic examinations ordered under this subpart.)

(b) The agency designates the examining physician or other appropriate practitioner, but must offer the individual an opportunity to submit medical documentation from his or her personal physician or practitioner. The agency must review and consider all such documentation supplied by the individual's personal physician or practitioner.

§ 339.304 Payment for examination.

Agencies shall pay for all examinations ordered or offered under this subpart, whether conducted by the agency's physician or the applicant's or employee's physician. Applicants and employees must pay for a medical examination conducted by a private physician (or practitioner) where the purpose of the examination is to secure a benefit sought by the applicant or employee.

§ 339.305 Records and reports.

(a) Agencies will receive and maintain all medical documentation and records of examinations obtained under this part in accordance with instructions provided by OPM, under provisions of 5 CFR Part 293, Subpart E.

(b) The report of an examination conducted under this subpart must be made available to the applicant or employee under the provisions of Part 297 of this chapter.

(c) Agencies must forward to the Office of Workers' Compensation Programs (OWCP), Department of Labor, a copy of all medical documentation and reports of examinations of individuals who are receiving or have applied for injury compensation benefits including continuation of pay. The agency must also report to the OWCP the failure of such individuals to report for examinations that the agency orders under this subpart. When the individual has applied for disability retirement, this information must be forwarded to OPM.

§ 339.306 Processing medical eligibility determinations on certificates of eligibles.

(a) In accordance with the provisions of this part, agencies are authorized to medically disqualify a nonpreference eligible. A nonpreference eligible so disqualified has a right to a higher level review of the determination within the agency.

(b) OPM must approve the sufficiency of the agency's reasons to:

(1) Medically disqualify or pass over a preference eligible on a certificate in place of a nonpreference eligible,

(2) Medically disqualify or pass over a 30 percent or more compensably disabled veteran for a position in the U.S. Postal Service in favor of a nonpreference eligible,

(3) Medically disqualify a 30 percent or more compensably disabled veteran for assignment to another position in a reduction in force, or

(4) Medically disqualify a 30 percent or more disabled veteran for noncompetitive appointment.

[FR Doc. 89-5286 Filed 3-7-89; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. No. 24; Doc. No. 6558S]

General Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby adopts, as a final rule, an interim rule which was published in the Federal Register on Tuesday, May 10, 1988, at 53 FR 16539. The interim rule clarified the intent of FCIC with respect to not insuring any acreage upon which a second crop is harvested within the same crop year. The intent of this rule is to remove a perceived restriction in some areas of the country in which two different crops are harvested from the same acreage during the same crop year as a normal practice, yet because of the language in the policy, procedures infer that a restriction is imposed on insurance for the second crop.

EFFECTIVE DATE: March 8, 1989.

ADDRESS: Written comments on this rule may be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as July 1, 1991.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This 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.

This action is not expected to have any significant impact on the quality of the human environmental, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Tuesday, May 10, 1988, FCIC published an interim rule in the Federal Register at 53 FR 16539, to remove a perceived restriction in some areas of the country in which two different crops are harvested from the same acreage during the same crop year as a normal practice, yet because of the language in the policy, producers infer that a restriction is imposed on insurance for the second crop.

Section 2.e.(9) of the General Crop Insurance Policy (7 CFR 401.8.2.e.(9)) provides that FCIC will not insure any acreage * * * "(O)f a second crop following any crop (insured or uninsured) harvested in the same crop year unless specifically permitted by the crop endorsement or the actuarial table."

The intent of this section was to disallow insurance on a second crop of the same crop from the same acreage within the same crop year because of lowered yields and other problems inherent in this type of farming, unless that practice was specifically permitted by the endorsement or the actuarial table. This type of double cropping is allowed on a limited number of certain crops.

The language in this section is perceived by some as not permitting (for example) grain sorghum following wheat on the same acreage in the same crop year, when this type of farming is an accepted and successful practice in the county. However, it is an accepted practice in certain sections of the country for a producer to plant two different crops on the same acreage within the same crop year especially in those areas where fall-planted crops are customary.

In order to clarify this section, FCIC has determined that the word "any" in the first line of this section should be removed and the words "the same" should be substituted therefor. This constituted the only change necessary.

Written comments on the interim rule were solicited by FCIC for 60 days following publication of this rule in the Federal Register, and the rule was scheduled for review. No comments were received, therefore, the interim rule published at 53 FR 16539 is hereby adopted without change as a final rule.

List of Subjects in 7 CFR Part 400

Crop insurance; General crop insurance regulations.

Final Rule

Accordingly, the Interim Rule published in the Federal Register on Tuesday, May 10, 1988, at 53 FR 16539, is hereby adopted as final without change.

Authority: 7 U.S.C. 1506, 1516.

Done in Washington, DC on February 28, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-5318 Filed 3-7-89; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 985

[FV-89-001FR]

Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 1989-90 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes the quantity of spearmint oil produced in the Far West, by class, that may be purchased from or handled for producers by handlers during the 1989–90 marketing year, which begins June 1, 1989. This action is taken under the marketing order for spearmint oil produced in the Far West in order to avoid extreme fluctuations in supplies and prices and thus stabilize the market for spearmint oil. This action was recommended by the Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the order.

EFFECTIVE DATE: April 7, 1989.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 985, as amended [7 CFR Part 985], regulating the handling of spearmint oil produced in the Far West. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

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 business 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.

The Far West spearmint oil industry is characterized by primarily small producers whose farming operations generally involve more than one commodity and whose income from farming operations is not exclusively dependent on the production of spearmint oil. The production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered under the marketing order). Spearmint oil is also produced in the Midwest and Great Plains. The production area covered by the marketing order normally accounts for more than 75 percent of U.S. production of spearmint oil.

The Committee reports that there are approximately 9 handlers and 253 producers of spearmint oil under the marketing order for spearmint oil produced in the Far West. Of the 253 producers, 160 producers hold "Class 1" (Scotch) oil allotment base and 136 producers hold "Class 3" (Native) oil allotment base. As of June 1, 1988, the producers' allotment base ranged from 667 to 181,902 pounds for Scotch oil and from 290 to 124,346 pounds for Native oil. The average total allotment base held is 10,413 pounds and 13,539 pounds for Scotch and Native oils, respectively.

Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.1) as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of Far West spearmint oil producers and handlers may be classified as small entities.

The final rule will establish salable quantities of 706,742 pounds and 781,092 pounds, respectively, for Scotch and Native spearmint oils produced in the Far West, and allotment percentages of 42 percent for both oils. This action will limit the amount of spearmint oil that may be purchased from or handled for producers, by handlers, during the 1989–90 marketing year, which begins June 1, 1989. Such salable quantities and allotment percentages have been placed into effect each season since the order's inception in 1980. The establishment of salable quantities and allotment percentages will likely result in the production of less than half of the total allotment base available for production of spearmint oil. However, the amounts recommended for sale are based on average sales levels over the past seven years, and are not expected to cause a shortage of spearmint oil supplies. Any unanticipated or additional market needs which may develop can be more than satisfied by current reserve stocks. In addition, those producers who produce more than their annual percentage of allotment may transfer such excess spearmint oil to a producer with a deficiency in spearmint oil production, or such excess spearmint oil may be placed into reserve stocks.

This regulation is similar to those which have been issued in prior seasons. Costs to producers and handlers resulting from this proposed action are expected to be offset by the benefits derived from improved returns.

The salable quantities and allotment percentages were recommended by the Committee at its September 21, 1988, meeting.

The salable quantity and allotment percentage for each class of spearmint oil for the 1989–90 marketing year, which begins June 1, 1989, is based upon recommendations of the Committee and the following data and estimates:

(1) "Class 1" (Scotch) Spearmint Oil

(A) Estimated carryin on June 1, 1989—16,892 pounds.

(B) Estimated trade demand (domestic and export) for the 1989–90 marketing year, based on an average of producer sales for the past seven marketing years, beginning with the 1980–81 marketing year through the 1986–87 marketing year (minus 23,419 pounds) [1]—718,000 pounds.

(C) Recommended desirable carryout on May 31, 1990—0 pounds.

(D) Salable quantity required from 1989 regulated production [2]—701,108 pounds.

(E) Total allotment bases for Scotch oil—1,682,719 pounds.

(F) Computed allotment percentage—41.6 percent.

(G) The Committee's recommended salable quantity—706,742 pounds.

(H) Recommended allotment percentage—42 percent.

(2) "Class 3" (Native) Spearmint Oil

(A) Estimated carryin on June 1, 1989—40,000 pounds.

(B) Estimated trade demand (domestic and export) for the 1989–90 marketing year, based on an average of producer sales for the past seven marketing years, beginning with the 1980–81 marketing year through the 1986–87 marketing year (minus 50,000 pounds [3])—818,266 pounds.

[1] The seven year average of sales was 741,419 pounds. The high years average approximately 50,000 pounds above the seven year average and the low years average approximately 50,000 pounds below the seven year average. Taking into consideration the cyclical demand for Scotch spearmint oil over the past years, the Committee determined that it was appropriate to reduce the estimated trade demand for the 1989–90 marketing year by 23,419 pounds.

[2] In past years, the Committee has considered production of 100,000 pounds from South Dakota in its computation of the Scotch salable quantity. However, this year, the Committee has determined that the South Dakota production does not directly affect the marketing of Far West Scotch spearmint oil. Therefore, South Dakota production was not included in the computation of trade demand and salable quantity.

[3] The seven year average sales was 868,266 pounds. The 1987–88 level of 745,777 pounds was

Continued

(C) Recommended desirable carryout on May 31, 1989—0 pounds.

(D) Salable quantity required from 1989 production—776,269 pounds.

(E) Total allotment bases for Native oil—1,859,743 pounds.

(F) Computed allotment percentage—41.8 percent.

(G) The Committee's recommended salable quantity—781,992 pounds.

(H) Recommended allotment percentage—42 percent.

The salable quantity is the total quantity of each class of oil which handlers may purchase from or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil. Pursuant to the order, the Committee may issue additional allotment base to both new and existing producers for each marketing year (17 CFR 985.51(b)).

Establishment of these salable quantities and allotment percentages will allow for anticipated market needs based on historical sales and provides spearmint oil producers with information on the amount of oil which should be produced for next season. Spearmint oil has an extremely inelastic demand and excess production normally is placed into the industry's reserves. Current reserves are equal to about 35 percent of the volume of Scotch spearmint oil and 110 percent of the volume of Native spearmint oil utilized by the market on a yearly basis. These reserve stocks are sufficient to meet any unanticipated marketing opportunities in the coming season.

This action establishes a new § 985.209 and is based on recommendations of the Committee and other information. Notice of a proposal to establish the salable quantity and allotment percentage for each class of oil was published in the December 30, 1988, issue of the Federal Register [53 FR 53001]. Comments on the proposed rule were solicited from interested persons until January 30, 1989. No comments were received. The salable quantities and allotment percentages established by this final rule are identical to those contained in the proposed rule.

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

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

List of Subjects in 7 CFR Part 985

Far west, Marketing agreements and orders, and Spearmint oil.

For the reasons set forth in the preamble, 7 CFR Part 985 is amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR Part 985 continues to read as follows:

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

2. Add a new § 985.209 under Subpart—Salable Quantities and Allotment Percentages to read as follows:

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

Subpart—Salable Quantities and Allotment Percentages

§ 985.209 Salable quantities and allotment percentages—1989–90 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year which begins June 1, 1989, shall be as follows:

(a) "Class 1" (Scotch) oil—a salable quantity of 708,742 pounds and an allotment percentage of 42 percent.

(b) "Class 3" (Native) oil—a salable quantity of 781,092 pounds and an allotment percentage of 42 percent.

Dated: March 3, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–5306 Filed 3–7–89; 8:45 am]

BILLING CODE 3410-02-M

below the seven year average and could be followed by another low year. Actual movement to date has not been at more than average levels. Based on this, the Committee used a seven year average but reduced this average by 50,000 pounds.

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 88–153]

Importation of Animals Through the Harry S Truman Animal Import Center; Special Use by the Agricultural Research Service During 1989

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that granted to the Agricultural Research Service of the United States Department of Agriculture the exclusive right to use the Harry S Truman Animal Import Center (HSTAIC) for an importation during calendar year 1989. This action enables the Agricultural Research Service to complete negotiations with officials in the People's Republic of China, and to proceed with the singular opportunity to import swine from that country in a project that should improve the germplasm of breeding animals in the United States, eventually improving the productivity and international competitiveness of U.S. swine.

EFFECTIVE DATE: April 7, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. Harvey A. Kryder, Senior Staff Veterinarian, Import-Export Products Staff, Veterinary Services, APHIS, USDA, Room 840, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8695.

SUPPLEMENTARY INFORMATION:

Background

On July 25, 1988, we published in the Federal Register (53 FR 27846–27847, Docket Number 88–107) an interim rule that amended the regulations in 9 CFR Part 92, § 92.41, by granting the Agricultural Research Service (ARS) of the United States Department of Agriculture the exclusive right to use the Harry S Truman Animal Import Center (HSTAIC) for an importation of swine from the People's Republic of China during calendar year 1989. We took that action to enable ARS to capitalize on a singular opportunity to proceed with a swine-importation project expected to improve the germplasm of breeding animals in the United States. This improved breeding stock should benefit breeders in the private sector.

Comments

Our interim rule invited the submission of written comments, which were to be postmarked or received on or before September 23, 1988. We received five comment letters. One commenter supported our action, and four commenters objected, raising the issues discussed below.

Comment: Despite numerous requests, the Animal and Plant Health Inspection Service (APHIS) has not published a space allocation plan for assigning space in HSTAIC to private importers for their shipments.

This comment is outside the scope of the interim rule, which concerns use of

HSTAIC by ARS in 1989, not use by private importers at other times. However, APHIS is currently developing a proposed rule allocating the use of HSTAIC after ARS use of the facility is completed.

Comment: HSTAIC was built for the express purpose of providing the private sector the capability of importing animals from countries where diseases exist that are exotic to the United States.

We disagree that HSTAIC was built solely for use by the private sector. The legislation authorizing establishment of HSTAIC (Pub. L. 91-239; 21 U.S.C. 135) also authorizes the Secretary of Agriculture "to cooperate in such manner as he deems appropriate, with other North American countries or with breeders' organizations or similar organizations or with individuals within the United States regarding importation of animals into and through the quarantine station * * *". The legislative history of Pub. L. 91-239 also clearly shows that one of the uses envisioned for the facility was the safe importation of animals by livestock producers, breeders, and research institutions to upgrade the genetic quality of domestic livestock. We believe that the use of HSTAIC by ARS is consistent with the intent of the authorizing legislation.

Comment: It is not appropriate to spend tax dollars to import one species to the exclusion of others.

It would be impossible to import all species eligible for quarantine in HSTAIC at any one time; decisions must be made on how to use the limited facilities. As for use of tax monies, we believe that a project to improve the germplasm of breeding swine within the United States is consistent with the legislatively authorized missions of both APHIS and ARS. In addition, part of the cost of the project is being borne by the University of Illinois and Iowa State University.

Comment: APHIS should open a replacement animal quarantine facility or approve an alternative method for importation of animals from foot-and-mouth disease countries for the period that ARS has exclusive use of HSTAIC.

The legislation authorizing establishment of HSTAIC (21 U.S.C. 135) authorized the Secretary of Agriculture to establish and maintain one international animal quarantine station. A replacement facility could not be opened without legislative action by Congress.

Comment: Since private importers are capable of performing the importation of swine from China, public funds should not be used.

The question of whether public funds should be used to import swine from China is outside the scope of our interim rule, which concerns use of the HSTAIC facility for the swine project. However, we note that no private importer has ever requested use of HSTAIC to import swine from China.

Comment: Private facilities other than HSTAIC are available to swine industry importers and have been offered to ARS.

Law and regulation do not allow importation of swine from countries where foot-and-mouth disease occur (including China) except through an international animal quarantine station established by the Secretary of Agriculture, i.e., HSTAIC.

Comment: Importers are ready to import llamas through HSTAIC, but cannot move their shipments until HSTAIC is available.

We do not believe that the possibility of importing llamas in 1989 is a sufficient justification to forego the opportunity to import swine from China for the germplasm improvement project. We are currently developing space allocation methods and otherwise preparing for the use of HSTAIC in the future to allow private importers, including llama importers, the opportunity to apply for space in HSTAIC for their shipments.

We therefore maintain that the facts presented in the interim rule still provide a basis for the rule. In granting to the Agricultural Research Service the exclusive right to use HSTAIC for 1989, we are capitalizing on an unprecedented opportunity to serve short- and long-term agricultural interests in the United States. Therefore, we are affirming the interim rule without change.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions; and will not cause a significant adverse effect 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.

If the Agricultural Research Service's importation proceeds according to plan, breeders in the public sector should eventually benefit.

This rule will enable ARS to proceed with a swine-importation project expected to improve the germplasm of breeding animals in the United States. This improved breeding stock should eventually benefit breeders in the private sector. There should be no near-term economic impacts caused by importation of the breeding stock for this project. The possible long-term impacts cannot be calculated at this time, since the project is experimental in nature and any eventual economic impacts would depend on the outcome of the experimental project, which is not presently quantifiable.

Adoption of this rule might result in a small number of importers of animals being unable to obtain space in HSTAIC that might otherwise be available for importation of their shipments of animals in 1989. The total number of animals that could be imported through HSTAIC in one calendar year is very small compared to the total number of animals imported into the United States annually.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal and Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, the interim rule amending 9 CFR Part 92 that was published at 53 FR 27846-27847 on July 25, 1988, is adopted as a final rule without change.

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 3rd day of March 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–5311 Filed 3–7–89; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 799

[Docket No. 80466-8066]

Chlorendic Anhydride; Reduction in Export Control

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Correction notice; announcement of effective date.

SUMMARY: On August 10, 1988 (53 FR 30026), the Bureau of Export Administration issued a final rule amending export controls on chlorendic anhydride. This chemical, formerly controlled for national security reasons under Export Control Commodity Number (ECCN) 5799C on the Commodity Control List, was transferred to ECCN 6799G and remains subject to export controls to Country Groups S and Z for foreign policy reasons.

The effective date was inadvertently omitted from the August 10 final rule. This notice establishes that the effective date of that rule is August 10, 1988, the date of publication.

FOR FURTHER INFORMATION CONTACT: Jim Seevaratnam, Capital Goods Technology Center, Bureau of Export Administration (Telephone: (202) 377–5695).

Dated: February 23, 1989.

Michael E. Zacharia,

Assistant Secretary for Export Administration.

[FR Doc. 89–5281 Filed 3–7–89; 8:45 am]

BILLING CODE 3510-DT-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229 and 249

[Release Nos. 33-6822; 34-26587; IC-16844; FR-34; File No. S7-6-88]

Acceleration of the Timing for Filing Forms 8-K Relating to Changes in Accountants and Resignations of Directors; Amendments to Regulation S-K Regarding Changes in Accountants

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Securities and Exchange Commission ("Commission") today announced the adoption of amendments to its rules to reduce the time period from 15 calendar days to five business days for a registrant to file a Form 8-K announcing a change in its independent certifying accountant or the resignation of a director. The Commission also announced amendments to Regulation S-K concerning changes in a registrant's independent certifying accountant to: (1) Reduce the time period for filing with the Commission the former accountant's letter from 30 calendar days to ten business days after the filing of the report or registration statement announcing the change in accountants, (2) require the registrant to file any such letter within two business days of receipt, and (3) permit the former accountant to provide an interim letter to the registrant, which also must be filed by the registrant within two business days of receipt.

EFFECTIVE DATE: April 7, 1989. These amendments are effective for changes in accountants and the receipt of letters from resigned directors occurring on or after the effective date.

FOR FURTHER INFORMATION CONTACT: Robert E. Burns or John M. Riley, (202) 272–2130, Office of the Chief Accountant, or William H. Carter, (202) 272–2573, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Background

When a registrant's independent certifying accountant resigns, declines to stand for re-election or is dismissed the registrant must provide the disclosure required by Item 304(a)(1) of Regulation S-K.[1] When the registrant engages a new independent certifying accountant, it must provide the disclosure required by Item 304(a)(2) of Regulation S-K.[2] In both cases, Item 304(a)(3) of Regulation S-K directs the registrant to request the former accountant to provide to the registrant a letter addressed to the Commission that indicates whether the former accountant agrees with the registrant's disclosures and, if not, the respects in which it does not agree.[3] The registrant is required to file any such letter received as an exhibit to the document containing the relevant disclosure.[4]

Generally, this disclosure regarding the change in accountants will first appear in a Form 8-K [5] filing. Prior to the adoption of the amendments announced today, General Instruction B.1 to Form 8-K required a registrant to file a report within 15 calendar days after the former accountant resigned, was dismissed, or declined to stand for re-election, or a new accountant was engaged. Under Item 304(a)(3) of

[1] 17 CFR 229.304(a)(1). These disclosures include whether the former accountant resigned, declined to stand for re-election or was dismissed; whether the accountant's report on the registrant's financial statements for either of the past two fiscal years contained (and if so the nature of) an adverse opinion, disclaimer of opinion, modification or qualification; whether the change in accountants was recommended or approved by the audit or similar committee of the board of directors; and a description of disagreements between management and the former accountant and "reportable events," including whether the former accountant discussed such matters with the audit committee or board of directors and whether the registrant has authorized the former accountant to discuss these matters with the successor auditors. For definitions of "reportable events" and "disagreements," *see* notes 7 and 8 *infra*.

[2] 17 CFR 229.304(a)(2). These disclosures principally focus on certain pre-existing relationships between the registrant and the newly engaged accountant. To the extent required disclosures previously were made in connection with the disclosure of the former accountant's resignation, declination to stand for reelection or dismissal, they do not have to be repeated. Instruction 1. to Item 304, and Instruction to Item 4, Form 8-K, 17 CFR 249.308.

[3] 17 CFR 229.304(a)(3). However, if the disclosures are to appear in an annual report to shareholders or a proxy or information statement, then in lieu of requesting such a letter the registrant must provide the former accountant with the opportunity to submit a brief statement to be included directly in the registrants's document. This statement must be submitted to the registrant within ten business days of the date the accountant receives the registrant's disclosure. *See* Instruction 2 to Item 304 of Regulation S-K, 17 CFR 229.304.

[4] Item 304(a)(3) of Regulation S-K, 17 CFR 229.304(a)(3).

[5] Item 4, Form 8-K, 17 CFR 249.308. The Division of Corporation Finance reviews all incoming Item 4 Forms 8-K. This review may result in a referral to the Commission's Division of Enforcement, examination of the current or next financial statements on a high priority basis, or disposition according to the routine comment process. The Division of Enforcement makes appropriate inquiries when it receives referrals on these matters from the Division of Corporation Finance.

Regulation S-K, the letter from the registrant's former accountant was to be filed within 30 calendar days after the document containing the registrant's Item 304 disclosures had been filed with the Commission.[6] Assuming the initial disclosure was made by the registrant on a Form 8-K 15 days after the former accountant resigns, declines to stand for re-election or is dismissed, and the former accountant's letter was filed 30 days after the date of the filing of the Form 8-K, a total of 45 calendar days could elapse from the date of the former accountant's leaving the engagement until the filing with the Commission of the former accountant's letter. This letter may be the first expression of the former accountant's concerns regarding communications with the registrant that are now disclosed as reportable events,[7] disagreements with the registrant concerning certain accounting, auditing or financial reporting issues,[8] or other matters.

More prompt disclosure of information related to changes in registrants' certifying accountants is in the public interest.[9] Moreover, in commenting on previous rulemaking proceedings the American Institute of Certified Public Accountants ("AICPA") and others recommended that the time period for filing the former accountant's letter be reduced.[10] Accordingly, in April 1988, the Commission published for public comment a proposal to reduce the time period from 15 to 5 calendar days for filing the initial Form 8-K, and to reduce the time period from 30 to 10 calendar days for filing the letter from the former accountant.[11] The Commission also proposed to require that the registrant file any letter from the former accountant responding to the registrant's Form 8-K disclosures within two calendar days of receipt,[12] and expressly to permit the former accountant to provide an interim letter, which also would be filed by the registrant within two calendar days of receipt.[13]

In reviewing the need for more prompt disclosure regarding changes in independent accountants, the Commission noted that disclosures concerning the resignation of a director[14] may be of similar importance in bringing to light disagreements or difficulties concerning management policies or practices that may be material to an investment decision with regard to the registrant's securities. Accordingly, the Commission further proposed to shorten the time period from 15 to five calendar days for reporting on Form 8-K the resignation of a member of a registrant's board of directors.[15]

The Commission received a total of 19 comment letters in response to this proposing release.[16] All 19 addressed the proposal to shorten the Form 8-K filing period for changes in accountants, 17 addressed the reduction in the time period under Regulation S-K for filing the former accountant's letter, and six addressed the time period for filing a Form 8-K concerning the resignation of directors. A significant majority of commentators on each of these proposals supported some reduction in the relevant time periods. The commentators differed, however, on what those periods should be.

Eight commentators also discussed direct communication by accountants with the Commission when there is a change in accountants. One suggestion was that a registrant be required to request that its former accountant send to the Commission a copy of its letter responding to the registrant's Form 8-K disclosures. This suggestion for further rulemaking is being reviewed by the Commission's staff. Even in the absence of rulemaking, however, the Commission continues to believe that an independent accountant who is aware that a required filing related to a change of accountants has not been made by the registrant should consider advising the registrant in writing of that reporting responsibility with a copy to the Commission.[17] In addition, the Commission strongly encourages the accounting profession to establish either a professional requirement for auditors to notify the Commission directly if they know that a required filing has not been made by a former client, or another approach that may achieve essentially the same result.

---

[6] Under Item 4 of Form 8-K the resignation or dismissal of an independent accountant, or its declination to stand for re-election, is a reportable event separate from the engagement of a new independent accountant. On some occasions, two reports on Form 8-K will be required for a single change in accountants, the first on the resignation (or declination to stand for re-election) or dismissal of the former accountant and the second when the new accountant is engaged. *See* Instruction to Item 4, Form 8-K. If the termination of the relationship with the former accountant and the engagement of the new accountant are reported separately, the registrant must make two requests for the former accountant to provide a letter indicating whether it agrees with the registrant's disclosure. The timing for each letter is computed separately, each period beginning with the related filing of the registrant's disclosure.

[7] Reportable events involve situations where the accountant has advised the registrant that it: questions the reliability of the registrant's financial statements, management's representations or the registrant's internal controls; needs to expand the scope of its audit to investigate certain matters; or, has concluded that certain information that has come to its attention materially impacts the fairness or reliability of current or past audit reports or the financial statements underlying those reports. *See* Item 304(a)(1)(v) of Regulation S-K, 17 CFR 229.304(a)(1)(v). *See generally* Financial Reporting Release No. 31 (April 12, 1988) (53 FR 12924).

[8] Instruction 4 to Item 304 of Regulation S-K, 17 CFR 229.304, states in part:

The term "disagreements" as used in this Item shall be interpreted broadly, to include any difference of opinion concerning any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure which (if not resolved to the satisfaction of the former accountant) would have caused it to make reference to the subject matter of the disagreement in connection with its report. It is not necessary for there to have been an argument to have had a disagreement, merely a difference of opinion.

See generally Financial Reporting Release No. 31 (April 12, 1988) (53 FR 12924).

[9] *See e.g.*, Hearings on Failure of ZZZZ Best Co. Before the Subcommittee on Oversight and Investigations of the House Committee on Energy and Commerce, 100th Cong., 2d Sess., Serial No. 100-115 (1988).

[10] *See* Letter from AICPA to Jonathan G. Katz, October 9, 1987, contained in File No. S7-24-87, which recommended that this period be reduced to 21 calendar days. Copies may be obtained by contacting the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

[11] Securities Act Release No. 6767 (April 12, 1988) (53 FR 12948).

[12] *Id.*

[13] *Id.*

[14] A Form 8-K must be filed when a director resigns (or declines to stand for re-election) because of a disagreement with the registrant relating to its operations, policies or practices, and that director has furnished a letter to the registrant describing the disagreement and requesting that the matter be disclosed. The required disclosure includes the date of resignation or refusal to stand for re-election and a summary of the director's description of the disagreement, with the director's letter attached to the Form 8-K as an exhibit. The registrant also may state briefly its own view of the disagreement. Item 6, Form 8-K.

[15] Securities Act Release No. 6767, *supra* note 11.

[16] Copies of the letters from commentators are available to the public in File No. S7-6-88 in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

[17] In Accounting Series Release No. 165 (December 20, 1974) (40 FR 1010), Financial Reporting Codification section 603.02.a.iii, the Commission stated:

When a change in independent accountants occurs so that the accountant being replaced is aware that a Form 8-K should be filed reporting the event, he might well bring that reporting responsibility to the attention of the registrant. If he becomes aware that the required reporting has not been made, e.g., because he has not been requested to furnish a letter as required by the Form 8-K item, he should consider advising the registrant in writing of that reporting responsibility with a copy to the Commission.

II. A Registrant's Filing on Form 8-K Regarding a Change in Certifying Accountants

The Commission has accelerated the timing for filing an initial Form 8-K regarding a change in certifying accountants from 15 calendar days to five business days.[18]

In proposing a five *calendar* day period, the Commission noted that documentation regarding disagreements and reportable events should be readily available to both the registrant and the former accountant.[19] While 14 of the 19 commentators generally supported reduction of the filing period, only one agreed with the five calendar day proposal. Others stated that the proposed periods may be too short for the preparation of complete and informative disclosures.[20] They indicated that the individuals who prepare and review the Form 8-K filing may not be available during a period as short as five calendar days. They also noted that with intervening weekends and holidays the filing period effectively could be reduced to as few as two business days if the change occurred immediately preceding a "three-day weekend." Several commentators, therefore, suggested that the filing period be either extended or expressed in business rather than calendar days. Four commentators specifically suggested a ten calendar day period, four others suggested a ten business day period, and five specifically recommended a five business day period.

In recognition of the commentators' concerns, the Commission has adopted a five business day period. In calculating the five business day period, the day on which the change in accountants occurs would not be counted. For example, assuming there are no intervening federal holidays, if the accountant resigns [21] on a Monday, the Form 8-K must be filed no later than the close of the Commission's business [22] on the following Monday. If the Item 4, Form 8-K event occurs on other than a business day, the filing period begins to run on and includes the first business day thereafter.

III. Filing Period Related to the Former Accountant's Letter

The Commission is amending Item 304(a)(3) of Regulation S-K to state that the former accountant's letter should be provided to the registrant as promptly as possible to permit the letter to be filed by the registrant with the Commission within ten business days [23] after the filing of the Form 8-K or other report or registration statement announcing the change in accountants. In order to facilitate the preparation of the accountant's letter, the Commission also has adopted, as proposed,[24] a requirement that the registrant provide the former accountant with a copy of the disclosures it has made concerning the change in accountants no later than the day those disclosures are filed with the Commission.

Fifteen of 17 commentators addressing the issue supported a reduction in the 30 day period for filing the former accountant's letter. Four of these commentators supported the proposed ten calendar day period, but others suggested longer periods citing the unavailability of personnel and the impact of weekends, among other factors, on promptly preparing and reviewing a complete and informative letter. Nine commentators suggested a ten business day period, four suggested a ten calendar day period, two recommended 21 calendar days, one suggested 15 business days, and one suggested a period of 21 business days.[25] After considering these comments, the Commission has revised the proposed ten calendar day period to ten business days. Calculation of this period should begin on and include the first business day after the initial filing with the Commission.

The new rules, as amended, contain the proposed language that the registrant shall request that the former accountant provide the letter "as promptly as possible." One commentator objected to this language, stating that it would be impossible to demonstrate compliance with that request.[26] This language has been added to the disclosure requirement to focus the accountant's attention on the need to address the issue in a timely manner, that is, with the diligence that may be expected under the circumstances.

The accountant's letter, therefore, may be received by the registrant prior to the expiration of the ten business day period. In order that such a letter may be made available to the public on a timely basis, the Commission proposed that the registrant file the letter within two calendar days of receipt. Three of the 11 commentators addressing this issue supported the proposed two calendar day period, while seven commentators suggested a two business day period and cited the adverse impact of weekends and holidays on their ability to meet the two calendar day requirement. One commentator noted that the proposed period may cause timing problems but did not offer a specific recommendation as to the appropriate time period. In response to the commentators' concerns, the Commission has adopted a two business day period.[27]

The newly adopted filing requirements for Form 8-K concerning a change in accountants result in a reduction in the overall time period for filing both the Form 8-K and the former accountant's letter from 45 calendar days to 15 business days.[28] The new time periods reflect an appropriate balance between the need for prompt disclosure and the time required to research, prepare and review the disclosures called for when a change in accountants occurs.[29]

IV. Interim Letter From the Former Accountant

The amendments to Item 304(a)(3) of Regulation S-K include the proposed provision specifying that the former accountant, at its discretion, may provide the registrant with an interim letter highlighting specific areas of concern and indicating a more detailed

---

[18] The term "business day" means any day other than a Saturday, Sunday, or federal holiday on which the Commission is not opened for business.

[19] Securities Act Release No. 6767, *supra*, note 11.

[20] *See* note 16, *supra*.

[21] In contrast to the dismissal of an accountant through the mail, which occurs when the registrant sends the notice of dismissal, when the accountant resigns by mailing a letter of resignation to the registrant the resignation is deemed to occur for the purpose of this requirement when the registrant receives the letter.

[22] The business hours of the principal office of the Commission in Washington, DC are from 9:00 a.m. to 5:30 p.m. Eastern Standard Time or Eastern Daylight Savings Time, whichever is currently in effect in Washington, each day except Saturdays, Sundays and holidays. Rule 0-2 under the Securities Exchange Act of 1934, 17 CFR 240.0-2.

[23] *See* note 18, *supra*.

[24] Securities Act Release No. 6767, *supra* note 11. The proposal stated that the accountant should be provided with a copy of these disclosures no later than the "time" they are filed with the Commission. To avoid controversy over the specific time that the disclosures were filed and the time they were received by the accountant, this provision has been revised to require that the accountant receive the disclosures on the same day they are filed with the Commission.

[25] Some commentators suggested more than one time period.

[26] Letter to Jonathan G. Katz from Peat Marwick Main & Co. dated May 16, 1988, available in File No. S7-6-88. *See* note 16, *supra*.

[27] The requirement to file the former accountant's letter within two business days of receipt is independent of the ten business day period discussed above and is not intended to result in an extension of that ten business day period.

[28] It should be noted that in current practice the accountant's letter often is filed with the initial Form 8-K.

[29] *See generally* Item 4 of Form 8-K, 17 CFR 249.308, and Item 304 of Regulation S-K, 17 CFR 229.304.

letter will follow. If such an interim letter is provided it must be filed by the registrant within two business days of receipt.[30]

Ten of 11 commentators addressing the interim letter provision generally opposed the provision because: the statements in the interim letter may be based on incomplete information; the provision could create a de facto reporting obligation; or the need for such a provision is diminished by the reduction of the filing period relating to the accountant's letter. The Commission recognizes these concerns. However, it believes it is important explicitly to provide former accountants with the opportunity to provide expedited notice to the public of situations where former accountants have concluded that registrants' Forms 8-K contain patently false disclosures. The Commission does not intend to establish a de facto reporting obligation and, to the contrary, believes that such interim letters will generally pertain to cases where there is no reasonable uncertainty regarding the former accountant's objection to the registrant's disclosures. An example of a case where the accountant may file such an interim letter is when the accountant is dismissed after having an obvious disagreement with the registrant and the registrant's initial Form 8-K states that there were no disagreements.

V. Filing Period for Reporting Disagreements Associated With the Resignation of a Director

In addition to the disclosure of disagreements between the registrant and its former accountant, disclosure of disagreements between the registrant and a director who has resigned (or declined to stand for re-election) also may be material to a shareholder's voting or investment decisions.[31]

Accordingly, the Commission has reduced the period from 15 calendar days to five business days for filing a Form 8-K relating to the resignation of a director.

Four of six commentators addressing this proposal agreed that some reduction in the filing period was appropriate. However, the impact of weekends and holidays and the possible unavailability of continuing directors to consult on the matter, and of legal counsel and others to prepare and review the Form 8-K disclosures were cited as reasons to extend the proposed five calendar day period.[32] Three commentators respectively suggested periods of ten business days, ten calendar days, and five business days, while another commentator supported either a ten calendar or five business day period.

The Commission has adopted a five business day filing period. The event that triggers the Form 8-K reporting obligation concerning the resignation of a director is the receipt by the registrant of a letter describing a disagreement between the registrant and the director relating to the registrant's operations, policies or practices.[33] For example, assuming no intervening federal holidays, if the registrant received the resigned director's letter on a Monday, it would be required to file the Form 8-K no later than the following Monday.

VI. Cost/Benefit Analysis

The amendments announced in this release affect the timing of procedures for a registrant filing a Form 8-K disclosing the resignation of a director or a change in the registrant's certifying accountant and the filing of a letter containing the views of the registrant's former account regarding certain matters disclosed by the registrant. The amendments, however, do not affect the recordkeeping, substance of the disclosure, or contents of the registrant's disclosure or the former accountant's letter. It is anticipated therefore that the costs associated with these amendments will be small and relate solely to the more prompt preparation of the registrant's disclosure and the former accountant's letter. The principal benefit of the amendments is the availability of signficant information to the market on a more timely basis.

VII. Certain Findings

Section 23(a)(2) of the Exchange Act [34] requires the Commission, in adopting rules under the Exchange Act, to consider the anti-competitive effect of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission has considered the amendments to Form 8-K and Regulation S-K in light of the standard cited in section 23(a)(2) and believes that adoption of these changes will not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act. As stated above, these amendments are designed to promote the purpose of the Exchange Act by providing more prompt disclosure of significant information, without changing the substance of the disclosure obligation.

VIII. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act,[35] the Chairman of the Commission previously certified that adoption of these amendments will not have a significant impact on a substantial number of small entities. No comments were received on that certification.

IX. Codification Update

The "Codification of Financial Reporting Policies" announced in Financial Reporting Release No. 1 (April 15, 1982) (47 FR 21028) is updated to:

1. Include a new paragraph 603.02.d to include the text in topic II of this release, "A Registrant's Filing On Form 8-K Regarding A Change In Certifying Accountants." (Footnotes in this topic that refer to footnotes in topic I of this release to contain the full text of the cited notes.)

2. Include a new paragraph 603.08 to include the text in topic III of this release, "Filing Period Related to the Former Accountant's Letter." (Footnotes in this topic that refer to footnotes in topics I or II of this release to contain the full text of the cited notes.)

3. Include a new paragraph 603.08.a to include the text in topic IV of this release, "Interim Letter from the Former Accountant." (Footnotes in this topic that refer to discussions or footnotes in topics II or III of this release to contain the appropriate citations to the codification and the full text of the cited notes.)

List of Subjects in 17 CFR Parts 229 and 249

Reporting and recordkeeping requirements; Securities.

Text of Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER THE SECURITIES ACT OF 1933 AND SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S-K

1. The authority citation for Part 229 continues to read as follows:

[30] A two calendar day period was proposed for comment. The Commission, however, has adopted a two business day period due to the impact of weekends and holidays on the registrant's ability to comply with the requirement. *See* the discussion of the two day filing period *supra*.

[31] *See* note 14, *supra*, for a discussion of when a Form 8-K regarding the resignation of a director should be filed and the required disclosures.

[32] *See* note 16, *supra*.

[33] Item 6(a), Form 8-K.

[34] 15 U.S.C. 78w(a)(2).

[35] 5 U.S.C. 605(b).

Authority: Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 12, 13, 14, 15(d), 23(a), 48 Stat. 892, 894, 901; secs. 205, 209, 48 Stat. 906, 908; sec. 203(a), 49 Stat. 704; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 301, 54 Stat. 857; secs. 8, 202, 68 Stat. 685, 686; secs. 3, 4, 5, 6, 78 Stat. 565–568, 569, 570–574; sec. 1, 79 Stat. 1051; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3–5, 28(c), 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 11, 18, 89 Stat. 117, 118, 119, 155; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78l, 78m, 78n, 78o(d), 78w(a), unless otherwise noted.

2. By revising § 229.304(a)(3) to read as follows:

§ 229.304 (Item 304) Changes in and disagreements with accountants on accounting and financial disclosure.

(a) * * *

(3) The registrant shall provide the former accountant with a copy of the disclosures it is making in response to this Item 304(a) that the former accountant shall receive no later than the day that the disclosures are filed with the Commission. The registrant shall request the former accountant to furnish the registrant with a letter addressed to the Commission stating whether it agrees with the statements made by the registrant in response to this Item 304(a) and, if not, stating the respects in which it does not agree. The registrant shall file the former accountant's letter as an exhibit to the report on registration statement containing this disclosure. If the former accountant's letter is unavailable at the time of filing such report or registration statement, then the registrant shall request the former accountant to provide the letter as promptly as possible so that the registrant can file the letter with the Commission within ten business days after the filing of the report or registration statement. Notwithstanding the ten business day period, the registrant shall file the letter by amendment within two business days of receipt; if the letter is received on a Saturday, Sunday or holiday on which the Commission is not open for business, then the two business day period shall begin to run on and shall include the first business day thereafter. The former accountant may provide the registrant with an interim letter highlighting specific areas of concern and indicating that a more detailed letter will be forthcoming within the ten business day period noted above. If not filed with the report or registration statement containing the registrant's disclosure under this Item 304(a), then the interim letter, if any, shall be filed by the registrant by amendment within two business days of receipt.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for Part 249 continues to read in part as follows:

Authority: The Securities Exchange Act of 1934, 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

4. By amending General Instruction B1 to Form 8–K (§ 249.308 of this chapter) to read as follows:

Note.—Form 8–K does not appear in the Code of Federal Regulations.

Form 8–K.

General Instructions

* * * * *

B. Events to be Reported and Time for Filing of Reports.

1. A report on this form is required to be filed upon the occurrence of any one or more of the events specified in Items 1–4 and 6 of this form. A report of an event specified in Items 1–3 is to be filed within 15 calendar days after the occurrence of the event. A report of an event specified in Item 4 or 6 is to be filed within 5 business days after the occurrence of the event; if the event occurs on a Saturday, Sunday, or holiday on which the Commission is not open for business then the 5 business day period shall begin to run on and include the first business day thereafter.

* * * * *

By the Commission.

Jonathan G. Katz,

Secretary.

March 2, 1989.

[FR Doc. 89–5293 Filed 3–7–89; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 87F–0320]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the increased use of di-*tert*-butylphenyl phosphonite condensation product with biphenyl as an antioxidant for low density polyethylene and olefin copolymers intended to contact food. This action responds to a petition filed by Ciba-Geigy Corp.

DATES: Effective March 8, 1989; written objections and requests for a hearing by April 7, 1989.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of October 29, 1987 (52 FR 41627), FDA announced that a petition (FAP 7B4018) had been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the increased use of di-*tert*-butylphenyl phosphonite condensation product with biphenyl as an antioxidant for low density polyethylene and olefin copolymers intended to contact food.

FDA has evaluated data in the petition and other relevant material in response to the petitioner's request. The agency concludes that these data and material establish the safety of increasing the level of use of the additive in certain copolymers, and that the regulations should be amended in § 178.2010(b) as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. Under FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25), an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(1).

Any person who will be adversely affected by this regulation may at any

time on or before April 7, 1989, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 178.2010 is amended in the table in paragraph (b) by adding a new entry "4" under the heading "Limitations" for the entry "Di-*tert*-butylphenyl phosphonite condensation product with biphenyl" under the heading "Substances" to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * *	* * *
Di-*tert*-butylphenyl phosphonite condensation product with biphenyl (CAS Reg. No. 38613-77-3) produced by the condensation of 2,4-di-*tert*-butylphenol with the Friedel-Crafts addition product (phosphorus trichloride and biphenyl) so that the food additive has a minimum phosphorus content of 5.4 percent, an acid value not exceeding 10 milligrams potassium hydroxide per gram, and a melting range of 85 °C to 110 °C (185 °F to 230 °F).	For use only: * * * 4. At levels not to exceed 0.15 percent by weight of olefin polymers complying with § 177.1520(c) of this chapter, item 2.1, 2.2, 3.1, or 3.2, where the polyethylene component has a density less than 0.94 gram per cubic centimeter.
* * *	* * *

Dated: February 28, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-5273 Filed 3-7-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Western Alaska Regulation 89-01]

Safety Zone Regulations: 54-12-30N, 165-37-39W, Lost Harbor, Akun Island, AK

AGENCY: Coast Guard, DOT

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone for the M/V AOYAGI MARU currently grounded at position latitude 54-12-30N, longitude 165-37-39W, Lost Harbor, Akun Island, for fifty (50) yards around the said vessel. The zone is needed to protect from a safety hazard associated with the pollution removal actions being conducted under section 311 of the Federal Water Pollution Control Act which includes use of explosives on the M/V AOYAGI MARU. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: This regulation becomes effective on February 24, 1989. It terminates on June 20, 1989 unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LCDR W.J. Hutmacher, 907-271-5137.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent death or injury to unauthorized personnel and further damage to the vessel.

Drafting Information

The drafters of this regulation are LCDR W.J. Hutmacher, project officer for the Captain of the Port, and LCDR R. Nelson, project attorney, Seventeenth Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation resulted from the grounding of the M/V AOYAGI MARU on December 10, 1988. It has approximately 52,598 gallons of diesel, bunker C and lube oil in breached tanks and approximately 47,632 gallons of diesel, bunker C, and lube oil remaining in the vessel's unruptured tanks. This poses a major pollution threat. The Federal government has taken over the removal action under the Federal Water Pollution Control Act which includes using explosives to ignite the remaining oil aboard. All personnel or vessels not directly involved with the Federal removal action may not approach within fifty (50) yards of the M/V AOYAGI MARU nor within fifty yards of the M/V KRYSTAL SEA and M/V BETTYE K when working alongside M/V AOYAGI MARU.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

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

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. A § 165.T1701 is added to read as follows:

§ 165.T1701 Safety zone: Lost Harbor, Akun Isl, Alaska.

(a) *Location.* The following area is a safety zone:

54-12-30N, 165-36-39W, Lost Harbor, Akun Island, Alaska, fifty yards (50) radius around M/V AOYAGI MARU and M/V KRYSTAL SEA and M/V BETTYE K when working alongside M/V AOYAGI MARU.

(b) *Effective Date.* This regulation becomes effective on 24 February 1989. It terminates on June 20, 1989 unless sooner authorized by the Captain of the Port.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

(2) Personnel or vessels not involved with the Federal removal actions may not approach the area within fifty (50) yards.

Dated: February 24, 1989.

R.N. Roussel,

Captain, U.S. Coast Guard, Captain of the Port, Western Alaska.

[FR Doc. 89-5409 Filed 3-7-89; 8:45 am]

BILLING CODE 4910-14-M

---

33 CFR Part 165

[COTP Cleveland REG 89-01]

Safety Zone; Old River and Cuyahoga River, Cleveland, OH

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule makes permanent the ten temporary safety zones most recently re-established on the Old and Cuyahoga Rivers on December 5, 1988 (53 FR 48907). Those temporary rules expired on January 31, 1989.

A pattern of collisions between large, underway vessels and small vessels located on bends in the river was identified. On August 31, 1987 one such collision resulted in severe damage to three recreational boats, one of which had persons aboard. Ten areas are considered to present the greatest danger to life and property based on collisions that have occurred or are likely to occur. Those areas are in the vicinity of river bends adjacent to the properties of Ontario Stone, Nicky's, Shooters, Nautica Stage, Columbus Road bridge, Upriver Marina, Alpha Precast Products (United Ready Mix), and Shippers C & D. Preventing mooring, standing, or anchoring of vessels in the ten areas will decrease danger to persons, property, and the environment by reducing the risk of collision at these river bends. This has been borne out by the positive results of the temporary safety zones first established on September 3, 1987.

EFFECTIVE DATE: This regulation becomes effective on April 7, 1989.

FOR FURTHER INFORMATION CONTACT: CDR Patrick A. Turlo, Captain of the Port, Cleveland (216) 522-4406.

SUPPLEMENTARY INFORMATION: On December 3, 1987, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** for these regulations (52 FR 45973). Interested persons were requested to submit comments by January 22, 1988 and 25 written comments were received. The comments came from the following groups: commercial operators/industrial interests, riparian landowners, private citizens, recreational boating organizations, small business organizations, and officials from the City of Cleveland.

As a result of some of these comments, notice of a public hearing was published in the **Federal Register** on February 8, 1988, and the comment period was extended to March 7, 1988 (53 FR 3609). A public hearing was held on March 7, 1988. At the hearing, there were 19 respondents, representing the City of Cleveland, private citizens, commercial shipping/local industry, landowners, and private businesses.

As a result of the public hearing, the Captain of the Port agreed to extend the comment period for an additional 90 days until June 8, 1988 to allow a working group of interested parties to further study the situation and submit any new proposals at that time. See the **Federal Register** of March 31, 1988 (53 FR 10399). A second extension was requested by the working group, and was granted until December 1, 1988. See the **Federal Register** of July 22, 1988 (53 FR 27711). A letter from the working group supporting these regulations was received by the Captain of the Port on December 2, 1988.

Drafting Information

The drafters of these regulations are CDR Patrick A. Turlo, the Captain of the Port, Cleveland, project officer, and LCDR Carl V. Mosebach, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Comments

The Coast Guard received a total of twenty-five letters in addition to nineteen statements made at the public hearing. These comments are discussed below and are arranged by topic.

1. Formation of a Working Group to Study the River Problem

Five commenters suggested that a working group comprised of interested parties be formed to study the river problem and develop its own suggestions to improve river safety without federal regulation. Such a working group was formed with the following members:

Shipping—Gordon Hall, Lake Carriers Association.
Recreational Boating—Norm Schultz, Lake Erie Marine Trades Association.
Small Commercial Boating—Wayne Bratton, Trident Marine.
River-related Industry—Carl Barricelli, Ontario Stone.
River-related Entertainment—Paul Ertel, JRM, Inc. (Nautica).
Ohio Department of Natural Resources Watercraft Division—Ken Alvey.
Property owner—Jack Stickney (Scranton Averell Trust).
Property owner/Flats Oxbow Association—Frank Samsel.
Flats Oxbow Association—Genevieve Ray (chair).
(Non-member observer) Ron Toth—City Division of Port Control.

The comment period was extended for an additional 90 days, until June 8, 1988, to allow the committee to meet. The working group requested and was granted a second extension until December 1, 1988. On December 1, 1988, the working group notified the Captain of the Port that they supported the proposed regulations. The group confirmed this with a letter on December 2, 1988.

2. Public Hearing

Five of the written comments called for a public hearing. On March 7, 1988, a public hearing was held in Cleveland.

3. Additional Zones

One commenter suggested that additional safety zones be included at International Salt and D'Poo's, and that the zone at Nautica Stage be enlarged. Another commenter recommended that rafting at the Commodores Club Marina be limited as part of these regulations. No problems requiring Coast Guard regulation have been identified at International Salt, D'Poo's, or Commodores Club Marina since they are not at bends in the river. The zone at Nautica Stage is deemed sufficient as is.

4. Channel Obstructions and Adequacy of Existing Regulations

One commenter felt that the real problem on the river is rafting of small craft, not mooring at dangerous bends. Another commenter felt that new

regulations were not necessary because existing "rules" adequately address the problem of small boats moored or standing within ten feet of certain river bends. 33 USC 409 already prohibits obstructing the river channel, so these regulations need not address the problem of rafting in general. However, no existing law, regulation, or Inland Navigation Rule specifically prohibits small vessels from mooring, standing, or anchoring at the ten areas covered by this regulation.

5. River Traffic

Two commenters voiced opposition to the proposal citing declining commercial use of the Cuyahoga River versus booming recreational use. The Coast Guard disagrees that commercial use of the river is declining. According to figures recently released by the Lake Carriers Association, an organization representing 14 U.S. flag fleets, the number of annual transits of the Cuyahoga River by commercial vessels has increased steadily from 770 transits in 1982 to 1,264 in 1987.

6. Closing the River

One commenter suggested that the Cuyahoga River be closed to commercial traffic from Friday evening until Monday morning during the peak boating season. The Coast Guard feels that closing the river to commercial traffic would place an undue burden on commercial vessel owners and on the industries which depend on these vessels for delivery of raw materials.

7. Mandatory Use of Tugs

Two commenters recommended that vessels greater than 1600 gross tons be required to use tugs for assistance when transiting the river. The Coast Guard feels that the mandatory use of tugs could be counter-productive. When the vessel and the attending tugs are considered as a unit, the tugs only add to the size of the unit, potentially making a transit in confined waters even more difficult. The danger to vessels moored at river bends would still exist. Therefore, this recommendation was not adopted. It will continue to be the vessel master's responsibility to request tugs as needed.

8. Mandatory "Call Ahead" to the Coast Guard for Vessels of More Than 1600 Gross Tons

Three commenters suggested that all vessels greater than 1600 gross tons be required to notify the Coast Guard of their intent to transit the river and their estimated time of arrival (ETA). Notice of vessel arrivals is information not needed by the Coast Guard, but only by dock owners who have, or apply for, a partial waiver under these regulations. Paragraph (b)(3) of these regulations requires approval of a plan, including notice of vessel arrivals, to obtain a partial waiver, so this comment was not incorporated into the final rule.

9. Use of Bumpers

One commenter proposed that "bumpers" or pilings could be placed at river bends where lakers could "pivot" around dangerous areas. The Coast Guard does not have the authority to require the construction of "bumpers" or pilings on the river.

10. Signs

Two commenters recommended the use of signs warning of the inherent dangers on the Cuyahoga River. One went on to suggest that the signs declare that a boat owner's insurance is null and void should he moor in any one of the ten areas, thus precluding the need for regulations. River property owners were provided and posted signs warning of the dangers on the river while the temporary regulations were effective. Similar signs will again be provided now that these regulations have been issued. However, such warning signs do not preclude the need for regulations. The Coast Guard does not have the authority to declare insurance null and void.

11. Coast Guard Authority

One commenter felt that the proposed regulations set a dangerous precedent, and could serve to give the Coast Guard more authority than a federal government agency should have. Another commenter stated that the Coast Guard does not have the authority to create the ten safety zones. The Coast Guard has the authority and the obligation under the Ports and Waterways Safety Act to ensure the safety of life, property, and the environment. This rulemaking addresses only the specific hazards of mooring, standing, or anchoring at certain bends in the Cuyahoga and Old Rivers.

12. Revocation of Partial Waivers

One commenter suggested that a provision for revoking the partial waiver to the safety zones be included in the final rules. This provision is not necessary since it is covered in the waiver letter itself.

13. Economic Effect

Two commenters suggested that implementation of the zones would constitute a "taking without compensation," would diminish land values and tax revenues, and would halt or severely restrict further development on the river. The regulations establish what are akin to "no parking" zones in a *federal* waterway, so no property is being "taken". Of the ten zones considered, only four have established facilities for mooring vessels. Two are not currently in operation, and one readily agreed that the zone in his area was acceptable. The fourth found it acceptable, and applied for and received a waiver. The Coast Guard has received no information concerning adverse economic impact during the year that the temporary safety zones have been in effect. In promulgating these zones, the Captain of the Port held discussions with the Flats Oxbow Association, a non-profit development corporation for the Cuyahoga River Flats, and with Tower City Development Corporation regarding development in the zones being considered. There are no plans for any development, such as a marina, which would be negatively impacted by these regulations.

14. Enforcement

One commenter suggested that the regulations shift the burden of enforcement from the Coast Guard to the property owner, and that the regulations are not enforceable. The Coast Guard disagrees. These regulations do not require or prohibit any conduct by property owners unless they have or apply for a partial waiver under paragraph (b)(3). Property/dock owners who obtain a waiver and boaters must comply with these regulations. The Coast Guard will enforce these regulations in the same manner we enforce any other Coast Guard regulation which has the force and effect of law.

15. Technical Changes

During the extended comment period, it was brought to the Coast Guard's attention that cargo vessels, by nature of their size, could intrude into several of the zones while moored for cargo operations. These regulations were not intended to restrict cargo operations. Therefore, the temporary regulations which became effective on August 1, 1988 included a provision which allowed cargo vessels to temporarily moor in the zones while conducting loading/unloading operations. This provision has been included in the final rule. Additionally, the zone described in paragraph 2(a)(10) was reduced to thirty feet from fifty feet.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and

nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. Of the ten affected areas, only five have existing dock space which would be capable of providing the owner with income from dock fees. The other five have no established mooring facilities for small boats, although small boats have moored there in the past. The dock space at one entity, formerly used for fueling boats, is not presently being used. Conversations with that property manager addressed the waiver which may be granted under these regulations, and a satisfactory agreement was reached whereby the fueling facility may qualify for a waiver should the property manager request one. Of the five affected entities with existing dock space, only one currently charges a fee for its use. This entity applied for and received a waiver under the temporary regulations, and the same partial waiver procedures are included in this final rulemaking. Additionally, the Captain of the Port, Cleveland has researched the long range plans for riverfront development, both with individual companies and with the Flats Oxbow Association, and has found that the regulations do not adversely affect income-generating capabilities of any entities now planned.

Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The Coast Guard has met and held discussions with representatives of the City of Cleveland, and with the Ohio Department of Natural Resources concerning this action. Both sent representatives to the working group, and both have expressed their support for the proposed rules. Both have also stated that their law enforcement branches do not have the authority to enforce such zones, nor do they have rules which provide a similar degree of safety. Therefore, these regulations are consistent with the principles of Federalism.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Final Regulations

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations is amended as follows:

PART 165—[AMENDED]

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

Authority: U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. Section 165.903 is added to read as follows:

§ 165.903 Safety zones: Cuyahoga River and Old River, Cleveland OH.

(a) *Location*: The waters of the Cuyahoga River and Old River extending ten (10) feet into the river at the following ten (10) location, including the adjacent shorelines, are safety zones:

(1) One hundred (100) feet downriver to one hundred (100) feet upriver from 41 degrees 29'53.5"N, 81 degrees 42'33.5"W, which is the knuckle on the north side of the Old River entrance at Ontario Stone.

(2) Fifty (50) feet downriver to fifty (50) feet upriver from 41 degrees 29'48.4"N, 81 degrees 42'44"W, which is the knuckle adjacent to the Ontario Stone warehouse on the south side of the Old River.

(3) From 41 degrees 29'51.1"N, 81 degrees 42'32.0"W, which is the corner of Nicky's pier at Sycamore Slip on the Old River, to fifty (50) feet east of 41 degrees 29'55.1"N, 81 degrees 42'27.6"W, which is the north point of the pier at Shooter's Restaurant on the Cuyahoga River.

(4) Twenty-five (25) feet downriver to twenty-five (25) feet upriver of 41 degrees 29'48.9"N, 81 degrees 42'10.7"W, which is the knuckle toward the downriver corner of the Nautica Stage.

(5) Ten (10) feet downriver to ten (10) feet upriver of 41 degrees 29'45.5"N, 81 degrees 42'9.7"W, which is the knuckle toward the upriver corner of the Nautica Stage.

(6) The fender on the west bank of the river at 41 degrees 29'45.2"N, 81 degrees 42.10"W, which is the knuckle at Bascule Bridge (railroad).

(7) The two hundred seventy (270) foot section on the east bank of the river between the Columbus Road bridge (41 degrees 29'18.8"N, 81 degrees 42'02.3W) downriver to the chain link fence at the upriver end of the Commodores Club Marina.

(8) Fifty (50) feet downriver of twenty-five (25) feet upriver from 41 degrees 29'24.5"N, 81 degrees 41'57.2"W, which is the knuckle at the Upriver Marine fuel pump.

(9) Seventy-five (75) feet downriver to seventy-five (75) feet upriver from 41 degrees 29'33.7"N, 81 degrees 41'57.5"W. which is the knuckle adjacent to the warehouse at Alpha Precast Products (United Ready Mix).

(10) Fifteen (15) feet downriver to fifteen (15) feet upriver from 41 degrees 29'41"N, 81 degrees 41'38.6"W, which is the end of the chain link fence between Jim's Steak House and Shippers C & D.

(b) *Regulations*—(1) *General Rule.* Except as provided below, entry of any kind or for any purpose into the foregoing zones is strictly prohibited in accordance with the general regulations in § 165.23 of this part.

(2) *Exceptions.* Any vessel may transit, but not moor, stand or anchor in, the foregoing zones as necessary to comply with the Inland Navigation Rules or to otherwise facilitate safe navigation. Cargo vessels of 1600 gross tons (GT) or greater may moor in these zones when conducting cargo transfer operations.

(3) *Waivers.* Owners or operators of docks wishing a partial waiver of these regulations may apply to the Captain of the Port, Cleveland, Ohio. Partial waivers will only be considered to allow for the mooring of vessels in a safety zone when vessels of 1600 GT on greater are not navigating in the proximate area. Any requests for a waiver must include a plan to ensure immediate removal of any vessels moored in a safety zone upon the approach of a vessel(s) 1600 GTs or greater.

Dated: February 13, 1989.

Patrick A. Turlo,

Commander, U.S. Coast Guard, Captain of the Port, Cleveland, OH.

[FR Doc. 89-5410 Filed 3-7-89; 8:45 am]

BILLING CODE 4910-14-M

---

33 CFR Part 165

[COTP Philadelphia, Pa Reg. 89-03]

Safety Zone Regulations; Marcus Hook Range Ship Channel, Marcus Hook Anchorage (Anchorage 7), Mantua Creek Anchorage (Anchorage 9), and Deepwater Point Anchorage, (Anchorage 6)

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone on the

Delaware River that includes the Marcus Hook Range ship channel, Marcus Hook Anchorage (Anchorage 7), Mantua Creek Anchorage (Anchorage 9), and Deepwater Point Anchorage (Anchorage 6). The safety zone is needed to protect vessels from safety hazards associated with dredging operations in Marcus Hook Range ship channel and to minimize temporary port congestion while the dredging operations are ongoing. The Marcus Hook Range ship channel in the vicinity of the dredging operation is closed to vessel traffic. Marcus Hook Anchorage (Anchorage 7) is closed to anchoring to permit vessel traffic to transit the anchorage in lieu of using the Marcus Hook Range ship channel. Vessels over 700 feet in length are subject to anchorage restrictions in Deepwater Point and Mantua Creek Anchorages (Anchorages 6 and 9). The safety zone is an amendment to the previous safety zone entitled 49 CFR § 165.T05076 that was in effect from November 24, 1988 to January 21, 1989. The amendment is necessary due to delays in completing the dredging., Additionally, vessels over 800 feet long will be required to have an additional tug alongside while bunkering.

EFFECTIVE DATES: This regulation is effective from 8:00 a.m., January 21, 1989 to 8:00 a.m., March 28, 1989, unless sooner terminated by the Captain of the Port, Philadelphia, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: LTJG Gary T. Croot, at the Captain of the Port, Philadelphia, (215) 271-4894.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. The Coast Guard was not officially informed that the dredging operations would extend past their anticipated completion date until February 2, 1989. Publishing an NPRM and delaying its effective date would be contrary to the public interest, since immediate action is needed to respond to potential hazards to vessel traffic caused by the presence of the dredge in the ship channel.

Drafting Information

The drafters of this regulation are LTJG Gary T. Croot, project officer for the Captain of the Port, Philadelphia, and LCDR Robin K. Kutz, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of the Regulation

The hazards requiring this regulation result from maintenance dredging of the Marcus Hook Range ship channel. The dredging operation originally was to have been completed by January 21, 1989, but has been delayed. The Marcus Hook Range ship channel must be closed and traffic diverted through Marcus Hook Anchorage (Anchorage 7) to reduce the hazards associated with dredging of the channel. Anchorage restrictions in Mantua Creek Anchorage and Deepwater Point Anchorage are being imposed to accommodate those vessels that will be prevented from anchoring in Marcus Hook Anchorage. The Captain of the Port, Philadelphia has been requiring a third tug alongside vessels 800 feet or longer while bunkering since the inception of the original safety zone entitled 49 CFR 165.T05076. The purpose is to ensure that at least two tugs will be dedicated to vessels 800 feet or longer at all times, and a third tug will be on scene to tend the bunkering barge. This regulation is effective from 8:00 a.m., January 21, 1989 until 8:00 a.m., March 28, 1989 unless sooner terminated by the Captain of the Port, Philadelphia.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

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

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. Section 165.T05076 is revised to read as follows:

§ 165.T05076 Safety Zone: Marcus Hook Range ship channel, Marcus Hook Anchorage (Anchorage 7), Mantua Creek Anchorage (Anchorage 9), Deepwater Point Anchorage (Anchorage 6), Delaware River.

(a) *Location.* The following areas are a safety zone: The Marcus Hook Range ship channel, as delineated on National Ocean Survey Chart 12312, within 150 yards of dredging operations, Marcus Hook Anchorage (Anchorage 7), Mantua Creek Anchorage (Anchorage 9), and Deepwater Point Anchorage (Anchorage 6), located in the Delaware River, as described in § 110.157 of this title.

(b) *Regulations.* (1) No vessel may enter or remain in the Marcus Hook Range ship channel within 150 yards of dredging operations. Vessels transiting the area shall pass through the Marcus Hook Anchorage (Anchorage 7).

(2) A vessel may not anchor in Marcus Hook Anchorage (Anchorage 7).

(3) In addition to the general regulations contained in § 110.157(b) of this title, before anchoring in the Mantua Creek or Deepwater Point Anchorages (Anchorages 9 and 6):

(i) Vessels over 700 feet in length shall obtain permission from the Captain of the Port to anchor in Deepwater Point or Mantua Creek Anchorages (Anchorage 6 or 9).

(ii) Vessels between 700 and 750 feet long shall have one tug alongside while anchored in either Deepwater Point or Mantua Creek Anchorage (Anchorage 6 or 9).

(iii) Vessels greater than 750 feet long shall have two tugs alongside while anchored in either Deepwater Point or Mantua Creek Anchorage (Anchorage 6 or 9).

(iv) In addition to the requirements of paragraph (b)(3)(iii) of this section, vessels greater than 800 feet long shall have one additional tug alongside while bunkering.

(4) Each tug alongside a vessel meeting the restrictions in either paragraph (b)(3) (ii) or (iii) of this section must have a minimum rating of 1000 shaft horsepower.

(5) Any vessel operating within this zone shall comply with the directions of the Captain of the Port, Philadelphia, Pennsylvania, or his designated representative.

(c) *Effective Date.* This regulation is effective from 8:00 a.m., January 21, 1989 to 8:00 a.m. March 28, 1989, unless sooner terminated by the Captain of the Port, Philadelphia, Pennsylvania.

E.K. Roe,

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

[FR Doc. 89-5408 Filed 3-7-89; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3519-9]

Approval and Promulgation of State Implementation Plans; Colorado; Revisions to Regulation No. 4; Regulation on the Sale of New Woodstoves

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: In this action, EPA is approving a revision to Regulation No. 4 of the Colorado State Implementation Plan (SIP), "Regulation on the Sale of New Woodstoves," which was submitted to EPA by the Governor on September 10, 1988. The revision exempts certain woodburning devices from the certification requirements of Regulation No. 4 in order to maintain consistency with EPA's "Standards of Performance for New Residential Wood Heaters" (53 FR 5860, February 26, 1988).

DATES: This action will be effective on May 8, 1989 unless notice is received by April 7, 1989 that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the State submittal are available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the following locations:

Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202-2405.

Environmental Protection Agency, Public Information Reference Unit, Waterside Mall, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Michael Silverstein, Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202-2405, (303) 293-1769, (FTS) 564-1769.

SUPPLEMENTARY INFORMATION: On July 18, 1985, the Governor of Colorado submitted to EPA new Regulation No. 4, "Regulation on the Sale of New Woodstoves," as a revision to the Colorado SIP. This new regulation requires all new woodstoves sold, offered for sale, or advertised for sale after January 1, 1987, to be certified to meet emission standards for particulates and carbon monoxide (CO), with more stringent emission standards taking effect on July 1, 1988. On April 10, 1986 (51 FR 12321), EPA approved Regulation No. 4 as part of the Colorado SIP.

On October 24, 1986, the Governor submitted to EPA a revision to Regulation No. 4 of the Colorado SIP. On June 22, 1987 (52 FR 23446), EPA approved this revision to Regulation No. 4, which established a new fee schedule for certification of new woodstoves sold after January 1, 1987. The original fee structure did not generate sufficient fees to pay for the projected costs of the certification program, including the costs associated with enforcement of Regulation No. 4.

On February 26, 1988 (53 FR 5860), EPA adopted a national woodstove certification program, "Standards of Performance for New Stationary Sources; New Residential Wood Heaters." In response, the State of Colorado revised Section I "Definitions" and Section II "Requirements for Sale of Wood Stoves" of Regulation No. 4 so as to exempt wood-fired appliances, boilers, furnaces, and cookstoves from the certification requirements of Regulation No. 4. Such revisions, which became effective on June 30, 1988, would provide for consistency between the State and Federal regulations. This revision to Regulation No. 4 was submitted by the Governor as a SIP revision on September 10, 1988.

The revisions made in Section I amend the definition for "Wood Stove" to be consistent with EPA's program, and add definitions for "Boiler," "Furnace," and "Cookstove." After review of these revisions, EPA finds that the revisions serve to maintain consistency between the State and Federal programs.

The revisions made in Section II add a subsection which lists wood burning devices exempted from the certification criteria of Regulation No. 4. This list includes "wood-fired appliances that are not suitable for heating equipment in or used in connection with residences," "boilers," "furnaces," and "cookstoves." Because boilers, furnaces, and cookstoves are now defined identically in the State and Federal regulations, and the Federal regulation also exempts these wood burning devices from the Federal certification program, EPA finds that these revisions to Regulation No. 4 serve to maintain consistency between the State and Federal programs.

Though the exemption of "wood-fired appliances that are not suitable for heating equipment in or used in connection with residences" is not an exemption listed in the Federal regulation, the revision mandates that "such appliances must be exempted by the Division (Colorado Air Pollution Control Division) on a case-by-case basis." Due to the State's federally consistent definition of "wood stove," and the case-by-case scrutiny allowed for in the revisions to section II, EPA finds this exemption of "wood-fired appliances that are not suitable for heating equipment in or used in connection with residences" to be reasonable and not inconsistent with the Federal regulations.

EPA also finds that because the subject exempted wood burning devices are few in number, the revision to Regulation No. 4 will not result in any appreciable increase in emissions and will not jeopardize attainment and maintenance of the ambient air quality standards in Colorado.

EPA is publishing this action 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 the **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 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 May 8, 1989.

Final Action

EPA hereby approves the revisions to Regulation No. 4, "Regulation on the Sale of New Woodstoves," of the Colorado SIP, which exempts certain woodburning devices from Regulation No. 4's certification requirements.

EPA finds good cause exists for making the action taken in this notice immediately effective because the implementation plan revisions are already in effect under State law or regulation, and EPA's approval poses no additional regulatory burden.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709)

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the U.S. Court of Appeals for the appropriate circuit by May 8, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Particulate matter, Carbon monoxide, Incorporation by reference.

Note.—Incorporation by reference of the State Implementation Plan for the State of Colorado was approved by the Director of the Federal Register on July 1, 1982.

Date: February 8, 1989.

Jack Moore,

Acting Administrator.

PART 52—[AMENDED]

Part 52 Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart G—Colorado

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.320 is amended by adding paragraph (c)(44) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(44) A revision to Regulation No. 4 of the Colorado SIP which exempts certain woodburning devices from the certification requirements of Regulation No. 4 was submitted by the Governor of Colorado on September 10, 1988.

(i) *Incorporation by reference.* (A) In a letter dated September 10, 1988, Roy Romer, Governor of Colorado, submitted a revision to Regulation No. 4 of the Colorado SIP.

(B) Paragraph (I)(A)(10)–(13) and (II)(C), revisions to Regulation No. 4, "Regulation on the Sale of New Woodstoves," of the Colorado SIP became effective on June 30, 1988.

[FR Doc. 89–3529 Filed 3–7–89; 8:45 am]

BILLING CODE 6560–50–M

---

40 CFR Part 52

[A-1-FRL-3530-8]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Reasonably Available Control Technology for Dow Chemical, U.S.A.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision establishes and required the use of reasonably available control technology (RACT) to control volatile organic compound (VOC) emissions from Dow Chemical, U.S.A. in Gales Ferry, Connecticut. The intended effect of this action is to approve of a source-specific RACT determination made by the State in accordance with commitments made in its Ozone Attainment Plan which was approved by EPA on March 21, 1984 (49 FR 10542). This action is being taken in accordance with section 110 of the Clean Air Act.

EFFECTIVE DATE: This rule will become effective on April 7, 1989.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Room 2313, Boston, MA 02203; and the Air Compliance Unit, Department of Environmental Protection, State Office Building, 165 Capitol Avenue, Hartford, CT 06106.

FOR FURTHER INFORMATION CONTACT: David B. Conroy, (617) 565–3252; FTS 835–3252.

SUPPLEMENTARY INFORMATION: On October 25, 1988 (53 FR 42979), EPA published a Notice of Proposed Rulemaking (NPR) for the State of Connecticut. The NPR proposed approval of State Order No. 8011 as a revision to the Connecticut SIP. The final State order was submitted by Connecticut as a formal SIP revision on December 5, 1988. The provisions of the Connecticut Department of Environmental Protection's (DEP's) State Order define and impose RACT on Dow Chemical, U.S.A. as required by subsection 22a–174–20(ee), "Reasonably Available Control Technology for Large Source", of Connecticut's Regulations for the Abatement of Air Pollution.

Under subsection 22a–174–20(ee), the Connecticut DEP determines and imposes RACT on all stationary sources with the potential to emit one hundred tons per year or more of VOC that are not already subject to RACT under Connecticut's regulations developed pursuant to the control techniques guidelines (CTG) documents. EPA approved this regulation on March 21, 1984 (49 FR 10542) as part of Connecticut's 1982 Ozone Attainment Plan. That approval was granted with the agreement that all source-specific RACT determinations made by the DEP would be submitted to EPA as source-specific SIP revisions.

EPA has reviewed State Order No. 8011 and has determined that the level of control required by this Order represents RACT for Dow. Dow manufactures a variety of polymers and a polymer-based expanded foam at its Gales Ferry facility. Dow's operation consists of four separate manufacturing processes that all have emissions of VOC. The four manufacturing processes are the Polystyrene Manufacturing Process, the Acrylonitrile-Butadiene-Styrene (ABS) Resin Manufacturing Process, the Styrene/Butadiene (SB) Latex Manufacturing Process, and the Styrofoam® Manufacturing Process. The State Order imposes various control requirements on each of the processes.

I. Polystyrene Manufacturing Process

The Polystyrene manufacturing Process produces polystyrene resins from styrene monomer using a continuous, thermal polymerization process. This process is regulated under subsections 22a–174–20(x) and 22a–174–20(y) of Connecticut's regulations entitled "Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical & Polymer Manufacturing Equipment" and "Manufacture of Polystyrene Resins," respectively. These RACT regulations were adopted pursuant to two of EPA's Group III CTG's entitled "Control of Volatile Organic Compound Emissions from Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins" (EPA–450/3–83–008) and "Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical and Polymer Manufacturing Equipment" (EPA–450/3–83–006).

The State Order requires Dow to demonstrate compliance with all of the provisions of subsections 22a–174–20(x) and 20(y) of Connecticut's regulations for this process. The State Order also imposes one additional requirement that is not contained in the two Connecticut regulations. It requires Dow to meet the CTG-recommended emission limit of 0.12 pounds of VOC per 1,000 pounds of product from all of the vents in the manufacturing process and not just the vents on the material recovery section as is required by Connecticut's polystyrene manufacturing regulation.

II. ABS Resin Manufacturing Process

The ABS Resin Manufacturing Process produces both polystyrene and ABS resins. The ABS resin is produced through the polymerization of acrylonitrile, polybutadiene rubber and styrene. The process is similar to the Polystyrene Manufacturing in that it also uses a continuous, thermal polymerization process. This process is also covered under the two Connecticut regulations adopted pursuant to EPA's Group III CTGs.

The State Order requires Dow to demonstrate the compliance with all of the provisions of subsection 22a-174-20(x) and 22a-174-20(y) of Connecticut's regulations. Additionally, as with the polystyrene operation, Dow is required to meet the CTG recommended emission limit of 0.12 pounds of VOC per 1,000 pounds of product from all of the vents in the manufacturing process.

III. SB Latex Manufacturing Process

The SB Latex Manufacturing Process uses an emulsion medium to copolymerize styrene and butadiene. For this process, the State Order restates the requirements of a federally-enforceable permit to construct/modify permit that was issued to Dow by the Connecticut DEP in 1984. Dow was required to obtain the permit when it undertook modifications to modernize and expand the capacity of the SB latex process. The permit requires the installation of Best Available Control Technology (BACT) on the SB latex process which has been defined as a refrigerated vapor recovery system on the butadiene storage sphere and a packed scrubber, with at least 91 percent efficiency, on the process equipment in the latex production facility. (The Connecticut SIP's new source review regulations require BACT for minor sources and minor modifications.)

IV. Styrofoam® Manufacturing Process

The Styrofoam® Manufacturing Process produces polystyrene foam. The process consists of mixing melted polystyrene with an additive, injecting a blowing agent, and extruding the material through a die where it expands and forms a rigid board. Historically, the blowing agent has consisted of both dichlorodifluoromethane (Freon 12) and methyl chloride, of which only methyl chloride is considered a VOC. Total usage of methyl chloride averaged approximately 740 tons per year for 1983 and 1984.

Dow has investigated the feasibility of installing add-on pollution control equipment to control the emissions from this process. However, the majority of the VOC emissions are fugitives emitted during the curing of the styrofoam®. In its analysis of add-on control equipment, Dow found that add-on control equipment would be prohibitively expensive. Dow has submitted studies to the DEP which justify the infeasibility of add-on control equipment at its Gales Ferry plant. (Copies of those studies are included in the Technical Support Document prepared by EPA for this final action.)

Since add-on control equipment is believed to be infeasible at this point in time, the only remaining option for this process was the reduction and/or replacement of its present blowing agent in order to reduce VOC emissions. Although the use of most of the compounds investigated (including exempt VOCs, inert gases and chemical decomposing blowing agents) has been found to be unsatisfactory for foam production, Dow has found that the replacement of the methyl chloride blowing agent with a mixture of ethyl chloride and carbon dioxide results in an acceptable blowing agent with a corresponding reduction in VOC emissions. The substitution of the methyl chloride blowing agent has been found to be feasible for all but two of the products produced at the Gales Ferry plant. In recent years, these two products have counted for approximately 12 percent of the total styrofoam® production at the plant.

As RACT, the State Order requires Dow to maintain a continuous emission rate for each product in terms of pounds VOC per one hundred pounds of polymer extruded. The emission rate for each product represents the reduction from the historical emission rate that has been found to represent RACT for that product. The implementation of RACT on this process will result in approximately a twenty percent reduction in VOC usage.

The level of reduction which will be achieved at the proposed RACT level for this process is generally less than the level of reduction achieved by RACT for most VOC-emitting processes. The only additional control technology which would result in greater VOC reductions, however, is add-on control equipment, and it has been shown that the costs which would be incurred for this equipment are in excess of the costs which would typically represent RACT.

Dow is required to comply with all of the requirements of the State Order by December 31, 1987 which is the final compliance date of subsection 22a-174-290(ee) of Connecticut's Regulations. Further, the State Order requires Dow to conduct and complete emission testing on the Polystyrene Manufacturing Process and the ABS Resin Manufacturing Process within 150 days of the final date of the State Order. Other specific requirements of State Order and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

Final Action

EPA is approving Connecticut State Order No. 8011 as a revision to the Connecticut SIP. The provisions of State Order No. 8011 define and impose RACT on Dow Chemical, U.S.A. to control VOC emissions as required by subsection 22a-174-20(ee) of Connecticut's regulations.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

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 May 8, 1989. 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, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Connecticut was approved by the Director of the Federal Register on July 1, 1982.

Date: February 13, 1989.

Paul G. Keough,

Acting Regional Administrator, Region I.

Subpart H, Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart H—Connecticut

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

Authority: 42 U.S.C. 7401-7642.

2. Section 52.370 is amended by adding paragraph (c)(48) to read as follows:

§ 52.370 Identification of plan.

* * * * *

(c) * * *

(48) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on December 5, 1988.

(i) *Incorporation by reference.* (A) Letter from the Connecticut Department of Environmental Protection dated December 5, 1988 submitting a revision to the Connecticut State Implementation Plan.

(B) State Order No. 8011 and attached Compliance Timetable and Appendix A (allowable limits by product classification) for Dow Chemical, U.S.A. in Gales Ferry, Connecticut. State Order No. 8011 was effective on October 27, 1988.

(ii) *Additional materials.* (A) Technical Support Document prepared by the Connecticut Department of Environmental Protection providing a complete description of the reasonable available control technology determination imposed on the facility.

[FR Doc. 89-4850 Filed 3-7-89; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Part 52

[FRL-3525-5]

Approval and Promulgation of Air Quality Implementation Plans; Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice conditionally approves the recodification of those federally-approved regulations that are a part of the Louisiana State Implementation Plan (SIP). This action is necessary because the Louisiana Legislature mandated in 1974 that the State's agencies adopt a uniform regulatory code. This action also approves the amendment of the SIP to include those regulations that contain minor textual changes, add test methods, or make administrative changes. EPA does not intend to approve any regulation that was disapproved in an earlier action.

DATES: This action will become effective on May 8, 1989, unless notice is received on or before April 7, 1989, that someone wishes to submit adverse comments. Such notice may be submitted to Mr. Thomas H. Diggs, Chief, SIP/New Source Section, at the address given below for EPA Region VI.

ADDRESSES: Copies of the State's submittal and other relevant documents are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region VI, 1445 Ross Avenue, Mail Code 6T-AN, Dallas, TX. 75202-2733,

Louisiana Department of Environmental Quality, Air Quality Division, 625 North 4th Street, 8th Floor, Baton Rouge, LA. 70804-4096, and

Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

If you plan to visit any of these offices, please contact the person named below to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Barbara Durso, (214) 655-7214 or FTS 255-7214.

SUPPLEMENTARY INFORMATION: In 1974, the Louisiana Legislature adopted a new administrative code and mandated that the State's agencies renumber their regulations to conform to the new code. On December 20, 1987, after public hearing, LDEQ adopted the recodified air quality regulations. In a letter dated January 6, 1988, the Governor of Louisiana requested that EPA approve the recodified air quality regulations as part of the SIP. After extensive review, the Region notified LDEQ in a letter dated April 11, 1988, that parts of the request could not be classified as recodification of existing regulations nor could all the regulations be properly included in the SIP. EPA identified those sections that the State should resubmit in a separate SIP revision request or that did not belong in the SIP (e.g., new source performance standards). On July 21, 1988, LDEQ and EPA discussed the April letter, and EPA agreed to expand the rulemaking to more than a strict recodification of the existing SIP. On July 22, 1988, EPA sent LDEQ a letter to clarify its position. EPA sent a final letter to LDEQ date September 26, 1988, asking the State to clarify its January request. In a letter dated October 4, 1988, the Governor revised his initial request to exclude these regulations: LAC:33:III:Chapters 21, 25, 29, and 31, and LAC:33:III:Section 6099 and 6100. He also noted that the original submittal erroneously deleted the bottom half of LAC:33:III:Table 4 and submitted a corrected copy of that table.

During the final review of the draft rulemaking notice, EPA identified three recodified regulations that contained unacceptable changes. These regulations, LAC:33:III:2305.C, 2307.C.1.a, and 2307.C.2.a, were reworded to refer to State regulations that are not, and will not, be a part of the SIP. When EPA approved these regulations originally, the State referenced the Code of Federal Regulations. EPA asked LDEQ to readopt these regulations with the original wording. LDEQ agreed to do so.

Except as noted above, the recodification makes only minor changes at most. For example, as part of the recodification, the names of State offices and agencies have been replaced throughout the regulations with the phrase "administrative authority." This phrase eliminates the need to amend regulations whenever the names of the positions or agencies are changed or eliminated. For example, the regulations no longer refer to the defunct Louisiana Environmental Control Commission (LECC). Therefore, the State eliminated the definitions of "Commission" and "Assistant Secretary" to add a new term: "administrative authority." Also, wherever the term "administrative authority" appears with an asterisk (*) in the regulations, the reader should note that the Administrator of EPA must also concur before "any alternative or equivalent test methods, waivers, monitoring methods, testing and monitoring procedures, customized or correction factors, and alternative to any design, equipment, work practices or operational standards * * * become effective."

Some other changes included revising all internal references to adhere to the new code, deleting obsolete terms, and consolidating repetitive regulations. In addition to the recodification, the State requested that EPA approve its Division Source Test Manual (LAC:33:III:Chapters 60, 61, and 63) as part of its SIP. Later, when the Governor modified his request to exclude LAC:33:III:Sections 6099 and 6100, he effectively withdrew Chapter 61, because this chapter only consisted of section 6100. EPA agreed to approve the remaining test methods, because they are identical to the test methods in 40 CFR Parts 60 and 61.

Rather than recount the many changes here, the Agency prepared Table A to compare the existing SIP regulations to the proposed regulations under the recodification. EPA also prepared Table B to show those regulations being deleted for obsolescence. Finally, Table C identifies the regulations that are new to the SIP. These regulations include definitions, test methods, and administrative procedures. Because these new rules are either identical to existing federal rules or are administrative, EPA is approving them without prior notice. These tables are printed below.

TABLE A.—RECODIFIED LOUISIANA AIR QUALITY REGULATIONS

New Code	Title	Old Code	Comments
Title 33	Environmental Quality		
Part III	Air		

TABLE A.—RECODIFIED LOUISIANA AIR QUALITY REGULATIONS—Continued

New Code	Title	Old Code	Comments
Chapter 1	General Provisions		
Section 101	Authority	1.0	Updated to show the amendments to the La.R.S. 30:1061, et seq. Throughout the new code, the State has substituted the term "administrative authority" for the former titles of State and Federal offices. Also, the State has replaced "LECC" and "Commission" with "Department." All references to the Commission and its meetings have been removed.
101.A		1.1	See above.
101.B		3.0	See above.
		3.1	See above.
103	Scope and Severability		
103.A	Scope	2.0	Unchanged.
		2.1	
103.B	Severability	30.0	See section 101 comments.
105			(Reserved.)
107	Investigations—Authority	7.0	See section 101 comments.
107.A	Private Conference Method	7.1	See section 101 comments.
107.B	Complaints to be Sent by Registered Mail	7.2	Unchanged.
107.C	Investigations to be Made Only for Written Complaints.	7.3	See section 101 comments.
107.D	If Investigation Reveals No Violation	7.4	See section 101 comments.
107.E	Confidentiality of Information	7.5	The word "secret" is replaced with "proprietary" in this section.
109	Compliance Schedules		
109.A		6.10	See section 101 comments.
109.B	Necessary Changes for Approval	6.10.1	See section 101 comments.
109.C	Annual Report Requirement	6.10.2	See section 101 comments.
111	Definitions:	4.0	
	"Act"	4.1	Unchanged.
	"Aerosol"	4.2	Unchanged.
	"Afterburner"	4.3	Unchanged.
	"Air Contaminants"	4.4	Unchanged.
	"Air Pollution"	4.5	Unchanged.
	"Ambient Air"	4.6	Unchanged.
	"Application for Approval of Emissions"	4.7	Unchanged.
	"ASME"	4.8	Unchanged.
	"ASTM"	4.9	Unchanged.
	"Asphalt"	4.81	Unchanged.
	"Atmosphere"	4.10	Unchanged.
	"Automobile"	4.85	Unchanged.
	"Automobile and Light-Duty Assembly Plant"	4.86	Unchanged.
	"Bubble Concept"	4.97	Unchanged.
	"Bulk Plant"	4.92	Unchanged.
	"Bulk Terminal"	4.93	Unchanged.
	"Carbon Monoxide (CO)"	4.11	Unchanged.
	"Class II Finish"	4.106	Unchanged.
	"Combustion Unit"	4.13	Unchanged.
	"Component"	4.140	Unchanged.
	"Condensate"	4.15	Unchanged.
	"Control Equipment"	4.16	Unchanged.
	"Cross-recovery"	4.96	Unchanged.
	"Cutback Paving Asphalt"	4.82	Unchanged.
	"Department"	4.17	See section 101 comments.
	"Distance from Source to Property Line"	4.18	Unchanged.
	"Downwind Level"	4.19	Unchanged.
	"Dry Cleaning Facility"	4.107	Unchanged.
	"Dwelling"	4.21	Unchanged.
	"Effluent Water Separator"	4.22	Unchanged.
	"Emission"	4.23	Unchanged.
	"Emission Inventory"	4.24	Unchanged.
	"Emulsified Asphalt"	4.83	Unchanged.
	"Final Repair"	4.87	Unchanged.
	"Flexogrphic Printing"	4.101	Unchanged.
	"Flue"	4.25	Unchanged.
	"Fossil Fuel"	4.26	Unchanged.
	"Fossil Fuel-fired Steam Generating Unit"	4.27	Unchanged.
	"Fuel Burning Equipment"	4.28	Unchanged.
	"Fugitive Dust"	4.29	Unchanged.
	"New Design Furnace"	4.95	Unchanged.
	"Garbage"	4.30	Unchanged.
	"Gasoline"	4.94	Unchanged.
	"Gas/Vapor Service"	4.139	Unchanged.
	"Good Performance Level"	4.136	Unchanged.
	"Graphic Arts (Printing)"	4.98	Unchanged.
	"Hardboard"	4.114	Unchanged.
	"Hardwood Plywood"	4.112	Unchanged.
	"Heat Input"	4.31	Unchanged.
	"Heat Sensitive Material"	4.109	Unchanged.

TABLE A.—RECODIFIED LOUISIANA AIR QUALITY REGULATIONS—Continued

New Code	Title	Old Code	Comments
	"Hydrocarbon"	4.32	Unchanged.
	"Impairment of Visibility"	4.34	Unchanged.
	"Incinerator"	4.35	Unchanged.
	"Installation"	4.36	Unchanged.
	"Leak"	4.141	Unchanged.
	"Light-Duty Truck"	4.88	Unchanged.
	"Low Organic Solvent Coating (LOSC)"	4.115	Unchanged.
	"Micrograms per Cubic Meter (μg/m*3)"	4.37	Unchanged.
	"Modification"	4.38	Unchanged.
	"Multiple Chamber Incinerator"	4.39	Unchanged.
	"Natural Finish Hardwood Plywood Panels"	4.113	Unchanged.
	"New Source"	4.40	Unchanged.
	"Nitric Acid Production Unit"	4.41	Unchanged.
	"Nitrogen Oxides"	4.42	Unchanged.
	"Nuisance"	4.43	Unchanged.
	"Opacity"	4.44	Unchanged.
	"Organic Solvents"	4.45	Unchanged.
	"Outdoor Burning (Open Burning)"	4.46	Unchanged.
	"PPM by Volume"	4.51	Unchanged.
	"Packaging Rotogravure Printing"	4.99	Unchanged.
	"Particleboard"	4.104	Unchanged.
	"Particulate Matter"	4.47	Disapproved on 3/26/79 and not approved here.
	"Penetrating Prime Coat"	4.84	Unchanged.
	"Person"	4.49	Unchanged.
	"Petroleum Refinery"	4.80	Unchanged.
	"Pharmaceutical Manufacturing Facility"	4.103	Unchanged.
	"Photochemical Oxidant"	4.50	Unchanged.
	"Polymer Manufacturing Industry"	4.138	Unchanged.
	"Portland Cement Plant"	4.48	Unchanged.
	"Premises"	4.52	Unchanged.
	"Primer"	4.89	Unchanged.
	"Primer-Surfacer"	4.90	Unchanged.
	"Printed Panels"	4.111	Unchanged.
	"Process Height"	4.53	Unchanged.
	"Production Equipment Exhaust System"	4.108	Unchanged.
	"Property"	4.54	Unchanged.
	"Publication Rotogravure Printing"	4.1000	Unchanged.
	"Public Nuisance"	4.55	Unchanged.
	"Refuse"	4.56	Unchanged.
	"Ringlemann Smoke Chart"	4.57	Unchanged.
	"Rubbish"	4.58	Unchanged.
	"Smoke"	4.59	Unchanged.
	"Soiling Index"	4.60	Unchanged.
	"Source"	4.61	Unchanged.
	"Stack or Chimney"	4.62	Unchanged.
	"Standard Condition"	4.63	Unchanged.
	"State"	4.64	Unchanged.
	"Submerged Fill Pipe"	4.65	Unchanged.
	"Sulfation Rate"	4.66	Unchanged.
	"Sulphur Compounds"	4.67	Unchanged.
	"Sulphur Dioxide (S02)"	4.68	Unchanged.
	"Sulphur Trioxide (S03)"	4.69	Unchanged.
	"Sulfuric Acid (H2S04)"	4.70	Unchanged.
	"Sulfuric Acid Production Unit"	4.71	Unchanged.
	"Suspended Particulate Matter"	4.72	Disapproved on 3/26/79 and not approved here.
	"Synthetic Organic Chemical Manufacturing Industry".	4.137	Unchanged.
	"Thin Particleboard"	4.105	Unchanged.
	"Topcoat"	4.91	Unchanged.
	"Transfer Efficiency"	4.110	Unchanged.
	"Undesirable Levels"	4.74	See section 101 comments
	"Upwind Level"	4.75	Unchanged.
	"Variance"	4.76	Unchanged.
	"Volatile Organic Compounds" 1	4.77	Unchanged.
	"Waste Classification"	4.78	Unchanged.
	"Weak Nitric Acid (HN03)"	4.79	Unchanged.
Chapter 3	Notification and Procedures for Unauthorized Discharges.	(Reserved.)	
Chapter 5	Permit Procedures		
501	Authority	6.0	See section 101 comments.
503	Interstate Pollution	6.11	See section 101 comments.
505	For Emissions Below PSD de minimis Levels		
505.A.1	Requirements for Preconstruction Permit	6.1, ¶ 1	See section 101 comments.
505.A.2		6.1, ¶ 2	Unchanged.
505.A.3		6.1.5, ¶ 1	Unchanged.
505.A.4		6.1.5, ¶ 2	See section 101 comments.
505.A.4.a		6.1.5, ¶ 2 part A.	See section 101 comments.
505.A.4.b		6.1.5, ¶ 2 part B.	Unchanged.
505.A.5		6.1.5, ¶ 3	See section 101 comments.

TABLE A.—RECODIFIED LOUISIANA AIR QUALITY REGULATIONS—Continued

New Code	Title	Old Code	Comments
505.B	Provisions for Exemptions and Certification of Approval.		
505.B.1		6.1.1, ¶ 1	See section 101 comments.
505.B.2		6.1.1, ¶ 2	See section 101 comments.
505.C	Permits for Storage Tanks May be Granted by the Administrative Authority.		
505.D	Department Has the Power to Prohibit Construction.	6.1.3	See section 101 comments.
505.E	Notification of Change of Ownership Required	6.1.4	See section 101 comments.
505.F	Multiple Process Permit	6.1.6	
505.F.1		6.1.6, ¶ 1	Unchanged.
505.F.2		6.1.6, ¶ 2	See section 101 comments.
505.G	Professional Engineer Required	6.2	Unchanged.
505.H	Permit Request (report) Contents	6.3	Unchanged.
505.H.1	Description of Proposed Action	6.3.1	Unchanged.
505.H.2	Location Map	6.3.2	Unchanged.
505.H.3	Data on Emission Sources Required	6.3.3	Unchanged.
505.H.4	Indicate Abatement	6.3.4	Unchanged.
505.H.5	State Effect on Air Quality	6.3.5	Unchanged.
505.H.6	Administrative Authority can Require Detailed Ambient Air Analysis.		See section 101 comments.
505.H.7	Other Pertinent Data	6.3.7	Unchanged.
505.H.8	LAER Required in Nonattainment Areas, Certification of Other Major Source Compliance Required.	6.3.8	See section 1 comments.
505.I	Public Comment Provisions	6.6	Unchanged.
505.I.1		6.6(1)	See section 101 comments.
505.I.2		6.6(2)	See section 101 comments.
505.I.3		6.6(3)	See section 101 comments.
505.I.4		6.6(4)	See section 101 comments.
505.J	Variances for Site Preparation	6.7	Disapproved on 3/28/79 and not approved here.
505.J.1		6.7, ¶ 1	See section 505.J comments.
505.J.2		6.7, ¶ 2	See section 505.J comments.
505.J.3		6.7, ¶ 3	See section 505.J comments.
505.J.4		6.7, ¶ 4	See section 505.J comments.
505.K	Relocation of Portable Facilities	6.8	
505.K.1		6.8, ¶ 1	See section 101
505.K.1.a		6.8 (1)	Unchanged.
505.K.1.b		6.8 (2)	Unchanged.
505.K.1.c		6.8 (3)	Unchanged.
505.K.1.d		6.8 (4)	Unchanged.
505.K.2		6.8, ¶ 2	Unchanged.
505.K.3		6.8, ¶ 3	Unchanged.
505.L	Temporary Exemption for Testing	6.9	Disapproved on 3/28/79 and not approved here.
505.L.1		6.9, ¶ 1	See section 505.L comments.
505.L.2		6.9, ¶ 2	See section 505.L comments.
505.L.3		6.9, ¶ 3	See section 505.L comments.
505.L.4		6.9, ¶ 4	See section 505.L comments.
505.M	Confidential Information		
505.M.1	Disclosure of Classified or Confidential Information Not Required.	6.4	The word "secret" is replaced with the word "proprietary."
507	Notification Required (for Emission Reduction)	6.5	See section 101 comments.
509	Prevention of Significant Deterioration		
509.A	Applicability	90.1	Unchanged.
509.A.1		90.1(1)	Unchanged.
509.A.2		90.1(2)	Unchanged.
509.B	Definitions	90.2	Unchanged.
	"Actual Emissions"	90.2(20)	Unchanged.
	Part 1	90.2(20)i	Unchanged.
	Part 2	90.2(20)ii	Unchanged.
	Part 3	90.2(20)iii	Unchanged.
509.B	"Administrative Authority"	90.2(27)	Unchanged.
	"Adverse Impact on Visibility"	90.2(26)	Unchanged.
	Part 1	90.2(26)i	Unchanged.
	Part 2	90.2(26)ii	Unchanged.
	"Allowable Emissions"	90.2(16)	Unchanged.
	Part 1	90.2(16)i	Unchanged.
	Part 2	90.2(16)ii	Unchanged.
	Part 3	90.2(16)iii	Unchanged.
	"Baseline Area"	90.2(15)	Unchanged.
	Part 1	90.2(15)i	Unchanged.
	Part 2	90.2(15)ii	Unchanged.
	"Baseline Concentration"	90.2(13)	Unchanged.
	Part 1	90.2(13)i	Unchanged.
	Subpart a	90.2(13)i (a)	Unchanged.
	Subpart b	90.2(13)i(b)	Unchanged.
	Part 2	90.2(13)ii	Unchanged.
	Subpart a	90.2(13)ii(a)	Unchanged.
	Subpart b	90.2(13)ii(b)	Unchanged.
	"Baseline Date"	90.2(14)	Unchanged.

TABLE A.—RECODIFIED LOUISIANA AIR QUALITY REGULATIONS—Continued

New Code	Title	Old Code	Comments
	Part 1	90.2(14)i	Unchanged.
	Part 2	90.2(14)ii	Unchanged.
	Part 3	90.2(14)iii	Unchanged.
	Subpart a	90.2(14)iii(a)	Unchanged.
	Subpart b	90.2(14)iii(b)	Unchanged.
	"Begin Acutal Construction"	90.2(11)	Unchanged.
	"Best Available Control Technology (BACT)"	90.2(12)	Unchanged.
	Part 1	90.2(12) ¶ 1	Unchanged.
	Part 2	90.2(12) ¶ 2	Unchanged.
	"Best Available Retrofit Technology (BART)"	90.2(28)	Unchanged.
	"Building, Structure, Facility, or Installation"	90.2(6)	Unchanged.
	"Commence"	90.2(9)	Unchanged.
	Part 1	90.2(9)i	Unchanged.
	Part 2	90.2(9)ii	Unchanged.
	"Complete"	90.2(21)	Unchanged.
	"Construction"	90.2(8)	Unchanged.
	"Emissions Unit"	90.2(7)	Unchanged.
	"Existing Stationary Facility"	90.2(29)	Unchanged.
	"Federal Class I Area"	90.2(30)	Unchanged.
	"Federal Land Manager"	90.2(23)	Unchanged.
	"Fixed Capitol Cost"	90.2(31)	Unchanged.
	"Fugitive Emissions"	90.2(19)	Unchanged.
	"In Existence"	90.2(32)	Unchanged.
	"In Operation"	90.2(34)	Unchanged.
	"Indian Governing Body"	90.2(25)	Unchanged.
	"Indian Reservation"	90.2(24)	Unchanged.
	"Innovative Control Technology"	90.2(18)	Unchanged.
	"Installation"	90.2(33)	Unchanged.
	"Integral Vista"	90.2(35)	Unchanged.
	"Major Modification"	90.2(2)	Unchanged.
	Part 1	90.2(2)i	Unchanged.
	Part 2	90.2(2)ii	Unchanged.
	Part 3	90.2(2)iii	Unchanged.
	Subpart a	90.2(2)iii(a)	Unchanged.
	Subpart b	90.2(2)iii(b)	Unchanged.
	Subpart c	90.2(2)iii(c)	Unchanged.
	Subpart d	90.2(2)iii(d)	Unchanged.
	Subpart e	90.2(2)iii(e)	Unchanged
	Condition 1	90.2(2)iii(e)1	Unchanged.
	Condition 2	90.2(2)iii(e)2	Unchanged.
	Subpart f	90.2(2)iii(f)	Unchanged.
	Subpart g	90.2(2)iii(g)	Unchanged.
	"Major Stationary Source"	90.2(1)	Unchanged.
	Part 1	90.2(1)i	Unchanged.
	Part 2	90.2(1)ii	Unchanged.
	Part 3	90.2(1)iii	Unchanged.
	Part 4	90.2(1)iv	Unchanged.
	"Mandatory Class I Federal Area"	90.2(36)	Unchanged.
	"Natural Conditions"	90.2(37)	Unchanged.
	"Necessary Preconstruction Approvals or Permits".	90.2(10)	Unchanged.
	"Net Emissions Increase"	90.2(3)	Unchanged.
	Part 1		
	Subpart a	90.2(3)i(a)	Unchanged.
	Subpart b	90.2(3)i(b)	Unchanged.
	Part 2	90.2(3)ii	Unchanged.
	Subpart a	90.2(3)ii(a)	Unchanged
	Subpart b	90.2(3)ii(b)	Unchanged.
	Part 3	90.2(3)iii	Unchanged.
	Part 4	90.2(3)iv	Unchanged.
	Part 5	90.2(3)v	Unchanged.
	Part 6	90.2(3)vi	Unchanged.
	Subpart a	90.2(3)vi(a)	Unchanged.
	Subpart b	90.2(3)vi(b)	Unchanged.
	Subpart c	90.2(3)vi(c)	Unchanged.
	Part 7	90.2(3)vii	Unchanged.
	"Potential to Emit"	90.2(4)	Unchanged.
	"Reasonably Attributable"	90.2(38)	Unchanged
	"Reconstruction"	90.2(39)	Unchanged
	Secondary Emissions"	90.2(17)	Unchanged
	Part 1	90.2(17)i	Unchanged.
	Part 2	90.2(17)ii	Unchanged.
	"Significant"	90.2(22)	Unchanged
	Part 1	90.2(22)i	Unchanged.
	Part 2	90.2(22)ii	Unchanged.
	Part 3	90.2(22)iii	Unchanged.
	"Signifcant Impairment"	90.2(40)	Unchanged.
	"Stationary Source"	90.2(5)	Unchanged.
	"Visibility Impairment"	90.2(41)	Unchanged.

TABLE A.—RECODIFIED LOUISIANA AIR QUALITY REGULATIONS—Continued

New Code	Title	Old Code	Comments
	"Visibility in Any Mandatory Class I Federal Area".	90.2(42)	Unchanged.
Table A	Table A	Table A	Unchanged.
509.C	Area Classification	90.3	Unchanged.
509.C.1		90.3(1)	Unchanged.
509.C.2		90.3(2)	Unchanged.
509.C.3		90.3(3)	Unchanged.
509.C.3a		90.3(3)i	Unchanged.
509.C.3.a.1		90.3(3)i(a)	Unchanged.
509.D	Ambient Air Increments	90.4	Unchanged.
509.E	Ambient Air Ceilings	90.5	Unchanged.
509.E.1		90.5(1)	Unchanged.
509.E.2		90.5(2)	Unchanged.
509.F.	Exclusions from Increment Consumption	90.6	Unchanged.
509.F.1		90.6(1)	Unchanged.
509.F.1.a		90.6(1)i	Unchanged.
509.F.1.b		90.6(1)ii	Unchanged.
509.F.1.c		90.90.6(1)iii	Unchanged.
509.F.1.d		90.6(1)iv	Unchanged.
509.G	Redesignation.	90.7	Unchanged.
509.H	Stack Heights	90.8	Unchanged.
509.H.1		90.8(1)	Unchanged.
509.H.1.a		90.8(1)i	Unchanged.
509.H.1.b		90.8(1)ii	Unchanged.
509.H.2		90.8(2)	Unchanged.
509.I	Review of Major Stationary Sources and Major Modifications Applicability and Exemptions.	90.9	Unchanged.
509.I.1		90.9(1)	Unchanged.
509.I.2		90.9(2)	Unchanged.
509.I.3		90.9(3)	Unchanged.
509.I.4		90.9(4)	Unchanged.
509.I.4.a		90.9(4)i	Unchanged.
509.I.4.b		90.9(4)ii	Unchanged.
509.I.4.b.i-xxvii		90.9(4)ii(a)-(z), (aa)	Unchanged.
509.I.4.c		90.9(4)iii	Unchanged.
509.I.4.c.i-iv		90.9(4)iii (a)-(d)	Unchanged.
509.I.5		90.9(5)	Unchanged.
509.I.6		90.9(6)	Unchanged.
509.I.7		90.9(7)	Unchanged.
509.I.8		90.9(8)	Unchanged.
509.I.8.a		90.9(8)i	Unchanged.
509.I.8.b		90.9(8)ii	Unchanged.
509.I.8.c		90.9(8)iii	Unchanged.
509.J	Control Technology Evaluation	90.10	Unchanged.
509.J.1		90.10(10)	Unchanged.
509.J.1		90.10(1)	Unchanged.
509.J.2		90.10(2)	Unchanged.
509.J.3		90.10(3)	Unchanged.
509.J.4.		90.10(4)	Unchanged.
509.K	Source Impact Analysis	90.11	Unchanged.
509.K.1		90.11(1)	Unchanged.
509.K.2		90.11(2)	Unchanged.
509.L.	Air Quality Models	90.12	Unchanged.
509.M	Air Quality Analysis	90.13	Unchanged.
509.M.1	Preapplication Analysis	90.13(1)	Unchanged.
509.M.1.a		90.13(1)i	Unchanged.
509.M.1.a.i		90.13(1)i(a)	Unchanged.
509.M.1a.ii		90.13(1)i(b)	Unchanged.
509.M.1.b		90.13(1)ii	Unchanged.
509.M.1.c		90.13(1)iii	Unchanged.
509.M.1.d		90.13(1)iv	Unchanged.
509.M.2	Post-Construction Monitoring	90.13(2)	Unchanged.
509.M.3	Operation of Monitoring Station	90.13(3)	Unchanged.
509.N	Source Information	90.14	Unchanged.
509.N.1		90.14(1)	Unchanged.
509.N.1.a		90.14(1)i	Unchanged.
509.N.1.b		90.14(1)ii	Unchanged.
509.N.1.c		90.14(1)iii	Unchanged.
509.N.2		90.14(2)	Unchanged.
509.N.2.a		90.14(2)i	Unchanged.
509.N.2.b		90.14(2)ii	Unchanged.
509.O	Additional Impact Analyses	90.15	Unchanged.
509.O.1		90.15(1)	Unchanged.
509.O.2		90.15(2)	Unchanged.
509.O.3		90.15(3)	Unchanged.
509.O.3.a		90.15(3)i	Unchanged.
509.O.3.b		90.15(3)ii	Unchanged.
509.O.4		90.15(4)	Unchanged.
509.O.5		90.15(5)	Unchanged.

TABLE A.—RECODIFIED LOUISIANA AIR QUALITY REGULATIONS—Continued

New Code	Title	Old Code	Comments
509.P	Source Impacting Federal Class I Areas-Additional Requirements.	90.16	Unchanged.
509.P.1	Notice to Federal Land Managers	90.16(1)	Unchanged.
509.P.2	Denial-Impact on Air Quality Related Values	90.16(2)	Unchanged.
509.P.3	Visibility Analysis	90.16(3)	Unchanged.
509.P.4	Class I Variances	90.16(4)	Unchanged.
509.Q	Public Participation	90.17	Unchanged.
509.Q.1		90.17(1)	Unchanged.
509.Q.2		90.17(2)	Unchanged.
509.Q.2.a		90.17(2)i	Unchanged.
509.Q.2.b		90.17(2)ii	Unchanged.
509.Q.3		90.17(3)	Unchanged.
509.Q.3.a		90.17(3)i	Unchanged.
509.Q.3.a.i-vii		90.17(3)1 (a)-(g)	Unchanged.
509.Q.4		90.17(4)	Unchanged.
509.Q.5		90.17(5)	Unchanged.
509.Q.6		90.17(6)	Unchanged.
509.Q.7		90.17(7)	Unchanged.
509.Q.8		90.17(8)	Unchanged.
509.Q.8.a		90.17(8)	Unchanged.
509.Q.8.b		90.17(8)ii	Unchanged.
509.R	Sourse Obligation	90.18	Unchanged.
509.R.1		90.18(1)	Unchanged.
509.R.2		90.18(2)	Unchanged.
509.R.3		90.18(3)	Unchanged.
509.R.4		90.18(4)	Unchanged.
509.S	Innovative Control Technology	90.19	Unchanged.
509.S.1		90.19(1)	Unchanged.
509.S.2		90.19(2)	Unchanged.
509.S.2.a		90.19(2)i	Unchanged.
509.S.2.b		90.19(2)ii	Unchanged.
509.S.2.c		90.19(2)iii	Unchanged.
509.S.2.d		90.19(2)iv	Unchanged.
509.S.2.d.i-iii		90.19(2)iv a-c	Unchanged.
509.S.2.e		90.19(2)v	Unchanged.
509.S.3		90.19(3)	Unchanged.
509.S.3.a		90.19(3)i	Unchanged.
509.S.3.b		90.19(3)ii	Unchanged.
509.S.3.c		90.19(3)iii	Unchanged.
509.S.4		90.19(4)	Unchanged.
Map	Untitled map of Louisiana air control regions	Map	Unchanged.
Chapter 7	Ambient Air Quality		This chapter consolidates the sections on National Ambient Air Quality
701	Purpose		Standards (NAAQS) in the old code.
701.A	General	8.1	Unchanged.
701.B	Particulate Matter (Suspended Particulates)	9.1.1	Unchanged.
701.C	Sulfur Dioxide	12.1	Unchanged.
701.D	Carbon Monoxide	13.1	Unchanged.
701.E			(Reserved.)
701.F	Atmospheric Oxidants	15.1	Unchanged.
701.G	Nitrogen Oxides	16.1	Unchanged.
701.H	Lead	10.1.1	Unchanged.
703	Scope	9.1.2, 13.2, 12.2, 16.2, 10.1.2, 15.2	This section consolidates the statements of scope for each of the NAAQS.
70	Standards	8.4	Unchanged.
707	Degradation of Ambient Air Having Higher Quality than Set Forth in these Sections Restricted.	9.15, 12.3, 10.1.5, 13.3, 15.3, 16.3	This section consolidates sections in the old code that prohibit the degradation of air having a higher quality than set forth by the standards.
709	Measurement of Concentrations-Particulate Matter (Suspended Particulates), Sulfur Dioxide, Carbon Monoxide, Atmospheric Oxidants, Nitrogen Oxides, and Lead.	15.5, 16.5, 10.3, 9.4, 13.5, 12.5	This section consolidates the statements on measurement and methodology of air quality standards in the old code.
709.A		15.5.1, 9.4.1, 13.5.1, 16.5.1, 12.5.1, 10.3.1..	See section 709 comments.
709.B		15.5.2, 16.5.2, 13.5.2, 9.4.2, 12.5.2, 10.3.2.	See section 709 comments.
Table 1	Primary Ambient Air Quality Standards	Table 1	Unchanged.
Table 1a	Secondary Ambient Air Quality Standards	Table 1a	Unchanged.
Table 2	Ambient Air—Methods of Contaminant Measurement.	Table 2	Unchanged.
Chapter 9	General Regulations on Control of Emissions and Emission Standards.		
901	Purpose	17.1	Unchanged.
903	Scope	17.2	Unchanged.
905	Control Facilities to be Installed when Feasible	17.9, 8.9	Consolidates statements in old code.
907	Emission Resulting in Undesireable Levels Not Allowed.	8.8	Unchanged.
907.A		8.2, 17.10	Consolidates statements from old code.
907.B	From Refuse Disposal	8.3	Unchanged.

TABLE A.—RECODIFIED LOUISIANA AIR QUALITY REGULATIONS—Continued

New Code	Title	Old Code	Comments
909	Responsible Person to have Test Made	8.5	Unchanged.
911	Department May Make Tests	8.6, 17.4	Consolidates statements from old code
913	New Sources to Provide Sampling Ports	17.5	Unchanged
915	Emission Monitoring Requirements	17.6	Unchanged
915.A	Applicability	17.6.1	Unchanged
915.B	Minimum Monitoring System Capability, Specifications, Data Reporting, Data Reduction	17.6.2	Unchanged
915.C	Special Consideration	17.6.3	See section 101 comments
915.D	Exemptions	17.6.1.1	Unchanged
915.E	Circumvention	17.8	Unchanged.
917	Variances	17.7	Unchanged.
917.A		17.7.1	See section 101 comments
917.B		17.7.2	Unchanged.
918	Recordkeeping and Annual Reporting	8.5.1, 17.13	Consolidates statements made in the old code.
923	Maintenance of Pay	17.15	Unchanged
925	Mass Emission Rate Control Plan		
925.A		17.16, ¶1	See section 101 comments.
925.B		17.16, ¶2	See section 101 comments
927	Notification Required (Emergency Occurrences)	17.11	Unchanged.
929	Violation of Emission Regulations Cannot be Authorized.		
929.A		8.4, 9.1.3, 10.1.3 13.4.1 16.4.1 12.4.1, 15.4.1	Drops phrase "above which limits the ambient air is hereby declared to be unacceptable and requires air pollution control measures" and the second sentence of Section 8.4 of the old code. Also consolidates the statements made in the other sections of the old code listed.
929.B		9.1.4, 13.4.2, 10.1.4, 15.4.2, 16.4.2, 12.4.2	Consolidates the statements made made in the old code on prohibited activities.
Chapter 11	Control of Emissions of Smoke		
1101	Control of Air Pollution from Smoke	18.0	Unchanged.
1101.A	Purpose	18.1	Unchanged.
1101.B	Control of Smoke	18.2	Unchanged.
1103	Impairment of Visibility on Public Roads Prohibited.	18.5	Unchanged.
1105	Smoke from Flaring Shall be no Darker than No. 1 Ringelmann.	18.3	See section 101 comments.
1107	Exemptions	18.4	See section 101 comments.
1109	Control of Air Pollution from Outdoor Burning	11.0	Unchanged.
1109.A	Purpose	11.1	Unchanged.
1109.B	Outdoor Burning Prohibited	11.2	Unchanged.
1109.C	Exceptions to Prohibition Against Outdoor Burning.	11.3	Unchanged.
1109.C.1		11.3.1	Unchanged.
1109.C.2		11.3.2	Unchanged.
1109.C.3		11.3.3	Unchanged.
1109.C.4		11.3.4	Unchanged.
1109.C.5		11.3.5	Unchanged.
1109.C.6		11.3.6	Unchanged.
1109.C.7		11.3.7	Unchanged.
1109.C.8		11.3.8	Unchanged.
1109.C.8.a-f		11.3.8(a)–(f)	Unchanged.
1109.C.9		11.3.9	Unchanged.
1109.C.9.a-c		11.3.9(a)-(c)	Unchanged.
1109.C.10		11.3.10	Unchanged.
1109.C.10.a-c		11.3.10(a)-(c)	Unchanged.
1109.C.11	Special Situations Approvable for Exemption by the Administrative Authority Prior to Initiation of Burning Operation.	11.3.11	See section 101 comments.
1109.D	Traffic Hazards Prohibited	11.4	Unchanged.
1109.E	Exclusion from Application of this Section	11.5	Unchanged.
1111	Exclusion	18.7	Unchanged.
1111.A	Variance	18.6.1	Unchanged.
1111.B	Unpopulated Areas	18.6.2	Unchanged.
1111.B.1		18.6.2(a)	Unchanged.
1111.B.2		18.6.2(b)	Unchanged.
1111.C	Water Vapor	18.6.3	See section 101 comments.
Chapter 13	Emission Standards for Particulate Matter.		
Subchapter A	General		
1301	Emission Standards for Particulate Matter	19.0	Unchanged.
1301.A	Purpose	19.1	Unchanged.
1301.B	Scope	19.2	Unchanged.
1303	Provision Governing Specific Activities	9.2	Unchanged.
1303.A	Toxic Substances	9.2.1	Unchanged.
1303.B	Impairment of Visibility	9.2.2	Unchanged.
1305	Control of Fugitive Emissions		
1305.A		19.3	Unchanged.
1305.A.1		19.3(a)	Unchanged.
1305.A.2		19.3(b)	Unchanged.
1305.A.3		19.3(c)	Unchanged.

TABLE A.—RECODIFIED LOUISIANA AIR QUALITY REGULATIONS—Continued

New Code	Title	Old Code	Comments
1305.A.4		19.3(d)	Unchanged
1305.A.5		19.3(e)	Unchanged
1305.A.6		19.3(f)	Unchanged
1305.A.7		19.3(g)	Unchanged
1309	Measurement of Concentration	19.7	Unchanged
1309.A	Method	19.7.1	Unchanged
1305.B	Calibration Required	19.7.2	Unchanged
Subchapter B	Fluid Catalytic Cracking Units		
1311	Emission Limits-Including Fluid Catalytic Cracking Units.		
1311.A		19.4	Unchanged
1311.B		19.5	Unchanged
1311.C		19.5.1, ¶ 1	Unchanged.
1311.D		19.5.1, ¶ 2	Unchanged
1311.E		19.5.1, ¶ 3	Unchanged.
1311.F		19.5.1, ¶ 4	Unchanged.
1311.G	Variances	19.5.2	Unchanged.
Subchapter C	Fuel Burning Equipment		
1313	Emission from Fuel Burning Equipment	21.0	Unchanged
1313.A	Purpose	21.1	Unchanged.
1313.B	Scope	21.2	Unchanged.
1313.C	Limitations	21.3	Unchanged.
1315	More Stringent Regulations may be Prescribed if Particulates are Toxic.	21.6, 21.6.1	The new regulation combines these statements from the old code
1317	Exclusions	9.3	Unchanged.
1317.A	When Variance is Granted	9.3.1	Unchanged.
1317.B	Applicant Shall Furnish the Department of Environmental Quality.	9.3.2	Unchanged
Subchapter D	Refuse Incinerators		
1319	Refuse Incinerators	20.0	Unchanged.
1319.A	Purpose	20.1	Unchanged.
1319.B	Scope	20.2	Unchanged.
1319.C	Determination of Incinerator Maximum Burning Capacity.	20.3	Unchanged
1319.D	All Incinerators Must be Approved Prior to Installation.	20.4	Unchanged
1319.E	Allowable Emission from Incinerator	20.5	Unchanged.
1319.F	Restriction on Emissions	20.6	Unchanged.
1319.F.1		20.6.1	Unchanged.
1319.F.2		20.6.2	Unchanged.
1319.F.3		20.6.3	Unchanged.
1319.G	Disposal of Particulate Matter and/or Suspended Particulate Matter.	20.7	Unchanged.
1319.H	All Incinerator Equipment to be Kept in Good Working Condition.	20.8	Unchanged.
Subchapter E	Leadened Particulate Matter		
1321	Emission Standards for Leadened Particulate Matter.	19.0A	Unchanged.
Chapter 15	Emission Standards for Sulfur Dioxide	24.0	Unchanged.
1501	Degradation of Existing Emission Quality Restricted.	24.5	Unchanged.
1503	Emission Limitations		
1503.A	Sulfuric Acid Plants New and Existing	24.7.2	Unchanged
1503.B	Sulfur Recovery Plants—New	24.7.3	Unchanged.
1503.C	All Other Sources—New and Existing not Elsewhere Discussed.	24.7.4	Unchanged.
1503.D	Measurement of Concentrations	24.6	Unchanged.
1503.D.1	Analytical methods	24.6.1	Unchanged.
1503.D.2	Calibration of Equipment Required	24.6.2	Unchanged.
1505	Variances	24.8	Unchanged.
1507	Exceptions	24.9	Unchanged.
1507.A	Start-Up provisions	24.9.1	Unchanged.
1507.A.1		24.9.1, ¶ 1	Unchanged.
1507.A.2		24.9.1, ¶ 2	Unchanged.
1507.B	On-line Operating Adjustments	24.9.2	Unchanged.
1507.B.1		24.9.2, ¶ 1	Unchanged.
1507.B.2		24.9.2, ¶ 2	Unchanged.
1509	Reduced Sulfur Compounds (New Source)	24.7.1	Unchanged.
Chapter 17	Control of Emissions of Carbon Monoxide (New Sources).	25.0	Unchanged.
Subchapter A	General		
1701	Degradation of Existing Emission Quality Restricted.	25.5	Unchanged.
Subchapter B	Ferrous Metal Emissions		
1703	Ferrous Metal Emissions	25.6.1	Unchanged.
Subchapter C	Petroleum Refinery Emissions		
1705	Petroleum Refinery Emissions	25.6.2	Unchanged.
Chapter 19	Control of Emission of Nitrogen Oxides		(Reserved.)
Table 8	Table 8	Table 8	Unchanged.
Chapter 23	Control of Emissions for Specific Industries		

TABLE A.—RECODIFIED LOUISIANA AIR QUALITY REGULATIONS—Continued

New Code	Title	Old Code	Comments
Subchapter A	Chemical Woodpulping Industry		
2301	Control of Emissions from the Chemical Woodpulping Industry.	23.0	Unchanged.
2301.A	Purpose	23.1	Unchanged.
2301.B	Scope	23.2	Unchanged.
2301.C	General	23.3	Unchanged.
2301.D	Emission Limitations	23.4	Unchanged.
2301.D.1	Particulate Emissions	23.4.1	Unchanged.
2301.D.1.a–d		23.4.1(1)–(4)	Unchanged.
2301.D.2	Sulfur Oxides	23.4.2	Unchanged.
2301.D.3	Total Reduced Sulfur Oxides	23.4.3	Unchanged.
2301.D.3.a		23.4.3(1)	Unchanged.
2301.D.3.a.i.–iv		23.4.3(1)a–d	Unchanged.
2301.D.3.b		23.4.3.(2)	Unchanged.
2301.D.3.c		23.4.3.(3)	Unchanged.
2301.D.3.d		23.4.3.(4)	Unchanged.
2301.D.3.e		23.4.3.(5)	Unchanged.
2301.D.3.f		23.4.3.(6)	Changes applicability to smelt dissolving tanks with 0.0016 gm/kg black liquor fired.
2301.D.3.g		23.4.3.1	Unchanged.
2301.D.3.h		23.4.3.2	Unchanged.
2301.D.3.i	Compliance	23.4.3.3	Unchanged.
2301.D.4	Opacity Limitation	23.4.4	Unchanged.
2301.D.4.a	Compliance	23.4.4.1	Unchanged.
2301.D.4.a.i.–ii		23.4.4.1(1)–(2)	Unchanged.
Subchapter B	Aluminum Plants		
2303	Standards for Horizontal Stud Soderberg Primary Aluminum Plants and Prebake Primary Aluminum Plants.	28.0	Unchanged.
2303.A	Purpose	28.1	Unchanged.
2303.B	Scope	28.1	Unchanged.
2303.C	General Definitions	28.2	Unchanged.
2303.C.1	Pot Line Primary Emission Control Systems	28.3	Unchanged.
2303.C.2	Prebake Process Primary Aluminum Plants	28.3.2	Unchanged.
2303.C.3	Horizontal Stud Soderberg Process Primary Aluminum Plant.	28.3.3	Unchanged.
2303.D	Emission Limitations	28.4	Unchanged.
2303.D.1	Particulate Emissions—Horizontal Stud Soderberg Process.	28.4.1	Unchanged.
2303.D.1.a		28.4.1, ¶ 1	Unchanged.
2303.D.1.b		28.4.1, ¶ 2	Unchanged.
2303.D.1.b.i.–ii		28.4.1(a)–(b)	Unchanged.
2303.D.2	Particulate Emissions—Prebake Process	28.4.2	Unchanged.
2303.D.2.a		28.4.2, ¶ 1	Unchanged.
2303.D.2.b		28.4.2, ¶ 2	Unchanged.
2303.D.2.b.i.–ii		28.4.2(a)–(b)	Unchanged.
2303.D.3	Fluoride Emissions—Horizontal Stud Soderberg Process.	28.4.3	Unchanged.
2303.D.4	Fluoride Emissions—Pre-Bake Process	28.4.4	Unchanged.
2303.E	Monitoring	28.5	Unchanged.
2303.E.1	Measurement of Concentrations	28.5.1	Unchanged.
2303.F	Reporting	28.6	Unchanged.
2303.F.1		28.6.1	Unchanged.
2303.F.1.a	Ambient Air	28.6.1(a)	Unchanged.
2303.F.1.b	Particulate Emissions	28.6.1(b)	Unchanged.
2303.F.1.c		28.6.1(c)	Unchanged.
2303.F.1.d		28.6.1(d)	Unchanged.
2303.F.2		28.6.2	Unchanged.
2303.G	Operating Practices	28.7	Unchanged.
2303.G.1		28.7, ¶ 1	Unchanged.
2303.G.2		28.7, ¶ 2	Unchanged.
2303.G.3		28.7, ¶ 3	Unchanged.
Subchapter C	Phosphate Fertilizer Plants		
2305	Fluoride Emission Standards for Phosphate Fertilizer Plants.	29.0	Unchanged.
2305.A	Purpose	29.1	Unchanged.
2305.B	Scope	29.2	Unchanged.
2305.C	Definitions	29.3	Changes reference from 40 CFR Part 60, Subparts A, T, U, and V to terms defined in Chapter 31. LDEQ has agreed to readopt the original language.
2305.D	Emission Limitations	29.4	Unchanged.
2305.D.1	Wet-Process Phosphoric Acid Plants	29.4.1	Unchanged.
2305.D.2	Superphosphoric Acid Plants	29.4.2	Unchanged.
2305.D.3	Diammonium Phosphate Plants	29.4.3	Unchanged.
2305.E	Test Methods and Procedures	29.5	Unchanged.
Subchapter D	Nitric Acid Industry		
2307	Emission Standards for the Nitric Acid Industry	26.0	Unchanged.
2307.A	Purpose	26.1	Unchanged.

TABLE A.—RECODIFIED LOUISIANA AIR QUALITY REGULATIONS—Continued

New Code	Title	Old Code	Comments
2307.B	Scope	26.2	The scope is reworded to include "all nitric acid producers," not just those *not* covered by NSPS as previously approved.
2307.C	Exceptions	26.3	Unchanged.
2307.C.1	Start Up Provision	26.3.1	Unchanged.
2307.C.1.a			Changes reference to LAC:33:III: 3191–3199 from 40 CFR Part 60, Subpart G. LDEQ has agreed to readopt the original language.
2307.C.1.b		26.3.1,¶ 2	Unchanged.
2307.C.2	On-Line Operating Adjustments	26.3.2	Unchanged.
2307.C.2.a			See section 2307.C.1.a comments.
2307.C.2.b		26.3.2,¶ 2, lines 1–4	Unchanged.
2307.C.2.c		26.3.2,¶ 2, lines 5–6	Unchanged.
2307.D	Emission	26.4	Unchanged.
2307.E	Responsible Persons to Have Tests Made	26.5	Unchanged.
2307.F	The Department May Make Tests	26.6	Unchanged.
2307.G	Degradation of Existing Emission Quality Restricted.	26.7	Unchanged.
2307.H	Measurement of Concentrations	26.8	Unchanged.
2307.H.1		26.8.1	Unchanged.
2307.H.2		26.8.1	Unchanged.
Chapter 56	Prevention of Air Pollution Emergency Episodes	27.0	Unchanged.
5601	Purpose	27.1	Unchanged.
5603	Scope	27.2	Unchanged.
5605	Episode Criteria		
5605.A		27.3	Unchanged.
5605.A.1	Air Pollution Forecast	27.3.1	Unchanged.
5607	Administrative Authority Will Determine When Criteria Level Has Been Reached.	27.4.4	Unchanged.
5609	Preplanning Strategies Required	27.5	Unchanged.
5609.A	Alert Level	27.5.1	Unchanged.
5609.A.1			
5609.A.1.a		27.3.2, lines 1–4	Unchanged.
5609.A.1.a.i.–iv		27.3.2, lines 5–13	Unchanged.
5609.A.1.b		27.4.1	Unchanged.
5609.A.2.a	Warning Level	27.3.3, lines 1–5	Unchanged.
5609.A.2.a. i.–iv		27.3.3, lines 6–13	Unchanged.
5609.A.2.b		26.4.2	Unchanged.
5609.A.3	Emergency Level		
5609.A.3.a		27.3.4, lines 1–13	Unchanged.
5609.A.3.a, i.–iv		27.3.4, lines 14–19	Unchanged.
5609.A.3.b		27.4.3	
5611	Standby Plans to be Submitted When Requested by Administrative Authority.		
5611.A		27.5.2	Unchanged.
5611.B		27.5.4	Unchanged.
5611.B.1	To Be Available During Episode	27.5.3	Unchanged.
Table 5	Table 5	Table 5	Unchanged.
Table 6	Table 6	Table 6	Unchanged.
Table 7	Table 7	Table 7	Unchanged.
Figure 1	Figure 1	Figure 1	Unchanged.
Chapter 65	Rules and Regulations for the Fee System of the Air Quality Control Programs.		These regulations were not previously coded, but were identified in the narrative portion of the SIP. EPA approved the fee system as meeting the requirements of section 110(a)(2)(K). (See 47 FR 29535.)
6501	Scope and Purpose		See above.
6503	Authority		See above.
6505	Definitions		See above.
6507	Application Fees		See above.
6509	Annual Fees		See above.
6511	Methodology		See above.
6513	Determination of Fee		See above.
6515	Method of Payment		See above.
6517	Late Payment		See above.
6519	Failure to Pay		See above.
6521	Effective Date		See above.
6523	Fee Schedule Listing		See above.

TABLE B. DELETIONS FROM THE LOUISIANA AIR QUALITY REGULATIONS

Old code	Text	Comments
5.0, 5.1	"For details on meetings of the Commission, see booklet entitled 'Rules of Procedure LA. Environmental Control Commission."	This section was in the approved 1982 SIP but has been deleted because the Environmental Control Commission (LECC) is now defunct.

TABLE B. DELETIONS FROM THE LOUISIANA AIR QUALITY REGULATIONS—Continued

Old code	Text	Comments
4.73	"Assistant Secretary. The Assistant Secretary of the [LECC] as specified in La. R.S. 30:1064."	The State has deleted this and adopted "administrative authority" instead, because the regulations will not have to be amended each time the title or office changes.
4.14	"Commission. The Environmental Control Commission of the State of Louisiana."	See comments for regulations 5.0 and 5.1.
4.12	"COH (Coefficient of Haze per 1000 linear feet). The measurement of the optical density of a filtered deposit of particulate matter as given in ASTM Standard D 1704-61."	LDEQ deleted this term, because it will no longer use this term in its emergency episode plan once the PM_{10} SIP is approved.
4.33	"I.I.A. Incinerator Institute of America."	This term was accidently deleted during recodification. Since then, LDEQ has taken steps to correct this oversight by spelling out this term the definition of "waste classification" (section 111).

TABLE C. ADDITIONS TO THE LOUISIANA SIP

New code	Title	Comments
101.C	Matter Incorporated by Reference	Administrative change that allows LDEQ to adopt a regulation by reference. The State can only enforce the regulation as it appeared on the date of incorporation.
111	Definitions "Administrative Authority" "Affected Facility" "Alternate Method" "Commenced" "Construction" "Continuous Monitoring System" "Equivalent Method" "Isokinetic Sampling" "Malfunction" "Monitoring Device" "One-hour Period" "Proportional Sampling" "Reference Method" "Run" "Shutdown" "Six-minute Period" "Start-up" "Volatile Organic Compound"[2]	These definitions are all taken from 40 CFR 60.2, with the exception of "administrative authority," which is used in place of the titles of State offices and agencies.
505.M.2	Non-disclosure Must be Requested	Declares that all information collected under the Louisiana Environmental Affairs Act (R.S. 30:1051 et seq.) or the regulations is subject to public disclosure unless non-disclosure is requested and granted under the terms of La. R.S. 30:1076.
505.M.3	Non-disclosure Shall Not Apply to Necessary Use by the Department.	Non-disclosure shall not apply to those duly authorized employees of State or Federal government who seek such information as a necessary part of their jobs.
505.M.4	Basis for non-disclosure must be specified	A facility must submit a written request for non-disclosure of information and specify the basis for seeking such treatment.
505.M.5	Provision for Denial.	Requires that the administrative authority submit a written notice to the requestor in the event that non-disclosure is denied.
505.M.6	Non-confidential Material to be Segregated.	Requires that the administrative authority segregate nonconfidential material from confidential material where feasible. When such information cannot be segregated, the administrative authority will treat the entire document as confidential.
505.M.7	Persons Who Must Sign Access Log.	Whenever an authorized person seeks access to a confidential document, the person shall sign an access log to acknowledge his understanding of the confidentiality of the material and his responsibility to keep that information confidential.
505.M.8	Department representative must be present while confidential file is reviewed.	Requires that a staff member of the Air Quality Division must be present when a non-staff member is reviewing a confidential file.
505.M.9	Confidential Information to be Returned When No Longer Needed.	Once the confidential material is no longer needed for the purposes of the Louisiana Environmental Affairs Act, the regulations, any order, or under the terms or conditions of a permit, the administrative authority shall return the material to the provider.

TABLE C. ADDITIONS TO THE LOUISIANA SIP—Continued

New code	Title	Comments
919	Emission Inventory	LDEQ first adopted these regulations on May 20, 1985, but EPA has no record by which these regulations were incorporated into the SIP. The regulations were readopted as part of the December 1987 recodification and are being incorporated here into the SIP. This regulation requires that information for emissions inventories be submitted to LDEQ in a machine readable format. The regulation also describes emissions inventories for affected facilities and sources.
Chapter 60	Test Methods-NSPS Division's Source Test Manual	This chapter describes test methods for sources affected by NSPS. LDEQ took these methods from 40 CFR Part 60, Appendix A. LDEQ Adopted Methods 1, 2, 2A, 2B, 3, 4, 5, 5A, 6, 6A, 6B, 6C, 7, 7a, 7B, 7C, 7D, 8, 9, 9—Alternative Methods 1, 11, 13A, 13B, 14, 15, 16, 16A, 17, 18, 19, 20, 21, 24, 25, and 27.
Chapter 63	Test Methods—LESHAP Division's Source Test Manual	This chapter describes the test for complying with Louisiana's Emission Standards for Hazardous Air Pollutants (LESHAP). The State's methods are taken from 40 CFR 61, Appendix B. LDEQ adopted Methods 101, 101A, 102, 103, 104, 105, 106, 107, and 107A. Also this chapter includes quality assurance procedures, adopted from 40 CFR 61, Appendix C.

EPA is approving these changes without prior public notice, because these changes are minor and noncontroversial. However, if anyone submits notice within 30 days from the date of this publication that he or she is sending adverse comments on this rulemaking, then the Agency will withdraw this notice of final rulemaking and publish a notice of proposed rulemaking instead. With that notice will come a thirty-day comment period. At the end of that time, the Agency will make its final decision and publish a new notice of final rulemaking.

Final Action

EPA is approving the recodification of those regulations already approved as part of the Louisiana SIP on the condition that LDEQ readopt LAC:33:III:2305.C, 2307.C.1.a., and 2307.C.2.a. with the original wording. Also EPA is approving minor textual changes, new definitions and test methods taken from Federal regulations, and new regulations reflecting administrative changes. The Agency is also approving the deletion of certain obsolete sections from the old code.

EPA is not approving the text of section 111 "Particulate matter," "Suspended particulate matter," section 505.J., and section 505.L., because these regulations were previously disapproved at 44 FR 18490.

Under 5 U.S.C. section 605(b), I certified that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under Executive Order 12291, this action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review.

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 May 8, 1989. 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, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Note: Incorporation by reference of the State Implementation Plan for the State of Louisiana was approved by the Director of the Federal Register on July 1, 1982.

Date: February 10, 1989.

Jack Moore,

Acting Administrator.

40 CFR Part 52 Subpart T is amended as follows:

PART 52—[AMENDED]

Subpart T—Louisiana

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

Authority: 42 U.S.C. 7401–7643.

2. Section 52.970 is amended by adding paragraph (c)(48) to read as follows:

§ 52.970 Identification of plan.

* * * * *

(c) * * *

(48) The recodified and revised regulations of the Louisiana Administrative Code, Title 33, Part 3 (LAC:33:III) that were adopted by the State effective December 20, 1987, and submitted by the Governor by letters dated January 6, 1988, and October 4, 1988, for inclusion in the SIP. These regulations include LAC:33:III: Chapters 1, 5, 7, 9, 11, 13, 15, 17, 23, 56, 60, 63, and 65, except LAC:33:III:111 "Particulate matter," and "Suspended particulate matter," LAC:33:III:505.J, and LAC:33:III:505.L, which were previously disapproved, and LAC:33:III:6099, which was withdrawn by the Governor.

(i) *Incorporation by Reference.* (A) Louisiana Administrative Code, Title 33, Part 3, Chapters 1, 5, 7, 9, 11, 13, 15, 17, 23, 56, 60, 63, and 65 as adopted by Louisiana Department of Environmental Quality on December 20, 1987, except LAC:33:III: section 111 "Particulate matter," "Suspended particulate matter," section 505.J, section 505.L, and section 6099.

(ii) *Additional Material.* (A) A letter dated December 16, 1987, from Martha Madden, Secretary of the Louisiana Department of Environmental Quality, to the Governor of Louisiana, approving the codified air quality regulations effective December 20, 1987.

3. Section 52.986 is revised to read as follows:

§ 52.986 Significant deterioration of air quality.

(a) The plan submitted by the Louisiana Department of Environmental Quality, specifically LAC:33:III:509 (formerly Louisiana Air Quality Regulation—Part V, §§ 90.1 through 90.19) and supplemental documents as incorporated by reference, is approved as meeting the requirements of Part C, Clean Air Act for preventing significant deterioration of air quality.

(b) The requirements of sections 160 through 165 of the Clean Air Act are not met for Indian lands since the plan, specifically LAC:33:III:509.A.1 (formerly known as Louisiana Air Quality Regulation § 90.1(1)), excludes all Federally recognized Indian lands from the provisions of this regulation. Therefore, the provisions of § 52.21 (b) through (w) are hereby incorporated by reference, made a part of the applicable implementation plan, and are applicable to sources located on land under the control of Indian governing bodies.

4. Section 52.988 is revised to read as follows:

§ 52.988 Rules and regulations.

(a) The requirements of § 51.281 of this chapter are not met since the definitions of "particulate matter" and "suspended particulate matter," as provided in LAC:33:III:111 (formerly §§ 4.47 and 4.72 respectively), could make applicable emission limitations of the Louisiana Department of Environmental Quality unenforceable in some circumstances. Therefore, LAC:33:III:111 "particulate matter" and "suspended particulate matter" are disapproved.

(b) The following definition of particulate matter applies to LAC:33:III: Chapters 13 and 56 (formerly regulations 9.0 and 27.0 respectively): "Particulate matter" means any finely divided solid or liquid material, other than uncombined water, as measured by the high volume method prescribed in 40 CFR 50, Appendix B.

(c) The following definition of particulate matter applies to LAC:33:III: Chapter 13 (formerly Regulations 19.0, 20.0, 21.0) and Chapter 23, Subchapters A and B (formerly Regulations 23.0 and 28.0 respectively): "Particulate matter" means any finely divided solid or liquid material, other than uncombined water, as measured by Method 5, or an equivalent or alternative method, in 40 CFR 60, Appendix A.

[FR Doc. 89-4023 Filed 3-7-89; 8:45 am]
BILLING CODE 6560-50-M

---

40 CFR Part 52

[FRL-3534-2]

Approval and Promulgation of Air Quality Implementation Plans; Louisiana; Correction to Identification of Plan

AGENCY: Environmental Protection Agency (EPA).

ACTIN: Final rule.

SUMMARY: This rule corrects an error made previously in the identification of the Louisiana State Implementation Plan (SIP) at 40 CFR 52.970(c). The publication of a rule at 47 FR 6017 on February 10, 1982, introduced an error to the numbering of 40 CFR 52.970(c) that remained until today.

DATE: This action will become effective on March 8, 1989, unless someone wishes to submit adverse comments.

ADDRESSES: Written comments on this action should be addressed to Tom Diggs, Chief, SIP/New Source Section at the following address:

U.S. Environmental Protection Agency, Region 6, Mail Code 6T-AN, Dallas, Texas 75202-2733.

Copies of documents relevant to today's notice may be examined at the above location or at either of the following locations:

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460.

Louisiana Department of Environmental Quality, 625 N. 4th Street, 8th Floor, Baton Rouge, Louisiana, 70804-4096.

If you wish to review these documents, please contact the person named below to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Barbara Durso, (214) 655-7214 or FTS 255-7214.

Final Action

Today's rule will correct an error made on February 10, 1982, at 47 FR 6017, by redesignating the paragraphs at 40 CFR 52.970(c) (21) through (48) as 40 CFR 52.970(c) (22) through (49). Then, the second paragraph designated 40 CFR 52.970(c)(20) will be redesignated 40 CFR 52.970(c)(21).

This action is being taken without prior public notice, because the changes are noncontroversial and EPA does not anticipate receiving any adverse comments on them. The public should be advised that this action is effective on the date of publication of this **Federal Register** notice. However, if notice is received within 30 days of publication that someone wishes to submit adverse or critical comments, this action will be withdrawn and a subsequent notice will be published that begins a new rulemaking period by announcing a proposal of the action and establishing a comment period.

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 May 8, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control.

Date: February 27, 1988.

Robert E. Layton Jr.,

Regional Administrator (6A).

Note.—This document was received by the Office of the Federal Register March 3, 1989.

40 CFR Part 52, Subpart T, is amended as follows:

PART 52—[AMENDED]

Subpart T—Louisiana

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

Authority: 42 U.S.C. 7401-7642.

§ 52.970 [Corrected]

2. Section 52.970 is amended by redesignating paragraphs (c)(21) through (c)(48) as (c)(22) through (c)(49), and the second paragraph designated (c)(20) is redesignated as (c)(21).

[FR Doc. 89-5333 Filed 3-7-89; 8:45 am]
BILLING CODE 6560-50-M

---

40 CFR Part 52

[FRL. 3497-9]

Approval and Promulgation of State Implementation Plans; Utah; CO SIP Revision for Utah County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today is approving a revision to the Utah Carbon Monoxide (CO) State Implementation Plan (SIP). The revision affects the CO SIP for Utah County which was approved on December 21, 1983 (48 FR 56378), with a revision on the attainment date on July 11, 1984 (49 FR 28243). The SIP revision, regulations and technical support documents were submitted by the Governor of Utah on December 12, 1985. The submittal defines several control strategies for CO in Utah County. The strategies are Federal Motor Vehicle Emission Control Program (FMVECP), Inspection/Maintenance (I/M) with anti-tampering, and Transportation Control Measures (TCM). The submittal is in response to a SIP Call dated December

19, 1984. EPA proposed approval of this SIP revision on February 18, 1987 (52 FR 4921). No comments were received.

DATES: This action will be effective on April 7, 1989.

ADDRESSES: Copies of the revision are available for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202-2405.

Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460.

The Office of the Federal Register, 1100 L Street, NW., Room 8301, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lee Hanley, Air Programs Branch, Environmental Protection Agency, Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202-2405, (303) 293-1762.

SUPPLEMENTARY INFORMATION:

Background

The Utah CO SIP for Utah County (hereafter called the Provo CO SIP) was approved on December 21, 1983 (48 FR 56378), with a revision on the attainment date in the July 11, 1984 **Federal Register** (49 FR 28243). The approval was based on CO monitored levels for the base year 1980-1981 of a second high 8-hour average of 12.5 ppm (14.4 mg/m^3). According to the SIP, a 25 percent reduction in CO emissions was required with an attainment date of February 1, 1986. The SIP further stated that based on Mobile 2 emission factors for typical winter conditions of 35°F and 25 mph for "all modes", a 40 percent reduction would be attained by 1987 under the FMVECP. Transportation controls were expected to result in an additional 1 percent reduction.

Since the approval of this SIP, CO in Provo has shown increased levels from the base year 1980-1981. Data indicate the following:

Year	Date of 2nd highest day	8-hr average
1980 to 1981	Base year	14.4 mg/m^3.
1/82 to 12/82	Jan. 25, 1982	19.0 mg/m^3.
1/83 to 12/83	Nov. 15, 1983	16.4 mg/m^3.

Based on the 1982 second maximum, a reduction of 51 percent in CO emissions would be required to meet the air quality standards. Calculations using the latest mobile emission factors (Mobile 3) indicate that the FMVECP will only result in 37 percent CO reduction by the end of 1987. Even with the additional transportation measures, the Provo CO SIP would still not be capable of meeting the CO standard by 1987. (The primary difference between Mobile 2, as used in the Provo CO SIP approved in 1983, and Mobile 3, is that Mobile 3 has been adjusted for the level of tampering and fuel switching that EPA surveys have found is occurring nationwide.)

SIP Call

In a letter dated December 19, 1984, EPA advised the Governor of Utah of the inadequacies of the Provo CO SIP. This finding of inadequacy required Utah, pursuant to the provisions of section 110(a)(2)(H) of the Clean Air Act (CAA), to carry out SIP obligations and to adopt and submit to EPA for approval whatever additional control measures are necessary to assure timely attainment and maintenance of the CO National Ambient Air Quality Standards (NAAQS). The Governor of Utah responded, in a letter dated February 11, 1985, with a schedule for revision to the SIP for CO in Utah County. The schedule committed to a December 19, 1985, deadline for submittal of the required SIP revision.

SIP Revision

On December 12, 1985, the Governor of Utah submitted a revision to the Utah SIP stating the program strategies for CO attainment in Utah County.

The SIP revision contains a new section, Section 9.C.6, which describes the data history, emission inventory, control strategies, authority to implement an Inspection/Maintenance (I/M) program with anti-tampering and the Utah County Health Regulations. The SIP references the technical support document which contained the summarized analyses and conclusions behind the control strategies listed in the SIP.

The inventory lists highway vehicles, point sources and space heating as the major emission categories of CO in Utah County. The SIP Revision documents indicate that the winter weekdays are when high CO concentrations are typically observed. Monitoring data show these high concentrations to be in the urban areas, and modeling, using meteorological data from high CO concentration days, indicates vehicle emissions as the major contributor. Point sources, which account for 14 percent of the CO (and is the second highest category) in the overall county emission inventory, affect the high concentration areas by less than 1 percent. (The point sources are located in the outskirts of the city and the wind patterns from these point sources are away from the areas of high concentration.) Space heating emissions are potentially greater during winter days but would be infeasible to reduce. Therefore, it was determined that the reduction of CO emissions must come from vehicle emissions. The SIP Revision documents state that a 40 percent reduction in vehicle CO emissions is necessary for attainment of the standard.

To obtain this reduction, the control strategies are: (1) FMVECP, (2) automobile I/M with anti-tampering, and (3) various TCMs.

The FMVECP requires vehicle manufacturers to certify that new vehicles meet federal vehicle emission standards. The replacement of older vehicles in a fleet with newer models produces a reduction in CO emissions. This strategy is estimated to provide an 18 percent reduction in vehicle CO emissions.

The automobile I/M with anti-tampering program requires the inspection of vehicles, model years 1968 and newer, prior to vehicle registration with the Utah State Tax Commission. The I/M portion of the program will test vehicle emissions with respect to the Utah County emission standards (known as cutpoints). (The emissions standards (cutpoints) are the percent CO and parts/million hydrocarbon that a car or truck of a given model year must meet during the vehicle exhaust gas test.) The anti-tampering portion of the program requires inspection of the air pollution control devices and the lead Plumbtesmo test of vehicles for model years 1968 and newer. (The lead Plumbtesmo test uses lead sensitive paper to determine lead contamination in the exhaust system. Lead contamination indicates an inoperative catalytic converter which would be required to be replaced.)

The vehicle owner will receive a "Certificate of Compliance" upon successful completion of the I/M and anti-tampering inspection tests. The certificate is necessary for annual vehicle registration or annual renewable registration in Utah County.

Given qualifying conditions, a "Certificate of Waiver" can be issued when a vehicle fails to pass the I/M test. Failure to pass the anti-tampering test will void the certificate of waiver requirements. The County is allowing a one-year grace period, July 1, 1986 to June 30, 1987, for vehicles, model years 1968 to 1980, in which a "Certificate of Waiver" can be issued even if the vehicle fails the tampering inspection. After June 30, 1987, the vehicle owner must correct the tampering before

another inspection is performed on that vehicle.

The SIP states that the I/M with anti-tampering program is expected to reduce CO emissions by 23 percent. It is designed to have a stringency factor of 30 percent; i.e., it is expected that 30 percent of the vehicles will fail the test, indicating such vehicles are not properly maintained.

The I/M program officially began on July 1, 1986. It will operate under the requirements stated in the City-County Health Department of Utah County Health Regulations, Vehicle Emission-Inspection Maintenance Program. The program requires station operators to be certified by the County, to operate these stations, the issue "Certificates of Compliance or Waiver" according to the County Rules and Regulations for I/M and anti-tampering program.

The TCMs are designed to reduce and improve traffic flow within Provo. The TCMs are: (1) Ridesharing, (2) traffic improvements, and (3) transit improvements. The ridesharing program is a transportation brokerage that will operate in Utah County to construct and operate park-and-ride lots, cars and van pooling programs, and to coordinate other transportation needs. The traffic improvement program would affect five major roads in Provo that would allow for better traffic flow through the area. These improvements were calculated to reduce automobile CO emissions by 3 percent. The transit improvements are being coordinated with the Utah Transit Authority for a mass transit system in Utah County; this effort is expected to reduce automobile CO emissions by 1 percent.

The above described strategies were designed to attain the CO standard by December 31, 1987. Utah County embarked on an aggressive program in an attempt to reach attainment of the standard by year-end 1987. This aggressive program allowed the County only 18 months to implement an I/M with anti-tampering program.

The County initiated a public awareness program immediately after adoption of the regulations. This program included (a) radio and television public information spots, (b) displays at the County Health Fair, (c) distribution of program brochures, (d) free voluntary inspections prior to I/M program start-up, and (e) discussions with local news reporters. With these efforts, the County's goal was to reduce the public's anxiety about the requirements and, therefore, improve the program's success.

The EPA has four concerns with the I/M and anti-tampering credits that the County has presumed. First, the County in its calculations assumed a start date of January 1986 for the I/M and anti-tampering programs. Since the I/M with anti-tampering program officially began on July 1, 1986, the calculations should use this date. Second, the full anti-tampering program only applies to 1977 and later vehicles; the County included 1974 and newer vehicles. Third, the County estimated credit for catalyst replacement on vehicles with tampered fuel inlet restrictors; however, no such requirement (catalyst replacement) exists in the program regulations. Finally, the County did not adjust the anti-tampering credits to reflect the one-year waivers for replacement of tampered equipment in the first year of the program; some of these waivers could have postponed repairs beyond December 31, 1987, and thus would have provided no emission reductions toward attainment by then.

The SIP, however, did not take credit for other efforts that EPA believes should be recognized. These efforts are: (1) The passage of anti-tampering inspection is required prior to waiver considerations for all 1968 and later vehicles and, (2) the I/M program includes heavy-duty vehicles (greater then 8500 lbs. GVWR), as well as all other vehicles (less than 8500 lbs. GVWR).

EPA realizes that excess credit may have been taken on the Mobile 3 calculations, but EPA also finds that such credit can be weighted and offset against that which was not claimed (i.e., anti-tampering passage and I/M for heavy duty vehicles). In addition to the credits just discussed, it is important to note that the County and State implemented a public awareness program since regulation adoption on the importance of the success of the I/M program, its health and economic benefits. EPA believes that for all intents and purposes, the I/M program was underway prior to July 1, 1986.

Following its review of the State's submittal, EPA requested clarification to (1) parts of section 9.11, "Inspection Procedures", (2) program reporting requirements to EPA, and (3) plan for maintenance of the standard once attainment is reached.

The State submitted additional information, dated May 8, 1986, in response to the EPA questions. Specifically, EPA was concerned with section 9.11.4, which allows waivers but does not specify the applicable critiera for such waivers. The State responded that the waiver option is to be used only in special circumstances, such as when an owner is unable to readily obtain a replacement part prior to registering his car. EPA understands from the State's explanation that the State will require ultimate compliance with the I/M requirements in those cases. On reporting requirements, EPA has been assured that the State will coordinate with the County to submit an annual status report to EPA.

On maintenance of the standard, EPA is concerned that House Bill No. 21 automatically expires on attainment of the CO standard. The State has responded by replying that it will comply with EPA policy on determining when an area is in attainment. EPA is putting the State on notice that ending the I/M program once the CO standard is achieved may not allow for protection *and* maintenance of the standard as required by the CAA. Unless the State can demonstrate maintenance of the standard without the I/M program, EPA will not entertain a redesignation request even if monitoring data shows attainment of the standard. EPA believes the SIP will be inadequate if the I/M program is abolished.

On February 18, 1987 (52 FR 4921), EPA proposed approval of the Utah CO SIP Revision for Utah County. No comments were received.

Because of the most recent air quality data released by EPA on May 3, 1988, Provo appears on the list of areas which received a call for a SIP revision on May 25, 1988. Despite the aggressive program outlined in this notice, CO values remained above the national ambient air quality standard (NAAQS) in 1987. The air quality data for 1987 shows improvement over 1986 data although still above the standard. Both years of data have to be considered for determining the design value. It is hoped that another year or two of further implementation of the I/M program and the other measures will bring further improvement. This will be analyzed as a result of the SIP call, and other measures, if needed, will be implemented. As a result of the recent SIP Call, EPA may require Utah to include additional specific measures based on EPA's proposed 1987 CO/O_3 policy in responding to the SIP Call.

EPA Action

The EPA is today approving the measures in a revision to the Utah CO SIP for Utah County. The SIP commits to reduction of vehicle emissions through the implementation of various programs, specifically that of a vehicle I/M with anti-tampering program. The SIP has stated an attainment date of December 31, 1987 but, because of the continuing exceedances of the CO NAAQS, EPA will not take final action today on the attainment demonstration.

EPA audited the Utah County I/M with anti-tampering program in August 1987 and found the program to be meeting its design goals.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from publication). This action may not be challenged later in proceedings to enforce its requirements (see 307(b)(2) CAA).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide and Incorporation by reference.

Note.—Incorporation by reference of the State Implementation Plan for the State of Utah was approved by the Director of the Federal Register on July 1, 1982.

Date: December 20, 1988.

Lee M. Thomas,

Administrator.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart TT—Utah

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2320 is amended by adding paragraph (c)(20) to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(20) A revision to the SIP was submitted by the Governor on December 12, 1985, for attaintment of the CO standard in Utah County.

(i) *Incorporation by reference.* (A) Letter and attachments dated December 12, 1985, from Governor Norman H. Bangerter submitting the SIP Revision for attainment of NAAQS for CO in Utah County. The attachments included Section 9, Part C; Section 9, Appendices A, C, H, and I; and Technical Support Document—Provo.

(ii) *Additional material.* (A) Letter dated May 8, 1986, from Brent C. Bradford to Irwin Dickstein; Re: Response to questions on I/M with anti-tampering program.

(B) Letter and attachment dated May 15, 1986, from Brent Bradford to Irwin Dickstein transmitting Appendix D of the Technical Support Document.

[FR Doc. 89–4301 Filed 3–7–89; 8:45 am]

BILLING CODE 6560–50–M

---

40 CFR Part 180

[PP 9E2149, 3E2910/R1008; FRL–3533–5]

Sodium Chlorate; Exemption From Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule exempts from the requirement of a tolerance residues of the defoliant, desiccant, and fungicide sodium chlorate when used as a harvest aid in or on the raw agricultural commodities dry edible beans and southern peas. This regulation, which eliminates the need to establish a maximum permissible level for residues of sodium chlorate in or on the commodities, was requested in petitions submitted by the Interregional Research Project No. 4 (IR–4).

EFFECTIVE DATE: March 8, 1989.

ADDRESS: Written objections, identified by the document control number [PP 9E2149, 3E2910/R1008], may be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail:

Hoyt Jamerson, Emergency Response and Minor Use Section (TS–767C), Registration Division (TS–767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557–2310.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of December 29, 1988 (53 FR 52734), in which it was announced 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 petitions to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project, and the named Agricultural Experiment Stations. These petitions requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of an exemption from the requirement of a tolerance for residues of sodium chlorate when used in accordance with good agricultural practice as a harvest aid in or on certain raw agricultural commodities.

1. *PP 9E2149.* Petition submitted on behalf of the California, Minnesota, Michigan, and North Dakota Agricultural Experiment Stations for dry edible beans.

2. *PP 3E2910.* Petition submitted on behalf of the Arkansas, Georgia, Missouri, Oklahoma, and Tennessee Agricultural Experiment Stations for southern peas.

Sodium chlorate is a strong oxidizing agent that can easily be reduced to sodium chloride in the presence of organic material. The available data indicate that the use results in negligible residues of sodium chlorate on the raw agricultural commodities. Dried beans and southern peas are normally rehydrated and cooked prior to human consumption, and these processes favor further reduction of sodium chlorate residues to sodium chloride.

Comments were received in response to the proposed rule from the National Food Processors Association (NFPA). NFPA commented in support of the proposed exemption from the requirement of a tolerance for sodium chlorate. NFPA commented that use of sodium chlorate as a desiccant would remove a physical barrier to harvest and maintain product quality in the event of untimely rainfall at or near harvest.

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

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered by the Agency, the exemptions from the requirement of a tolerance established by amending 40 CFR 180.1020 would protect the public health. Therefore, the exemptions are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported

by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

Dated: February 17, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

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

2. Section 180.1020 is revised, to read as follows:

§ 180.1020 Sodium chlorate; exemption from the requirement of a tolerance.

Sodium chlorate is exempted from the requirement of a tolerance for residues in or on the following raw agricultural commodities when used as a defoliant, desiccant, or fungicide in accordance with good agricultural practice.

Commodities

Beans, dry, edible
Corn, fodder
Corn, forage
Corn, grain
Cottonseed
Flaxseed
Flax, straw
Guar beans
Peas, southern
Peppers, chili
Rice
Rice, straw
Safflower, grain
Sorghum, grain
Sorghum, fodder
Sorghum, forage
Soybeans
Sunflower seed

[FR Doc. 89-5212 Filed 3-7-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-121; FCC 88-406]

FM Broadcast Service; Use of Directional Antennas in Making Short-Spaced Station Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission adopts new rules that permit an applicant for a commercial FM broadcast station to request the authorization of a transmitter site that would be nominally short-spaced to other co-channel or adjacent channel stations, provided the service of those other licensees is protected from interference in accordance with well established criteria. The maximum amount of short-spacing is limited by the amount of separation specified for the next smaller size station class. However, because of resource limitations, permissible short-spacing will also be initially limited to 8 kilometers (5 miles). No change is made to the FM channel allotment process, or the intermediate frequency minimum distance separation requirements. The purpose of these new rules is to afford FM broadcast station licensees some additional flexibility in the selection of transmitter sites.

EFFECTIVE DATE: The Federal Communications Commission will issue a Public Notice, to be published in the Federal Register, announcing the effective date of this action.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: B.C. "Jay" Jackson, Jr., or Bernard Gorden, Mass Media Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information is estimated to vary from 71 hours 45 minutes to 301 hours 30 minutes per response with an average of 110 hours 28 minutes per response for an FCC Form 301 applicant (3060-0027), and from 76 hours to 80 hours per response with an average of 78 hours 4 minutes for an FCC Form 340 applicant (3060-0034), including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Office of the Managing Director, Washington, DC 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060-0027/3060-0034), Washington, DC 20503.

Following is a summary of the Commission's *Report and Order* adopted December 12, 1988, and released February 22, 1989. The full text of this action is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this action may also be purchased from the Commission's copy contractors, International Transcription Services, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of the Report and Order

1. The Commission adopts new rules that permit an applicant for commercial FM facilities to request the authorization of a transmitter site that would be nominally short-spaced to the facilities of other co-channel or adjacent channel stations, provided the service of other licensees is protected from interference in accordance with well established criteria. Various methods may be used to provide this protection, such as taking advantage of terrain elevation in the direction of the short-spaced station(s), making an appropriate reduction in operating facilities (power and/or antenna height), using a directional antenna, or employing any combination of these means. The maximum amount of short-spacing permitted will be limited by the amount of separation specified for the next smaller station class. However, because of limited application processing resources, permissible short-spacing is restricted temporarily to 8 kilometers (5 miles). No change is made in the current FM channel allotment process, under which proposals for new channel allotments must meet minimum distance separation requirements with respect to other co-channel and adjacent channel stations. Also, no change is made in the intermediate frequency minimum distance separation requirements. Although these new provisions pertain mainly to commercial FM stations, non-commercial educational FM stations that are currently subject to the distance separation requirements of 47 CFR 73.207 are also affected.

2. Under the new rules, all existing fully spaced stations will continue to be afforded protection based on the presumed use of the maximum ERP and reference HAAT for their station class.

However, only the actual facilities of the stations that apply for short-spaced locations under the new rules will be protected. In general, stations will not be authorized at locations that do not meet, as a minimum, the required co-channel and adjacent channel spacings applicable to the next lower class of station. Thus, short-spaced sites will be allowed, but only to the extent that would be feasible if the stations were to operate with the approximate minimum facilities permitted their class. The exact distances involved are specified in a new rule, 47 CFR 73.215. The Commission will continue to require licensees to provide principal city coverage (70 dBu) over their community of license and to preserve their service from interference.

3. Because this proceeding reintroduces, in a limited way, the contour protection method of making assignments affecting the commercial FM service, it was necessary to determine the signal strength to be used for FM stations' protected contour. The *Notice of Proposed Rule Making ("Notice")* questioned whether a uniform level of 1 mV/m for all station classes might be appropriate. This is the level used for non-commercial educational FM stations and approximates the level that is, in effect, protected for most of the commercial station classes. However, Class B and B1 stations in the non-reserved band, in effect, receive protection of somewhat lower signal levels, approximately 0.5 mV/m and 0.7 mV/m respectively. In view of the record developed in this proceeding, the Commission will use these lower values for Class B and Class B1 stations' protected contours for the purpose of contour protection in connection with these short-spacing rules, but recognizes that it may be appropriate to revisit this matter in the future.

4. On the matter of voluntary acceptance of interference, the comments were virtually unanimous that licensees should not be allowed to accept any interference beyond that already permitted. The Commission prefers to develop further experience with various methods of limiting interference, such as the use of directional antennas as contemplated in this proceeding. Accordingly, the new rules do not permit acceptance of additional interference.

5. The rules for determining antenna height above average terrain ("HAAT") in the non-commercial FM service and the Low Power TV service require the use of as many radials as necessary to establish the lack of prohibited overlap. In some cases, only a few radials are needed, while in other cases, such as a valley between two mountains, many radials may be necessary to accurately establish the lack of prohibited overlap. The Commission has determined that this method also be used for commercial FM broadcast stations when contour protection is required. The distance to pertinent contours is calculated at each azimuth using the HAAT and effective radiated power ("ERP") along the individual radial. This method must be used for both the protected contour and the interfering contour. However, for purposes of station authorization, the overall HAAT will be computed in accordance with the traditional eight-radial procedure.

New Application Tenderability Requirements

6. Because applications processed pursuant to the new rules are entitled only to protection based on proposed facilities, applicants for such stations will be required to expressly indicate by an appropriate exhibit in their application that they are to be processed pursuant to these new rules. This will allow immediate identification of the protection to be afforded such applications. Failure to indicate that an application is to be processed under these new rules would afford the proposed facility more protection than it is entitled to and unnecessarily restrict other applicants. Therefore, if an applicant requests authorization to operate pursuant to these new rules, an additional element of substantial completeness at tender will be the requirement that an exhibit be submitted intended to demonstrate compliance with the applicable provisions of the new rules. Accordingly, an applicant's failure to submit the appropriate exhibit will result in the return of the application as not substantially complete at tender. The Commission is therefore adding this requirement for an exhibit to its list of tender criteria utilized in evaluating the substantial completeness of applications under the FM "hard look" processing procedures (*see Report and Order* in MM Docket No. 84–750, 50 FR 19936, May 13, 1985). Finally, the Commission is adding a question to Section V–B, FCC Form 301 ("Application for Authority to Construct or Make Changes in a Commercial Broadcast Station"), which will require an engineering study to establish the lack of prohibited overlap of contours involving affected stations. A similar revision in FCC Form 340 ("Application for Authority to Construct or Make Changes in a Noncommercial Educational Broadcast Station") is being made. In the interim, before the changed forms are available, applicants proposing operation pursuant to the new rules must include, as a supplement to the old form, an additional exhibit. The information to be contained in the exhibit is given at the end of of this summary, however, a full sized copy of the exhibit, available from the Commission, must be used for actual filings.

7. Applications involving the use of directional antennas will require considerably more resources to process than others, both from a personnel and computer processing standpoint. Budgetary constraints will severely limit the Commission's ability to process any significant number of applications involving directional antennas at this time. The Commission therefore finds it necessary to limit temporarily the number of applications received that involve short-spacing and believes that this is best done by temporarily limiting the amount by which applicants may short-space to 8 kilometers (about 5 miles). This limit will enable the Commission to be responsive to the majority of applications which currently require consideration on a waiver basis and it will, moreover, assist it in identifying any unforeseen problems in the evaluation of these applications. Consistent with this short-term necessity, the Commission will not consider applications involving greater amounts of short-spacing at this time. This temporary policy is stated in a Note in the new rules. Authority is delegated to the Chief, Mass Media Bureau, to issue an Order to remove this Note when it is no longer necessary.

8. Also, pending the outcome of the Commission's proposal in MM Docket No. 88–375 (*see Notice of Proposed Rule Making*, 53 FR 38743, October 3, 1988) to increase the maximum power of Class A FM stations to 6 kW, it will not accept applications which involve contour protection based on the current 3 kW Class A power limit. Because such applications could preclude the intended benefits of the power increase proposal for individual Class A stations, it would clearly be inappropriate to accept them until a decision concerning Class A power is final. However, the Commission will accept applications based on the presumed use of an ERP of 6 kW and and antenna HAAT of 100 meters for Class A stations, as the potential preclusive effect of such applications on Class A facilities would be largely avoided. However, Class A applicants applying under the new rules should be aware that they will be protected only to their actual facilities

and therefore may not be able to take advantage of any rule changes that the Commission may adopt in MM Docket No. 88-375. A Note concerning this policy is being added following paragraph (b)(2)(ii) of new rule 47 CFR 73.215. This Note will be removed when final action concerning the Class A power increase is taken.

9. Applications submitted prior to the effective date of the new rules that include a request for waiver of 47 CFR 73.207 will be processed under the current minimum spacing rules only and not under the new contour protection rules. Applications submitted on or after the effective date must specify whether they are to be processed under the new contour protection rules. Amendments submitted on or after the effective date (including amendments to applications on file prior to the effective date) also must specify whether they are to be processed under the new contour protection rules. The Commission believes that it would be improper to presume, without an explicit election, that an applicant chooses processing under the new contour protection rules, as this entails some risk that future modifications of its facilities might become restricted as the result of protection of actual, rather than maximum, facilities. Therefore, in the absence of a specific request by the applicant, including the required supplementary exhibit as described below, the Commission will presume that the applicant intends the application to be processed under the minimum spacing rules only and not under the new contour protection rules.

10. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, the Commission notes that adoption of these provisions will provide broadcasters with an alternative and increased flexibility in selecting the most beneficial antenna site.

Additional Exhibit Required

11. The provisions contained in this action have been analyzed with respect to the Paperwork Reduction Act of 1980, and have been found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

12. Applicants requesting processing pursuant to 47 CFR 73.215 must submit additional information as follows, together with FCC Form 301 ("Application for Authority to Construct or Make Changes in a Commercial Broadcast Station"), or FCC Form 340 ("Application for Authority to Construct or Make Changes in a Noncommercial Educational Broadcast Station"), as appropriate. The information to be submitted as an exhibit is a complete engineering study to establish the lack of prohibited overlap of contours involving affected stations. The engineering study must include the following:

(a) Protected and interfering contours, in all directions (360°), for the proposed operation.

(b) Protected and interfering contours, over pertinent arcs, of all short-spaced assignments, applications and allotments, including a plot showing each transmitter location, with identifying call letters or file numbers, and indication of whether facility is operating or proposed. For vacant allotments, use the reference coordinates as transmitter location.

(c) When necessary to show more detail, an additional allocation study utilizing a map with a larger scale to clearly show prohibited overlap will not occur.

(d) A scale of kilometers and properly labeled longitude and latitude lines, shown across the entire exhibit(s). Sufficient lines should be shown so that the location of the sites may be verified.

(e) The official title(s) of the map(s) used in the exhibit(s).

13. Accordingly, *it is ordered* That 47 CFR Part 73 is amended as set forth below. This action is taken pursuant to authority contained in sections 4 and 303 of the Communications Act of 1934, as amended. *It is further ordered* That this proceeding is terminated.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

List of Subjects in 47 CFR Part 73

Radio broadcasting, FM broadcast stations, Minimum distance separation requirements, Directional antennas (FM), Short-spaced antenna sites (FM).

For the reasons set forth in the preamble, 47 CFR Part 73 is amended as follows:

PART 73—[AMENDED]

1. The authority citation for 47 CFR Part 73 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. 47 CFR 73.207 is amended by revising paragraph (a) to read as follows:

§ 73.207 Minimum distance separation between stations.

(a) Except for assignments made pursuant to §§ 73.213 or 73.215, FM allotments and assignments must be separated from other allotments and assignments on the same channel (co-channel) and on nearby adjacent channels by not less than the minimum distances specified in paragraphs (b) and (c) of this section. The Commission will not accept petitions to amend the Table of Allotments, applications for new stations, or applications to change the channel or location of existing assignments unless transmitter sites meet the minimum distance separation requirements of this section, or such applications conform to the requirements of §§ 73.213 or 73.215. However, applications to modify the facilities of stations with short-spaced antenna locations authorized pursuant to prior waivers of the distance separation requirements may be accepted, provided that such applications propose to maintain or improve that particular spacing deficiency. Class D (secondary) assignments are subject only to the distance separation requirements contained in paragraph (b)(3) of this section. (*See* § 73.512 for rules governing the channel and location of Class D (secondary) assignments.)

* * * * *

3. 47 CFR 73.209 is amended by revising paragraph (b) and removing paragraph (c), as follows:

§ 73.209 Protection from interference.

* * * * *

(b) The nature and extent of the protection from interference afforded FM broadcast stations operating on Channels 221-300 is limited to that which results when assignments are made in accordance with the rules in this subpart.

4. A new section 47 CFR 73.215 is added to read as follows:

§ 73.215 Contour protection for short-spaced assignments.

The Commission will accept applications that specify short-spaced antenna locations (locations that do not meet the domestic co-channel and adjacent channel minimum distance separation requirements of § 73.207); Provided That, such applications propose contour protection, as defined in paragraph (a) of this section, with all short-spaced assignments, applications and allotments, and meet the other applicable requirements of this section. Each application to be processed pursuant to this section must specifically request such processing on its face, and must include the necessary exhibit to demonstrate that the requisite contour protection will be provided. Such applications may be granted when

the Commission determines that such action would serve the public interest, convenience, and necessity.

(a) *Contour protection.* Contour protection, for the purpose of this section, means that on the same channel and on the first, second and third adjacent channels, the predicted interfering contours of the proposed station do not overlap the predicted protected contours of other short-spaced assignments, applications and allotments, and the predicted interfering contours of other short-spaced assignments, applications and allotments do not overlap the predicted protected contour of the proposed station.

(1) The protected contours, for the purpose of this section, are defined as follows. For all Class B and B1 stations on Channels 221 through 300 inclusive, the F(50,50) field strengths along the protected contours are 0.5 mV/m (54 dBμ) and 0.7 mV/m (57 dBμ), respectively. For all other stations, the F(50,50) field strength along the protected contour is 1.0 mV/m (60 dBμ).

(2) The interfering contours, for the purpose of this section, are defined as follows. For co-channel stations, the F(50,10) field strength along the interfering contour is 20 dB lower than the F(50,50) field strength along the protected contour for which overlap is prohibited. For first adjacent channel stations (±200 kHz), the F(50,10) field strength along the interfering contour is 6 dB lower than the F(50,50) field strength along the protected contour for which overlap is prohibited. For second adjacent channel stations (±400 kHz), the F(50,10) field strength along the interfering contour is 20 dB higher than the F(50,50) field strength along the protected contour for which overlap is prohibited. For third adjacent channel stations (±600 kHz), the F(50,10) field strength along the interfering contour is 40 dB higher than the F(50,50) field strength along the protected contour for which overlap is prohibited.

(3) The locations of the protected and interfering contours of the proposed station and the other short-spaced assignments, applications and allotments must be determined in accordance with the procedures of paragraphs (c), (d)(2) and (d)(3) of § 73.313, using data for as many radials as necessary to accurately locate the contours.

(b) Applicants requesting short-spaced assignments pursuant to this section must take into account the following factors in demonstrating that contour protection is achieved:

(1) The ERP and antenna HAAT of the proposed station in the direction of the contours of other short-spaced assignments, applications and allotments. If a directional antenna is proposed, the pattern of that antenna must be used to calculate the ERP in particular directions. See § 73.316 for additional requirements for directional antennas.

(2) The ERP and antenna HAAT of other short-spaced assignments, applications and allotments in the direction of the contours of the proposed station. The ERP and antenna HAATs in the directions of concern must be determined as follows:

(i) For vacant allotments, contours are based on the presumed use, at the allotment's reference point, of the maximum ERP that could be authorized for the station class of the allotment, and antenna HAATs in the directions of concern that would result from a non-directional antenna mounted at a standard eight-radial antenna HAAT equal to the reference HAAT for the station class of the allotment.

(ii) For existing stations that were not authorized pursuant to this section, including stations with authorized ERP that exceeds the maximum ERP permitted by § 73.211 for the standard eight-radial antenna HAAT employed, and for applications not requesting authorization pursuant to this section, contours are based on the presumed use of the maximum ERP for the applicable station class (as specified in § 73.211), and the antenna HAATs in the directions of concern that would result from a non-directional antenna mounted at a standard eight-radial antenna HAAT equal to the reference HAAT for the applicable station class, without regard to any other restrictions that may apply (e.g. zoning laws, FAA constraints, application of § 73.213).

Note to paragraphs (b)(2)(i) and (b)(2)(ii): Until further notice, contours for existing Class A assignments, Class A applications not requesting authorization pursuant to this section, and Class A allotments are based on the presumed use of an ERP of 6000 Watts, and antenna HAATs in the directions of concern that would result from a non-directional antenna mounted at a standard eight-radial antenna HAAT equal to 100 meters. This temporary provision will be removed after the final resolution of proposals in MM Docket No. 88-375.

(iii) For stations authorized pursuant to this section, except stations with authorized ERP that exceeds the maximum ERP permitted by § 73.211 for the standard eight-radial antenna HAAT employed, contours are based on the use of the authorized ERP in the directions of concern, and HAATs in the directions of concern derived from the authorized standard eight-radial antenna HAAT. For stations with authorized ERP that exceeds the maximum ERP permitted by § 73.211 for the standard eight-radial antenna HAAT employed, authorized under this section, contours are based on the presumed use of the maximum ERP for the applicable station class (as specified in § 73.211), and antenna HAATs in the directions of concern that would result from a non-directional antenna mounted at a standard eight-radial antenna HAAT equal to the reference HAAT for the applicable station class, without regard to any other restrictions that may apply.

(iv) For applications containing a request for authorization pursuant to this section, except for applications to continue operation with authorized ERP that exceeds the maximum ERP permitted by § 73.211 for the standard eight-radial antenna HAAT employed, contours are based on the use of the proposed ERP in the directions of concern, and antenna HAATs in the directions of concern derived from the proposed standard eight-radial antenna HAAT. For applications to continue operation with an ERP that exceeds the maximum ERP permitted by § 73.211 for the standard eight-radial HAAT employed, if processing is requested under this section, contours are based on the presumed use of the maximum ERP for the applicable station class (as specified in § 73.211), and antenna HAATs in the directions of concern that would result from a nondirectional antenna mounted at a standard eight-radial antenna HAAT equal to the reference HAAT for the applicable station class, without regard to any other restrictions that may apply.

Note to paragraph (b): Applicants are cautioned that the antenna HAAT in any particular direction of concern will not usually be the same as the standard eight-radial antenna HAAT or the reference HAAT for the station class.

(c) Applications submitted for processing pursuant to this section are not required to propose contour protection of any assignment, application or allotment for which the minimum distance separation requirements of § 73.207 are met, and may, in the directions of those assignments, applications and allotments, employ the maximum ERP permitted by § 73.211 for the standard eight-radial antenna HAAT employed.

(d) Stations authorized pursuant to this section may be subsequently authorized on the basis of compliance with the domestic minimum separation distance requirements of § 73.207, upon filing of an FCC Form 301 or FCC Form

340 (as appropriate) requesting a modification of authorization.

(e) The Commission will not accept applications that specify a short-spaced antenna location for which the following minimum distance separation requirements, in kilometers (miles), are not met:

Relation	Co-channel	200 kHz	400/600 kHz
A to A	82 (51)	42 (26)	25 (16)
A to B1	119 (74)	66 (41)	46 (29)
A to B	143 (89)	88 (55)	67 (42)
A to C2	143 (89)	84 (52)	53 (33)
A to C1	178 (111)	111 (69)	73 (45)
A to C	203 (126)	142 (88)	93 (58)
B1 to B1	138 (86)	88 (55)	48 (30)
B1 to B	175 (109)	114 (71)	69 (43)
B1 to C2	163 (101)	105 (65)	55 (34)
B1 to C1	200 (124)	134 (83)	74 (46)
B1 to C	233 (145)	169 (105)	105 (65)
B to B	211 (131)	145 (90)	71 (44)
B to C2	200 (124)	134 (83)	69 (43)
B to C1	241 (150)	169 (105)	77 (48)
B to C	270 (168)	195 (121)	105 (65)
C2 to C2	163 (101)	105 (65)	55 (34)
C2 to C1	196 (122)	130 (81)	74 (46)
C2 to C	224 (139)	169 (105)	105 (65)
C1 to C1	224 (139)	158 (98)	79 (49)
C1 to C	249 (155)	188 (117)	105 (65)
C to C	270 (168)	209 (130)	105 (65)

Note to paragraph (e): Until further Notice, the Commission will not accept applications that specify short-spaced antenna locations pursuant to this section wherein the proposed distance separation is less than the normally required distance separation in § 73.207 by more than 8 kilometers (5 miles). This temporary restriction will be removed when the Commission determines that available resources are sufficient to allow the timely processing of additional applications proposing short-spaced locations using contour protection.

5. 47 CFR 73.311 is amended by revising paragraph (a) and adding a new paragraph (b)(4) as follows:

§ 73.311 Field strength contours.

(a) Applications for FM broadcast authorizations must show the field strength contours required by FCC Form 301 or FCC Form 340, as appropriate.

(b) * * *

(4) In determining compliance with § 73.215 concerning contour protection.

6. 47 CFR 73.316 is amended by revising paragraphs (b), (c)(1), (c)(2), and (c)(3), and by adding paragraphs (c)(4), (c)(5), (c)(6), (c)(7), and (c)(8), to read as follows:

§ 73.316 FM antenna systems.

* * * * *

(b) *Directional antennas.* A directional antenna is an antenna that is designed or altered for the purpose of obtaining a non-circular radiation pattern.

(1) Directional antennas that have a ratio of maximum to minimum radiation in the horizontal plane of more than 15 dB will not be authorized.

(2) Directional antennas that have a radiation pattern which varies more than 2 dB per 10 degrees of azimuth will not be authorized.

(c) * * *

(1) A complete description of the proposed antenna system, including the manufacturer and model number of the proposed directional antenna. It is not sufficient to label the antenna with only a generic term such as "dipole". A specific model number must be provided. In the case of individually designed antennas with no model number, or in the case of a composite antenna composed of two or more individual antennas, the antenna must be described as a "custom" or "composite" antenna, as appropriate. A full description of the design of the antenna must also be submitted.

(2) A relative field horizontal plane pattern of the proposed directional antenna. A single pattern encompassing both the horizontal and vertical polarization is required, rather than separate patterns for horizontal and vertical polarization. A value of 1.0 must be used to correspond to the direction of maximum radiation. The plot of the pattern must be oriented such that 0° corresponds to the direction of maximum radiation or alternatively, in the case of an asymmetrical antenna pattern, the plot must be oriented such that 0° corresponds to the actual azimuth with respect to true North. The horizontal plane pattern must be plotted to the largest scale possible on unglazed letter-size polar coordinate paper (main engraving approximately 7" x 10") using only scale divisions and subdivisions of 1, 2, 2.5, or 5 times 10 to the Nth power. Values of field strength less than 10% of the maximum field strength plotted on that pattern must be shown on an enlarged scale. In the case of a composite antenna composed of two or more individual antennas, the pattern required is that for the composite antenna, not the patterns for each of the individual antennas.

(3) A tabulation of the relative field pattern required in paragraph (c)(2) of this section. The tabulation must use the same zero degree reference as the plotted pattern, and must contain values for at least every 10°. In addition, tabulated values of all maximas and minimas, with their corresponding azimuths, must be submitted.

(4) Sufficient vertical patterns to indicate clearly the radiation characteristics of the antenna above and below the horizontal plane. Complete information and patterns must be provided for angles of ±10° from the horizontal plane and sufficient additional information must be included on that portion of the pattern lying between +10° and the zenith and −10° and the nadir, to conclusively demonstrate the absence of undesirable lobes in these areas. The vertical plane pattern must be plotted on rectangular coordinate paper with reference to the horizontal plane. In the case of a composite antenna composed of two or more individual antennas, the pattern required is that for the composite antenna, not the patterns for each of the individual antennas.

(5) A statement that the antenna will be mounted on the top of an antenna tower recommended by the antenna manufacturer, or will be side-mounted on a particular type of antenna tower in accordance with specific instructions provided by the antenna manufacturer.

(6) A statement that the directional antennas will not be mounted on the top of an antenna tower which includes a top-mounted platform larger than the nominal cross-sectional area of the tower in the horizontal plane.

(7) A statement that no other antennas of any type are mounted on the same tower level as a directional antenna, and that no antenna of any type is mounted within any horizontal or vertical distance specified by the antenna manufacturer as being necessary for proper directional operation.

(8) In the case of applications for license upon completion of antenna construction, a statement from a licensed surveyor that the antenna has been installed pursuant to the manufacturer's instructions and is in the proper orientation.

* * * * *

[FR Doc. 89-5277 Filed 3-7-89; 8:45 am]
BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 88-114; FCC 89-43]

Broadcast Services; Deregulatory Review of Technical and Operational Regulations for Television Stations

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: This action amends certain technical and operational regulations for television broadcast stations. This action continues the Commission's deregulatory review of technical and operational regulations for various radio services. It is intended to delete burdensome or outdated television

broadcast regulations that are no longer needed.

EFFECTIVE DATE: April 13, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Bernard Gorden, Mass Media Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* adopted February 7, 1989, and released February 28, 1989. The full text of this action is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this action may also be purchased from the Commission's copy contractors, International Transcription Services, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. This action deletes certain technical and operational television broadcast regulations that are outdated and unnecessary. The majority of comments filed in response to the *Notice of Proposed Rule Making (Notice)* in this proceeding generally supported these rule amendments.

2. *Separate operation of TV aural and visual transmitters.* Television broadcasts are usually composed of both picture and sound signals. The picture and sound generally are transmitted simultaneously via separate video and audio transmitters. Under certain conditions, however, programs may consist of picture and sound transmissions that are unrelated to one another. For example, TV stations may provide an additional broadcast service in the form of an audio program with or without visual material, or a video informational bulletin board with or without related sound information. Such a service might display the text of news, weather, and other reports. Currently, such service is restricted by our rules to "graveyard hours" (12 midnight to 6 a.m.), or for only 15 minutes just prior to a station regular sign-on time, if after 6 a.m. When those provisions were adopted in 1980, the Commission was concerned that broadcasters might over use this form of service by filling their program day with audio-only or video-only bulletin board-like informational service, in place of normal programming during regular operational hours.

3. Upon reviewing the comments, all of which supported the proposed relaxation, the Commission can find no basis for continuing to preclude licensees from making a wider range of programming judgments. The Commission believes that the public interest would better be served by allowing licensees to establish the duration and time of day deemed to be most appropriate for transmitting separate audio or video services. Therefore, the Commission is amending § 73.653 by eliminating all time restrictions pertaining to the transmission of separate aural and video service.

4. *Power meter calibration.* The rules currently require that a television broadcast licensee have the capability to determine the station's visual power at all times. The most popular method of complying with this regulation is use of a power meter that must be calibrated at least once every 6 months. Because the rules also stipulate that this meter should be calibrated as often as necessary to ensure compliance with the appropriate power level, we find that the 6-month calibration requirement to be redundant.

5. While the comments filed in response to the *Notice* supported the requirement to perform meter calibration as often as needed, they recommended that the Commission eliminate the periodic 6-month calibration period as being duplicative of the general calibration requirement. Accordingly § 73.663 is amended to reflect this decision.

6. *Color burst signal requirement.* The color burst is a special synchronizing signal, transmitted within the television picture signal, that enables the TV receiver to decode the color information for proper display on the screen. During the transmission of black-and-white video programming, color burst signals do not benefit reception. In fact, they have the potential to degrade the picture quality if transmitted along with certain black-and-white picture signals. Thus, the rules currently require that the color burst signal be omitted during the extended transmission of black-and-white programming..

7. In recent years however, broadcasters have encountered certain operational disadvantages in omitting the color burst signal during black-and-white program production. Modern video equipment technology now utilizes the color burst signal for more than its original purpose of conveying transmitted color reference information. Popular types of video processing equipment now rely on the color burst for timing and synchronization information to correct video signal stability or timing errors. For example, many production video tape recorders (as opposed to most consumer equipment) require the color burst signal for proper operation. Consequently, broadcasters have occasionally requested and received waivers of our color burst rules on a case-by-case basis. Also, some broadcasters have suggested that the color burst omission requirement should be eliminated because they believe that today's television receivers have been developed to the point that they are immune to picture degradation caused by the color burst signal.

8. On the other hand, some television receiver manufacturers are skeptical, recalling that older model receivers have in fact experienced black-and-white picture degradation due to the color burst and that current receivers may not be totally immune either. Thus, the manufacturers generally prefer that the current color burst omission standard be retained.

9. While the comments were divided over the extent of picture degradation caused by the presence of the color burst, the Commission notes that the color burst omission requirement was established as a quality control regulation and does not relate to preventing or restricting cochannel or adjacent channel interference. However, the comments have focused our attention on the fact that the current requirement has become a television receiver interoperability standard. Thus, television sets are currently designed and produced in accordance with the traditional objectives of the color burst omission requirement. Therefore, the Commission believes the current rule should be retained as a *recommended* standard instead of an absolute broadcast operating requirement. This approach is consistent with a 1985 action taken by the Commission with respect to standards relating to maximum horizontal and vertical blanking intervals (*see Report and Order*, MM Docket No. 79-145, 50 FR 13971, April 9, 1985). Therefore, § 73.699 is amended accordingly.

10. *Equipment installation and safety specifications.* The rules currently contain requirements pertaining to the construction and installation of transmission systems and studio equipment, as well as related safety procedures. These requirements were imposed many years ago, when it was common for broadcasters to design and build their own facilities. Today, nearly all broadcasters acquire their transmission system equipment from manufacturers that must design it to meet the safety requirements imposed by other regulatory agencies (*e.g.*, OSHA and various local and state agencies).

11. The comments favored elimination of the current requirements, but

suggested that an advisory reference to pertinent federal, state, local or other recognized safety organizations standards and procedures would be appropriate. The Commission agrees and amends § 73.687 accordingly.

12. *Reference table for conversion of minutes and seconds to decimal parts of a degree.* This table contains mathematical conversions for minutes-to-decimal and seconds-to-decimal parts of a degree. These values may be used in the calculation of geographical distance separations between television channel assignment locations. They were placed in the rules to provide the means for consistent and accurate calculations before the advent and widespread availability of electronic calculators and computers.

13. The commenters agreed with the Commission that the table has become superfluous and no longer needed because of the universal availability of electronic calculators and computers that provide far more accuracy. Therefore, the Commission is deleting from § 73.698 the reference table of minutes and seconds converted to decimal parts of a degree.

14. *Antenna radiation pattern limitations.* Television broadcasting directional antennas may be useful in improving service, *e.g.*, to reduce radiation over large bodies of water and concentrate it over populated areas. In such cases, the antennas must normally comply with restrictions that limit the ratio of the maximum radiated power at any point in the antenna pattern to the minimum radiated power at some other point in the pattern (the degree of suppression or null). The Commission adopted these limits in the early 1950s. It concluded at that time that the limits were needed because of the difficulty in determining the actual radiated pattern of an antenna with very sharp nulls. Additionally, early antenna patterns were considered unstable, and more subject to television picture "ghosting" degradation in null areas because of the exaggerated signal strength ratio that is possible between the directly received signal and other reflected signals.

15. However, over the years broadcasters have been granted waivers to exceed the current ratio limits in order to more effectively limit the power radiated over large bodies of water, or to avoid excessive signal radiation toward the face of a hill or mountain, which could reflect the signal and cause "ghosting" degradation. Also, the current ratio limits have no relationship with the spacing criteria used to control interstation interference. Thus, the *Notice* proposed that these limits be eliminated.

16. The comments, however, have convinced the Commission that while waivers permitting the use of non-restricted radiation patterns are often appropriate (as described above), such operation might not be advisable in all situations, particularly in cases involving tightly located or short-spaced stations. The comments further expressed concern over the Commission's ongoing FM directional antenna proceeding, which is addressing a similar issue, but which does contemplate the short-spacing of FM station antenna sites (*see* MM Docket No. 87–121, 53 FR 12779, April 19, 1988). The comments emphatically reject such short-spacing in the case of TV stations. Thus, the Commission's proposal to eliminate the current ratio limits received only qualified support. Moreover, the record is inadequate in terms of suggesting what degree of relaxation in the limits might be appropriate. Because of the current controversy over the circumstances in which directional antennas should be authorized, and because the Commission's current waiver process appears adequate in dealing with unusual situations, elimination of the current rule does not appear to be a matter of great urgency. Accordingly, the Commission believes the appropriate course of action is to retain the current rules for the time being, and reconsider this matter at some time in the future if circumstances warrant.

17. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, the Commission notes that adoption of these provisions will provide broadcasters with alternatives and increased flexibility in meeting their operational requirements.

18. The rule amendments contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980, and found to contain no new or modified form, information collection, and/or record keeping, labeling, disclosure, or record retention requirement; and will not increase or decrease burden hours imposed on the public.

19. Accordingly, *it is ordered that,* Pursuant to authority contained in sections 4(i) and 303 of the Communications Act of 1934, as amended, Part 73 of the Commission's Rules and Regulations are amended as set forth at the end of this document. *It is further ordered,* That this proceeding is terminated.

Donna R. Searcy,

Secretary, Federal Communications Commission.

List of Subjects in 47 CFR Part 73:

Radio broadcasting.

Appendix

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73 [AMENDED]

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

Authority: 47 U.S.C. 154 and 303.

2. Section 73.208 is amended by removing paragraphs (c)(1) (i) and (ii) and revising paragraph (c)(1) to read as follows:

§ 73.208 Reference points and distance computations.

* * * * *

(c) * * *

(1) Convert the latitudes and longitudes of each reference point from degree-minute-second format to degree-decimal format by dividing minutes by 60 and seconds by 3600, then adding the results to degrees.

* * * * *

3. 47 CFR 73.653 is revised in its entirety to read as follows:

§ 73.653 Operation of TV aural and visual transmitters.

The aural and visual transmitters may be operated independently of each other or, if operated simultaneously, may be used with different and unrelated program material.

4. 47 CFR 73.663 is amended by revising paragraph (b)(3) to read as follows:

§ 73.663 Determining operating power.

* * * * *

(b) * * *

(3) The meter must be calibrated with the transmitter operating at 80%, 100%, and 110% of the authorized power as often as may be necessary to maintain its accuracy and ensure correct transmitter operating power. In cases where the transmitter is incapable of operating at 110% of the authorized power output, the calibration may be made at a power output between 100% and 110% of the authorized power output. However, where this is done, the output meter must be marked at the point of calibration of maximum power output, and the station will be deemed to be in violation of this rule if that power is exceeded. The upper and lower limits of permissible power deviation as determined by the prescribed calibration, must be shown upon the meter either by means of adjustable red markers incorporated in the meter or by red marks placed upon the meter scale or glass face. These markings must be

checked and changed, if necessary, each time the meter is calibrated.

5. 47 CFR 73.687, Transmission system requirements, is amended by revising paragraph (d), and removing paragraphs (e), (f) and (h), and redesignating paragraph (g) as (e) to read as follows:

§ 73.687 Transmission system requirements.

* * * * *

(d) The construction, installation, and operation of broadcast equipment is expected to conform with all applicable local, state, and federally imposed safety regulations and standards, enforcement of which is the responsibility of the issuing regulatory agency.

* * * * *

§ 73.698 [Amended]

6. 47 CFR 73.698, Tables, is amended by removing and reserving in its entirety Table I.

7. 47 CFR 73.699, Figure 6, is amended by revising Note 8 to read as follows:

§ 73.699 TV engineering charts.

* * * * *

Figure 6, Television Synchronizing Waveform for Color Transmission

Notes

* * * * *

8. It is recommended that color bursts signal be omitted during monochrome transmission.

* * * * *

§ 73.4272 [Removed]

8. 47 CFR 73.4272 is removed in its entirety.

[FR Doc. 89-5131 Filed 3-7-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 204, 219, and 252

Federal Acquisition Regulation Supplement; Small Business Competitiveness Demonstration Program

AGENCY: Department of Defense (DoD).

ACTION: Interim rule (Extension of comment period).

SUMMARY: The Defense Acquisition Regulatory Council published an interim rule with request for public comment on January 27, 1989 (54 FR 4246), to revise the Department of Defense Federal Acquisition Regulation Supplement (DFARS) Parts 204, 219, and 252 to further implement FAR Subpart 19.10 and the December 22, 1988 joint Office of Federal Procurement Policy (OFPP) and Small Business Administration (SBA) interim policy directive and test plan implementing Title VII of the "Business Opportunity Development Reform Act of 1988", Pub. L. 100-656 (53 FR 52889). The original date for submission of comments, February 27, 1989, has been extended to April 15, 1989, to accommodate the requests of interested parties.

DATE: Written comments on the interim rule should be submitted to the address shown below not later than April 15, 1989, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, ODASD(P)/DARS, c/o OASD(P&L) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301-3062. Please cite DAR Case 88-322 in all correspondence related to this subject.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, telephone (202) 697-7266.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

[FR Doc. 89-5384 Filed 3-7-89; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Office of the Secretary

48 CFR Parts 932 and 952

Acquisition Regulation; Prompt Payment Policies, Procedures and Contract Clauses

AGENCY: Department of Energy (DOE).

ACTION: Final Rule.

SUMMARY: This final rule amends the Department of Energy Acquisition Regulation (DEAR), by deleting the DOE unique prompt payment policies, procedures and contract clauses established in the DEAR to implement the requirements of the Prompt Payment Act (Pub. L. 97-177; May 21, 1982), and requires the use of the prompt payment policies, procedures and contract clauses recently established, on a Federal-wide basis, in the Federal Acquisition Regulation (FAR).

EFFECTIVE DATE: The requirements of this amended regulation are effective as of March 8, 1989.

FOR FURTHER INFORMATION CONTACT:

Rudolph J. Schuhbauer, Business and Financial Policy Division (MA-422), Procurement and Assistance Management, Washington, DC 20585, (202) 586-8175

Paul A. Gervas, Office of the Assistant General Counsel for Procurement and Finance (GC-34), Washington, DC 20585, (202) 586-6906.

SUPPLEMENTARY INFORMATION:

I. Background

II. Procedural Requirements

A. Review Under Executive Order 12291

B. Review Under the Regulatory Flexibility Act

C. Review Under the Paperwork Reduction Act

D. Review Under the National Environmental Policy Act

E. Public Hearing

III. Public Comments

I. Background

Under Section 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254), the Secretary of Energy is authorized to prescribe such procedural rules and regulations as may be deemed necessary or appropriate to accomplish the functions vested in that position. Accordingly, the DEAR was promulgated with an effective date of April 1, 1984 (49 FR 11922, March 28, 1984), 48 CFR Chapter 9.

The purpose of this final rule is to revise the DEAR, as necessary, to implement the requirements of the Prompt Payment Act as implemented by Office of Management and Budget (OMB) Circular A-125, Prompt Payment, and FAR Subpart 32.9, Prompt Payment, which was published in the **Federal Register** (53 FR 3688, February 8, 1988) as Federal Acquisition Circular 84-33.

A brief description of the DEAR amendments follows:

DEAR Section 932.111, Contract Clauses, is deleted in its entirety.

DEAR Subpart 932.71, Contract Payments, is deleted in its entirety.

DEAR Subpart 932.9, Prompt Payment, is added as a new subpart in order to establish certain DOE specific policies and procedures required to implement the prompt payment provisions specified in FAR Subpart 32.9.

Under Part 952, Solicitation Provisions and Contract Clauses, Section 952.232, including Subsections 952.232-1 through 952.232-8, 952.232-10, and 952.232-70 through 952.232-73, is deleted in its entirety.

II. Procedural Requirements

A Review Under Executive Order 12291

In accordance with the requirements of Executive Order 12291 (46 FR 13193, February 27, 1981), this rulemaking has been reviewed by DOE. DOE has concluded that the rule is not a "major rule" because its promulgation 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 government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete in domestic or export markets. Accordingly, a regulatory impact analysis is not required.

B. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. This rule will simplify DOE's implementation of Pub. L. 97–177, by requiring use of the Federalwide prompt payment policies, procedures, and contract clauses prescribed in FAR Subpart 32.9, rather than the unique DEAR provisions established by DOE in 1984. Accordingly, this rule will have no impact on interest rates, tax policies or liabilities, the costs of goods or services or other direct economic factors. It will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Review Under Paperwork Reduction Act

No information collection or recordkeeping requirements are imposed by this amended rule. Accordingly, no OMB clearance is required by section 350(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.).

D. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 432 et seq., 1976), or the Council on Environmental Quality regulations (40 CFR Part 1020), and therefore does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

E. Public Hearing

The Department has concluded that this final rule does not involve a substantial issue of fact or law, and that the rule should not have a substantial impact on the nation's economy or large numbers of individuals or businesses. This rule will result in uniform implementation of the Federal-wide prompt payment provisions recently established in the FAR. Therefore, pursuant to Pub. L. 95–91, the DOE Organization Act, the Department did not hold a public hearing on this rule.

III. Public Comments

This final rule is based on the Notice of Proposed Rulemaking (NOPR) that DOE published in the **Federal Register** on November 9, 1988 (53 FR 45294), wherein public comments were invited for the 30-day period ending December 9, 1988. No public comments were received.

List of Subjects in 48 CFR Parts 932 and 952

Government procurement.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, DC on February 27, 1989.

Berton J. Roth,

Deputy Assistant Secretary for Procurement and Assistance Management.

PART 932—CONTRACT FINANCING

1. The authority citation for Parts 932 and 952 continues to read as follows:

Authority: (42 U.S.C. 7254; 40 U.S.C. 486(c)).

§ 932.111 [Removed]

2. Section 932.111 is removed in its entirety.

Subpart 932.71—[Removed]

3. Subpart 932.71, consisting of sections 932.7100, 932.7101, 932.7102, 932.7103, 932.7104, 932.7105, 932.7106 and 932.7107 and subsections 32.7107–1 and 932.7107–2, is removed in its entirety.

4. Part 932 is amended by adding a new Subpart 932.9, Prompt Payment, consisting of §§ 932.908 and 932.970, as follows:

Subpart 932.9—Prompt Payment

932.908 Contract clause.
932.970 Implementing DOE policies and procedures.

Subpart 932.9—Prompt Payment

§ 932.908 Contract clause.

(c) The contracting officer shall incorporate paragraph (c), *Electronic Funds Transfer,* promulgated as Alternate II at FAR 52.232–25, in solicitations and contracts containing the basic Prompt Payment clause or its Alternate I as prescribed at FAR 32.908(a) and FAR 32.908(b), respectively.

§ 932.970 Implementing DOE policies and procedures.

(a) *Invoice payments.* (1) *Contract Settlement Date.* For purposes of determining payment due dates on a final invoice pursuant to paragraph (a)(2)(ii) of the basic Prompt Payment clause and (a)(2)(i)(B) of its Alternate I at FAR 52.232–25, contract settlement occurs when the contracting officer determines that the contractor has complied with all contract terms and conditions, including all administrative requirements (e.g., execution and delivery of contractor's release of claims, execution of understandings setting forth final indirect cost rates, and establishment of final contract price). In addition, for purposes of determining any interest penalties under cost-type contracts, the effective date of contract settlement shall be the effective date of the final contract modification issued to acknowledge contract settlement and to close out the contract.

(2) *Constructive acceptance periods.* It is expected that, in the majority of cases, Government acceptance or approval can occur within the standard constructive acceptance or approval periods specified in paragraphs (a)(6)(i) of the basic Prompt Payment clause and (a)(5)(i) of its Alternate I at FAR 52.232–25. However, the contracting officer should coordinate these provisions with the DOE official(s) that will be responsible for performing the acceptance and/or approval function(s). Where the contracting officer determines, in writing, on a case-by-case basis, that it is not reasonable or feasible for DOE to perform the acceptance or approval function within the standard period, the contracting officer should specify a longer constructive acceptance or approval period, as appropriate. Considerations include, but are not limited to, the nature of supplies or services involved, geographical site location, inspection and testing requirements, shipping and acceptance terms, and available DOE resources.

(b) *Contract Financing Payments.* (1) The standard payment due date, to be specified by the contracting officer in paragraphs (b)(2) of the basic Prompt Payment clause and its Alternate I at FAR 52.232–25, shall normally be 30 days for progress payments and 30 days for interim payments on cost-type contracts.

(2) Contracting officers may specify payment due dates that are less than the standard when a determination is made,

in writing, on a case-by-case basis, that a shorter contract financing payment cycle will be required to finance contract work. In such cases, the contracting officer should coordinate with the finance and program officials that will be involved in the payment process to ensure that the contract payment terms to be specified in solicitations and resulting contract awards can be reasonably met. Consideration should be given to geographical separation, workload, contractor ability to submit a proper request, and other factors that could affect timing of payment. However, payment due dates that are less than 7 days for progress payments or less than 14 days for interim payments on cost-type contracts are not authorized

PART 952—SOLICITATION PROVISION AND CONTRACT CLAUSES

§§ 952.232, 952.232-1, 952.232-2, 952.232-3, 952.232-4, 952.232-5, 952.232-6, 952.232-7, 952.232-8, 952.232-10, 952.232-70, 952.232-71, 952.232-72, and 952.232-73—[Removed]

5. Subpart 952.2 is amended by removing section 952.232 and subsections 952.232-1, 952.232-2, 952.232-3, 952.232-4, 952.232-5, 952.232-6, 952.232-7, 952.232-8, 952.232-10, 952.232-70, 952.232-71, 952.232-72, and 952.232-73.

[FR Doc. 89-5245 Filed 3-7-89; 8:45am]
BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 580

[Docket Number 87-09; Notice 9]

RIN: 2127-AC42

Odometer Disclosure Requirements

AGENCY: National Highway Traffic Safety Administration.

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule is in response to a recent amendment to the Truth in Mileage Act (contained in the Pipeline Safety Reauthorization Act of 1988). The amendment concerns powers of attorney used in connection with mileage disclosures and requires NHTSA to promulgate regulations concerning their use.

This rule permits, in limited circumstances when a title document is physically held by a lienholder, the use of a secure power of attorney form. It allows a transferor to make the required odometer disclosure on a secure power of attorney form, issued by a State, that would authorize the transferee to exactly restate the mileage on the title document on the transferor's behalf. Similarly, this rule allows a transferee to authorize this transferor to sign the disclosure on the title document, on behalf of the transferee. To the extent that they are consistent with the new law, this rule grants, in whole or in part, three petitions for reconsideration.

This notice is published as an interim final rule without notice and the opportunity for comment. However, NHTSA requests comments on this rule. Following the close of the comment period, NHTSA will publish a notice responding to the comments and, if appropriate, NHTSA will amend the provisions of this rule.

DATES: Comments on this interim rule are due no later than April 7, 1989. This interim final rule becomes effective on April 29, 1989, unless a permanent final rule is issued thirty days prior to that date.

ADDRESS: Written comments should refer to the docket number of this notice and should be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. (Docket hours are 8 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Judith Kaleta, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202-366-1834).

SUPPLEMENTARY INFORMATION:

Background

To implement the Truth in Mileage Act of 1986 and to make some needed changes in the Federal odometer regulations, the National Highway Traffic Safety Administration (NHTSA) published a notice of proposed rulemaking (NPRM) on July 17, 1987. 52 FR 27022 (1987). The agency received numerous comments on the NPRM, representing the opinions of new and used car dealers, auto auctions, leasing companies, State motor vehicle administrators, and enforcement and consumer protection agencies. Each of the comments was considered and a final rule was published on August 5, 1988. 53 FR 29464 (1988).

As required by the Truth in Mileage Act, the August 1988 final rule requires the transferor of a motor vehicle to provide a mileage disclosure on the title document or, if the title document does not include a space for the mileage disclosure (during the phase-in period), or if the vehicle has not been previously titled, it requires the transferor to make a written disclosure of mileage on a separate document. Also as required by that statute, that final rule requires that title documents be manufactured or otherwise set forth by a secure process to deter counterfeiting and alteration; requires that at the time of issue, the titles include the mileage disclosure; adds disclosure requirements for lessors and lessees; and adds retention requirements for lessors and auction companies. In addition, consistent with the statute, the rule amends the form and content of the odometer disclosure statement. The August 1988 rule also prohibits a person from signing the disclosure as both the transferor and transferee in the same transaction in order to guard against a situation where only one party to the transaction would be aware of the disclosure. Finally, that rule clarifies the definition of transferor and transferee and extends the record retention requirement for dealers and distributors.

The Agency received seven petitions for reconsideration of the August 1988 final rule. In addition, we received numerous letters concerning the final rule and supporting the petitions. These petitions requested that NHTSA reconsider the provisions of the final rule that: (1) Prohibit a person from signing the odometer disclosure statement as both the transferor and transferee in the same transaction; (2) define "transferor" and "transferee"; (3) define "secure printing process"; (4) concerned the language included on the odometer disclosure statement; and (5) require dealers and distributors to retain, for five years, a copy of every odometer disclosure statement, including the transferee's signature, that they issue and receive. These petitions and letters have been placed in the docket. Before the Agency could fully consider the petitions, Congress enacted the Pipeline Safety Reauthorization Act of 1988, Pub. L. 100-561.

Section 401 of the Pipeline Safety Reauthorization Act, which amends section 408(d)(1) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1988(d)(1), concerns the use of certain powers of attorney in connection with the required mileage disclosure. Although the Truth in Mileage Act generally requires that a vehicle seller (or other transferor) make the required disclosure on the vehicle's title, Congress determined that, under certain limited conditions when the title document is physically held by a lienholder, the transferor should not be precluded from making the disclosure on a secure power of attorney form which

includes a space for the required odometer disclosure information. This secure power of attorney form would be given to a buyer (transferee), authorizing him to restate, on the title document, the mileage disclosed by the seller on the secure power of attorney form, if State law otherwise permits. Congress found that precluding such uses of powers of attorney could cause an undue burden on dealers when a consumer's title is held by a bank or other lienholder. Because the consumer does not have the vehicle's title document, the consumer would be unable to complete the disclosure on the title unless: (1) The consumer returned to the dealer after the dealer paid off the lien and received the title from the lienholder, or (2) the title was mailed by the dealer to the consumer, completed by the consumer, and mailed back to the dealer. Both of these alternatives were seen by Congress as interfering with usual commercial transactions. 134 Cong. Rec. H10079 (daily ed. October 12, 1988) (remarks of Rep. Dingell).

To resolve this problem and to alleviate potential costs for dealers and consumers, the new amendment specifies that a secure power of attorney form, which includes a mileage disclosure by the transferor, may be used when the transferor's title document is physically held by a lienholder, if otherwise permitted by State law. The new law directs the agency to prescribe the form and content of the power of attorney/disclosure document and reasonable conditions for its use by the transferor, "consistent with this Act and the need to facilitate enforcement thereof." More specifically, the new law requires that the form: (1) "be issued by a State to transferees in accordance with paragraph (2)(A)(i) * * *" (Paragraph (2)(A)(i) concerns the issuance of documents that are set forth by a secure printing process or other secure process.); (2) include an odometer disclosure statement and other information as NHTSA deems necessary; and (3) be submitted to the State by the person granted the power of attorney. It also requires NHTSA's rule to provide for the retention of a copy of the power of attorney and to ensure that the person granted the power of attorney completes the disclosure on the title consistent with the disclosure on the power of attorney form.

Scope

Consistent with the statutory mandate, this interim final rule grants, in whole or in part, three of the petitions for reconsideration. This interim final rule also implements the portion of the Pipeline Safety Reauthorization Act of 1988 that concerns the use of powers of attorney to disclose mileage.

NHTSA has also granted, in whole or in part, four petitions for reconsideration in a Notice of Proposed Rulemaking (NPRM) published in today's **Federal Register**. Generally, the NPRM concerns the definition of transferor and transferee with regard to the person who acts as agent for the transferor and transferee. It also concerns the relationship between the retention requirement applicable to dealers and distributors and the requirement that the transferee's signature appear on the odometer disclosure statements.

NHTSA has denied, in whole or in part, three petitions for reconsideration of the final rule published on August 5, 1988, because they are inconsistent with the new statute. For reasons discussed in the document denying the petitions, two other petitions were also denied. The denial notice is published in today's **Federal Register**.

Misuse of Powers of Attorney in Odometer Fraud Schemes

Although the July 1987 proposed rule to implement the Truth in Mileage Act did not include a regulatory provision explicitly concerning the use of powers of attorney, we stated in the preamble to the proposed rule that we recognize that powers of attorney are necessary in certain transactions. Someone acting on behalf of a deceased or incompetent owner would use a power of attorney from those owners to transfer the vehicles to a third party. In addition, the spouse of overseas military personnel, or of someone out of town or otherwise unavailable, may have a power of attorney from a husband or wife to transfer a vehicle to a third party. However, we emphasized that powers of attorney that allow a person to sign a disclosure as both the transferor and transferee result in only one party to the transaction being aware of the previous mileage disclosures. This could jeopardize the integrity of the "paper trail," the evidence of rollbacks that Congress intended to enhance by enacting the Truth in Mileage Act. 52 FR 27026 (1987).

The American Association of Motor Vehicle Administrators (AAMVA), the Wisconsin Department of Transportation (Wisconsin), and the National Association of Consumer Agency Administrators (NACAA) agreed with our position. AAMVA noted that a power of attorney that allows a person to sign the disclosure as both the buyer and the seller creates a situation ripe for fraud, if that person is intent on rolling back the vehicle's odometer. Several of AAMVA's members concurred in this position. Wisconsin suggested that a new paragraph be added to section 580.5 providing that no person may sign a disclosure as both the transferor and transferee.

Other commenters, concerned that the title had to be present at the time of sale ("title present"), hoped that the use of a power of attorney would ease the burden that title present might have imposed. A coalition of commenters (the "coalition"), consisting of AAMVA, the National Auto Auction Association (NAAA), the National Automobile Dealers Association (NADA), the National Independent Automobile Dealers Association (NIADA), the Automotive Trade Association Executives, and the American Car Rental Association, suggested the use of a special power of attorney. (Although the coalition used the term "secure power of attorney," we are referring to its suggestion by the term "special power of attorney." This helps to differentiate between the statutorily permitted secure power of attorney and the coalition's suggestion.) The coalition proposed that this special power of attorney would (1) Be set forth by a secure process; (2) contain the appropriate Federal odometer disclosure statement; and (3) be fully completed, dated, and signed by the transferee. Upon receipt of the transferor's title, the initial transferee would negotiate the title and complete the transferor's statement based on the transferor's special power of attorney and mileage disclosure thereon. The title, together with the special power of attorney and all subsequent reassignments, would be presented to the State with any application for title.

We reviewed AAMVA's comments and the suggestions of Wisconsin and the coalition in light of our investigative experience which showed that powers of attorney had been abused in the furtherance of odometer fraud schemes. The following two schemes, uncovered during NHTSA's investigations, are illustrative of the use of a power of attorney to commit odometer fraud:

(A) The transferor, a leasing company, sold several vehicles to a wholesale dealer and gave this dealer a power of attorney to execute the odometer disclosure statements on its behalf. The buying dealer rolled back the odometer on the vehicles, entered the lower mileage on the disclosure statements, and signed the disclosures as both the buyer and the seller. The buyer then sent a copy of the statements to the leasing company where they were filed.

(B) A new car dealer purchased a used vehicle and received a separate odometer disclosure staement on which his transferor certified that the odometer reflected the actual mileage of the vehicle. The new car dealer sold the car before he received the title, certifying that the odometer reflected the vehicle's actual mileage. The new car dealer then received the title, which had a blatantly altered odometer reading in the reassignment space on the reverse side of the title. Using the power of attorney that he received from his buyer, the new car dealer signed the disclosure as both the transferor and transferee. He never advised his buyer of the mileage problem. [Note: Other title problems that could be ignored by unscrupulous persons include higher mileage on the face of the title than on the reassignment on the reverse side and a certification that the odometer reading does not reflect the actual mileage.]

Based on the comments from AAMVA, NACAA, and Wisconsin and our own investigative experience, we adopted Wisconsin's suggestion and added a new § 580.5(h). This provision prohibits a person from signing the disclosure as both the transferor and transferee in the same transaction.

We did not adopt the suggestion of the coalition of commenters for several reasons. First, we had modified the proposed requirement in the NPRM of July 1987 that the title be present at the time of transfer of ownership and addressed the primary concern of the commenters by permitting the disclosure to be made "in connection with the transfer of ownership," rather than "at the time of transfer of ownership." Second, we were concerned that the coalition's suggestion would interfere with the integrity of the paper trail, which Congress intended to enhance by enacting the Truth in Mileage Act. Under the coalition's suggestion, only one party to the transfer would see the odometer disclosure (which would have been on the title). The power of attorney could be easily discarded and a new one forged and submitted to the State by any of the parties to subsequent transfers, since the issuance of the special power of attorney forms would not be controlled in any way. Finally, this process would place a burden on State titling offices to review additional documentation, check for conformity of the information contained on the documents, and maintain additional records. Accordingly, the final rule of August 1988 implemented the Truth in Mileage Act, while allowing the States the maximum discretion in complying with these requirements. 53 FR 29469, 29472, 29475 (1988).

Petitions for Reconsideration

In petitions filed with the agency, NADA, NIADA, and NAAA asked NHTSA to reconsider § 580.5(h), the provision which prohibits a person from signing the disclosure as the transferor and transferee in the same transaction. The agency also received many letters in support of the petitions. The petitioners claimed that customers would not return to dealers to sign the disclosure on the title. They alleged that a customer's failure to return would result in costs associated with locating these people, administrative costs for mailing and/or duplicating titles, and increased inventory costs in States where the dealer must have the title present at time of sale. This would result in higher vehicle prices as dealers would pass these expenses on to the consumer. Alternatively, they argued that if customers did return, this return visit would result in lost time at work and other costs. They also claimed that a person signing the disclosure as the buyer and the seller did not create a situation ripe for fraud, that the provision conflicted with State laws and was contrary to Federal law. Additional information concerning these petitions is included in the denial of petitions for reconsideration published in today's **Federal Register.**

The petitioners asked that NHTSA eliminate section 580.5(h). Alternatively, the petitioners suggested that NHTSA permit the use of a special power of attorney or require title sets, a two-part title system where the owner holds the title and the lienholder holds a notice of security interest filing.

Congressional Mandate

Before the agency could fully consider these petitions, Congress enacted the Pipeline Safety Reauthorization Act, Pub. L. 100–561. Section 401 of the Act, which amends section 408(d)(1) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1988(d)(1), concerns the use of limited powers of attorney in connection with mileage disclosure. The purpose of this provision is to resolve a technical problem for purchaser: of used motor vehicles (dealers), without increasing the burden on States or lessening our ability to fight odometer fraud. 134 Cong. Rec. H10079 (daily ed. October 12, 1988) (remarks of Rep. Whittaker). Congress determined that NHTSA's August 1988 final rule, which prohibits a person from signing an odometer disclosure statement as both the transferor and transferee in the same transaction, could have the effect of precluding the use of a power of attorney in certain instances. Recognizing that the Truth in Mileage Act of 1986 requires a disclosure, including the transferee's signature, on the title, Congress found that limiting the use of powers of attorney could cause an undue burden on dealers and consumers when a consumer's title is held by a bank or other lienholder. Because the consumer does not have the vehicle's title in these instances, the consumer, as a transferor, would be unable to complete the disclosure on the title unless: (1) The consumer returned to the dealer after the dealer paid off the lien and received the title from the lienholder, or (2) the title was mailed by the dealer to the consumer, completed by the consumer, and mailed back to the dealer. Both of these alternatives were rejected by Congress. "It is not reasonable to assume that the consumer will come back to the dealer several days or weeks later to fill in a title received from the bank by the dealer after paying off the lien. It is also not safe to rely on the mails to send the valuable title document to the consumer or to rely on the consumer to return the document in a timely fashion." 134 Cong. Rec. H10079 (daily ed. October 12, 1988) (remarks of Rep. Dingell).

To resolve the problem and alleviate potential costs for dealers and consumers, the new law specifies that a power of attorney authorizing the dealer to disclose mileage on the title on behalf of the consumer may be used when the transferor's title document is physically held by a lienholder, if otherwise permitted by State law. The new law does not require the States to allow the use of a power of attorney for the purpose of mileage disclosure. However, if a State chooses to permit the use of powers of attorney in connection with mileage disclosure, the State itself must issue the power of attorney form, and the form must be consistent with the requirements of the law and the regulations promulgated thereunder. The new law directs the agency to prescribe the form and content of the power of attorney/disclosure document and reasonable conditions for its use by the transferor. More specifically, the new law requires that the form: (1) "be issued by a State to transferees in accordance with paragraph (2)(A)(i) * * *" (Paragrpah (2)(A)(i) concerns the issuance of documents that are set forth by a secure printing process or other secure process.); (2) include an odometer disclosure statement and other information as NHTSA deems necessary; and (3) be submitted to the State by the person granted the power of

attorney. It also requires NHTSA to provide for the retention of a copy of the power of attorney form and to ensure that the person granted the power of attorney completes the disclosure on the title consistent with the disclosure on the power of attorney form.

We note that in some States, a secure power of attorney is not necessary to ensure that the mileage disclosure of the customer trading in a vehicle to a dealer is included on the vehicle's title document. For example, some States record all lien information on computerized recordkeeping systems and allow the registered owner to hold the title document. Other States have adopted a two-part title system under which the registered owner holds the title document and the lienholder holds a notice of security interest filing. Under either system, because the vehicle owner would have the title document, he could make the disclosure on the title and would not need to use a power of attorney form. In these States, the provisions of the new law would not apply, and the disclosure signed by the transferor would continue to be required on the vehicle's title document.

Interim Final Rule

This notice is published as an interim final rule, without prior notice and opportunity to comment. NHTSA believes that there is good cause for finding that notice and comment rulemaking is impracticable, unnecessary, and contrary to the public interest in this instance, since it would prevent compliance with the February 1, 1989 statutory deadline for issuance of a final rule. This finding is also based on the agency's view that given the April 29, 1989 effective date of NHTSA's August 1988 final rule which could result in an undue burden on dealers and consumers when a consumer's title is held by a bank or other lienholder, relief from the August 1988 rule is imperative.

As an interim final rule, this regulation is fully in effect and binding after its effective date, unless NHTSA issues a permanent final rule thirty days prior to that time. No further regulatory action by NHTSA is essential to the effectiveness of this rule. However, in order to benefit from comments which interested parties and the public may make, we are requesting that comments be submitted to the docket for this notice. All comments submitted in response to this notice will be considered by the agency. Following the close of the comment period, NHTSA will publish a notice responding to the comments and, if appropriate, NHTSA will amend the provisions of this rule.

Consistent with the provisions of the new law concerning the security of the power of attorney forms, this interim final rule revises § 580.4, which concerns the security of title documents. Although the legislative history indicates that the power of attorney forms must be "no less secure than the title document itself", 134 Cong. Rec. H10079 (daily ed. October 12, 1988) (remarks of Rep. Dingell), we believe that we can satisfy our statutory obligation to require secure forms and avoid unnecessary financial burdens upon the States by including a provision that is consistent with our position on the security of reassignment documents. Since the August 1988 final rule requires that reassignment documents be set forth by "a secure process", not necessarily the same process used to secure the title, this rule requires that the power of attorney forms also be set forth by "a secure process". Accordingly, we are changing the title of § 580.4 to read "Security of titles documents and power of attorney forms", and we are amending that section to require that power of attorney forms issued pursuant to § 580.13 and § 580.14 be set forth by a secure process.

The new law does not give NHTSA explicit statutory authority to require the States to control the power of attorney forms by any type of numbering system. Therefore, we have not limited the administrative discretion of the States in this area even though we recognize that it is common practice to control secure documents. This is also consistent with our position concerning reassignment documents. However, nothing in the Act or this rule should be read to preclude a State from using control techniques on these documents.

Since section 401 of the Pipeline Safety Reauthorization Act has the effect of allowing a person to sign an odometer disclosure statement on the title as both the transferor and the transferee in specified circumstances, we are amending § 580.5(h), which prohibits a person from signing an odometer disclosure statement as both the transferor and transferee in the same transaction. This amendment to § 580.5(h) permits a person to sign an odometer disclosure statement as both the transferor and transferee if the requirements of the new § 580.13 and § 580.14, which NHTSA is adding below, have been met.

In accordance with the Congressional mandate, we are adding a new § 580.13. Under this section, if permitted by State law, a transferor whose motor vehicle title document is physically held by a lienholder may give his transferee a power of attorney for the purpose of mileage disclosure on the title document. The power of attorney must be on Part A of a secure form issued by the State and must contain a space for the transferor to disclose the mileage.

The disclosure required to be made by the transferor to the transferee on the power of attorney form parallels the disclosure required to be made by the transferor to the transferee on the title and on a separate odometer disclosure statement. While this rule sets forth the information which must be disclosed, we are adding, in Appendix E, a sample power of attorney form that the States which elect to provide power of attorney forms may adopt. The form must be separated into parts A, B, and C. However, each State is free to organize, in each part, the information required by this rule in any way it wishes.

As required by the new law and to ensure the integrity of the paper trail, we are requiring the transferee exercising the power of attorney to restate the mileage on the transferor's title exactly as it appears on the transferor's disclosure on the power of attorney form. In addition, this rule requires the transferee to submit the original power of attorney form to the State with an application for title and the transferor's title. This could be accomplished at one of two times. The transferee could apply for title in his own name and submit the secure power of attorney form and his transferor's title. Alternatively, the transferee could submit the secure power of attorney form after selling the vehicle, with the title and his purchaser's title application, provided his purchaser permits him to apply for title on behalf of the purchaser. As noted by Representative Clement, "Limiting the use of the power of attorney to this "first sale" instance should assist auto dealers in completing the sales transaction while affording sufficient safeguards against odometer fraud." 134 Cong. Rec. H10081 (daily ed. October 12, 1988) (remarks of Rep. Clement). It would ensure that the State would be able to compare the transferor's disclosure on the power of attorney form with the transferee's disclosure, on behalf of the transferor, made on the title pursuant to the power of attorney. If the transferee were not required to submit the power of attorney to the State with the application for title and the transferor's title, the integrity of the paper trail would be at risk, because subsequent transferors could discard the power of attorney, forge a new one, and alter the mileage on the title. (As noted above, we recognize that even with securely printed titles, some alterations

have been, and may continue to be, undetected upon initial review by State Departments of Motor Vehicles.) Additionally, the paper trail would be in jeopardy if the transferee submitted only the power of attorney form and no title documents. This could result in the transfer of the vehicle to an out-of-state buyer. The title would be in one State and the secure power of attorney form in another; they could not be easily compared. This would be similar to the problems with the current use of a separate odometer disclosure statement. Therefore, we believe that this submission of the original power of attorney form to the titling State is necessary to prevent the misuse of the forms and to facilitate enforcement of the anti-fraud provisions of the law.

As requested during the debate in the House of Representatives on the amendment, NHTSA has also considered other instances when a secure power of attorney may be necessary so as not to alter or interfere with proper business transactions. We have considered whether to permit a transferee to give his power of attorney to his transferor for the purpose of acknowledging the mileage disclosure. For example, if the transferor is a dealer who does not have possession of the title, because the vehicle was a trade-in and the lienholder has not yet released title, should the buyer, the transferee, be permitted to give a power of attorney to the transferor/selling dealer to acknowledge the mileage disclosure on his behalf? This power of attorney from the transferee to the transferor would allow the tranferor to sign the title as both the transferor and transferee in the same transaction. To alleviate any potential commercial or business problems that could result in costs to dealers when they have not yet received the title upon which they must make a mileage disclosure, because the title is physically held by the lienholder of the person who traded in a car to the dealer, we are adding a new § 580.14 that permits a transferee to give his power of attorney to his transferor for the purpose of reviewing the title and any reassignment documents to determine whether there are any mileage discrepancies and, if there are no mileage discrepancies, to sign the title, acknowledging the disclosure. This power of attorney must include a disclosure from the transferor to the transferee that parallels the disclosure required to be made by the transferor to the transferee on the title document and on the separate odometer disclosure statement. In addition, because this power of attorney would allow the same person to sign the title as the transferor and transferee in the same transaction, the appointment of the transferor as the tansferee's attorney-in-fact must be made on Part B of the same secure power of attorney form, issued by a State, upon which the transferor was appointed the attorney-in-fact by his transferor pursuant to § 580.13. This will enable purchasers to examine the previously issued power of attorney for alterations, erasures, and other marks, and to learn the name of the prior owner without the additional cost of a title search. This is the same information that purchasers would receive if the title was not held by a lienholder since, under the Truth in Mileage Act of 1986, the transferor is required to disclose mileage on the vehicle's title, if the title contains a space for the disclosure. This rule requires that a transferee who is granted a power of attorney from his transferor and who applies for title in his own name must show his purchaser, upon his purchaser's request, a copy of the previous owner's title, including the odometer disclosure completed on behalf of the previous owner, and a copy of the power of attorney form completed by the previous owner. Similarly, if a purchaser decides not to appoint his transferor as his attorney-in-fact pursuant to § 580.14, the transferor must show his purchaser a copy of the previous owner's title and a copy of the power of attorney form completed by the previous owner.

To ensure that a person who exercises a power of attorney, either under § 580.13, alone, or under §§ 580.13 and 580.14, is fully aware of his obligation and his liability for any action that is inconsistent with the power of attorney, this interim final rule requires, under a new § 580.15, that the person exercising a power of attorney, either under § 580.13 or under §§ 580.13 and 580.14, complete, on Part C of the secure power of attorney form issued by the State, a certification that he has received and reviewed the title and any reassignment documents and that there are no indications of mileage discrepancies. Any mileage discrepancies void the powers of attorney. A violation of this section could result in fines and/or imprisonment.

We have also considered other instances in which a secure power of attorney that would allow a person to sign a disclosure as the transferor and transferee in the same transaction should be permitted. Some have suggested that a secure power of attorney should be permitted when a title is lost or misplaced. We have carefully balanced the potential convenience of permitting a power of attorney in this circumstance against the serious potential for undermining the law enforcement purposes of the law. (As we have explained above, a person signing a mileage disclosure as both the transferor and transferee creates a situation ripe for fraud when the person signing the disclosure is intent on rolling back the odometer.) On balance, we have concluded that the possible increase in inconvenience does not outweigh the increased opportunity for odometer fraud. Furthermore, we have not been made aware of any business or commercial problems associated with this conclusion that would be comparable to the problems associated with titles physically held by lienholders. Especially because lost or misplaced titles can be replaced, and because we can limit the possible misuse of secure power of attorney forms, we have not extended the use of these secure powers of attorneys to situations in which the transferor's title is lost or misplaced.

NHTSA invites comments on other situations in which a secure power of attorney form may be necessary and appropriate.

Finally, section 401 of the Pipeline Safety Reauthorization Act requires NHTSA to promulgate a regulation that provides for the retention of a copy of the power of attorney form. Therefore, we are amending § 580.8 which concerns odometer disclosure statement retention by adding a new paragraph (c). Under this new paragraph, motor vehicle dealers and distributors who are granted a power of attorney by their transferor are required to retain, for five years, a photostat, carbon, or other facsimile copy of each power of attorney form that they receive. These documents must be retained at the primary place of business of the dealer or distributor in an order that is appropriate with business requirements and that permits systematic retrieval. This new paragraph (c) is consistent with the retention requirements of the August 1988 final rule that is applicable to dealers, distributors, and lessors. Like that final rule, the storage provision of this amendment is phrased broadly to include any media by which information may be stored, provided there is no loss of information.

Federalism Assessment

Congress found that limiting the use of powers of attorney in connection with mileage disclosure could cause an undue burden on dealers and consumers when a consumer's title is physically held by a bank or other lienholder. To resolve the

problem and alleviate potential costs for dealers and consumers, the new law specifies that a power of attorney may be used, if otherwise permitted by State law. The law specifies that the form be securely printed and include a disclosure. This interim final rule does not impose any requirements upon the States other than those imposed by the law. Nevertheless, this action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this interim final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The States may decide not to allow the use of powers of attorney in connection with mileage disclosure and, therefore, would not be required to print conforming forms.

Regulatory Impacts

A. Costs and Benefits to Dealers, States, and Consumers

NHTSA has analyzed this rule and determined that it is neither "major" within the meaning of Executive Order 12291, nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. A regulatory evaluation of the impacts of this proposal has been prepared and place in Docket 87-09, Notice 9. Any interested person may obtain a copy of this regulatory analysis by writing to NHTSA Docket Section, 400 Seventh Street, SW., Washington, DC 20590, or by calling the Docket Section at (202) 366-4949.

B. Small Business Impacts

The agency has also considered the impacts of this rule in relation to the Regulatory Flexibility Act. I certify that this rule will not have a significant economic impact on a substantial number of small entities. The net increase in annual operating costs resulting from this interim final rule would be an estimated $4.1 million for States and localities and an estimated $4.5 million to $6.6 million to dealers. We estimate that there are 75,000 dealers that would be effected by this rule. Therefore, the cost to each dealer would be approximately $60.00 to $80.00. Small businesses (dealers) will need to spend the same time executing each form as will large businesses (dealers). It is not possible to minimize this burden. However, since these small entities will make fewer sales than large businesses, they will spend less time on these forms. Furthermore, while the States may charge dealers for these secure power of attorney form, the estimated cost of these documents is only approximately five cents per form. Accordingly, no regulatory flexibility analysis has been prepared. However, the agency invites comments from small businesses on this issue.

C. Environmental Impacts

NHTSA has considered the environmental implications of this rule, in accordance with the National Environmental Policy Act, and determined that it will not significantly affect the human environment. Accordingly, an environmental impact statement has not been prepared.

D. Paperwork Reduction Act

The office of Management and Budget (OMB) has already approved NHTSA's information collection requirements that require consumers, dealers, distributors, lessors, and auction companies to disclose and/or retain odometer disclosure information. (OMB #2127-0047). This rule expands the scope of those requirements to include transferrors who authorize their transferee to exactly restate the mileage disclosure on the title as they have disclosed it on a power of attorney form issued by a State. It also expands the scope of the requirements to include transferees who use a secure power of attorney form to authorize their transferors to review the title for discrepancies and acknowledge mileage disclosure on their behalf. Finally, this rule expands the scope of the information collection requirements to include dealers and distributors who retain a copy of the secure power of attorney form. Therefore, these new requirements are also considered to be information collection requirements as that term is defined by OMB in 5 CFR Part 1520. Accordingly, this rule will be submitted to OMB for its approval pursuant to the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Comments on these information collection requirements should be submitted to Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Office for NHTSA. It is requested that comments sent to OMB also be sent to the NHTSA rulemaking docket for this proposed action.

Public Comments

Interested persons are invited to submit comments on this interim final rule. It is requested, but not required, that ten copies be submitted.

All comments must not exceed fifteen pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the fifteen page limit. This limitation is intended to encourage comments to detail their preliminary arguments in a concise fashion.

All comments received before the close of business on the comment closing date listed above will be considered and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Following the close of the comment period, NHTSA will publish a notice responding to the comments and, if appropriate, NHTSA will amend the provisions of this rule. Comments received too late for consideration will be considered as suggestions for future rulemaking action. The agency will continue to file relevant information as it becomes available. It is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments by the docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

In consideration of the foregoing, 49 CFR Part 580 is amended as follows:

PART 580-[AMENDED]

1. The authority citation for Part 580 continues to read as follows:

Authority: 15 U.S.C. 1988; delegation of authority at 49 CFR 1.50(f) and 501.8(e)(1).

2. Section 580.4 is revised to read as follows:

§ 580.4 Security of title documents and power of attorney forms.

Each title shall be set forth by means of a secure printing process or other secure process. In addition, any other documents which are used to reassign the title shall be set forth by a secure process. Power of attorney forms issued pursuant to §§ 580.13 and 580.14 shall be issued by the State and shall be set forth by a secure process.

3. Section 580.5 is amended by revising paragraph (h) to read as follows:

§ 580.5 Disclosure of odometer information.

* * * * *

(h) No person shall sign an odometer disclosure statement as both the transferor and transferee in the same transaction, unless permitted by § 580.13 or § 580.14.

4. Section 580.8 is amended by adding paragraph (c) to read as follows:

§ 580.8 Odometer disclosure statement retention.

* * * * *

(c) Dealers and distributors of motor vehicles who are granted a power of attorney by their transferor pursuant to § 580.13, or by their transferee pursuant to § 580.14, shall retain for five years a photostat, carbon, or other facsimile copy of each power of attorney that they receive. They shall retain all powers of attorney at their primary place of business in an order that is appropriate to business requirements and that permits systematic retrieval.

5. Section 580.13 is added to read as follows:

§ 580.13 Disclosure of odometer information by power of attorney.

(a) If the transferor's title is physically held by a lienholder and if otherwise permitted by State law, the transferor may give a power of attorney to his transferee for the purpose of mileage disclosure. The power of attorney shall be on a form issued by the State to the transferee that is set forth by means of a secure printing process or other secure process, and shall contain, in Part A, a space for the information required to be disclosed under paragraphs (b), (c), (d), and (e) of this section and in Part B, a space for the information required to be disclosed under § 580.14. The form shall contain, in Part C, a space for the certification required to be made under § 580.15.

(b) In connection with the transfer of ownership of a motor vehicle, each transferor whose title is physically held by a lienholder and who elects to give his transferee a power of attorney for the purpose of mileage disclosure, must appoint the transferee his attorney-in-fact for the purpose of mileage disclosure and disclose the mileage on the power of attorney form issued by the State. This written disclosure must be signed by the transferor, including the printed name, and contain the following information:

(1) The odometer reading at the time of transfer (not to include tenths of miles);

(2) The date of transfer;

(3) The transferor's name and current address;

(4) The transferee's name and current address; and

(5) The identity of the vehicle, including its make, model, year, body type, and vehicle identification number.

(c) In addition to the information provided under paragraph (b) of this section, the power of attorney form shall refer to the Federal law and state that providing false information or the transferee's failure to submit the form to the State may result in fines and/or imprisonment. Reference may also be made to applicable State law.

(d) In addition to the information provided under paragraphs (b) and (c) of this section,

(1) The transferor shall certify that to the best of his knowledge the odometer reflects the actual mileage; or

(2) If the transferor knows that the odometer reading reflects mileage in excess of the designed mechanical odometer limit, he shall include a statement to that effect; or

(3) If the transferor knows that the odometer reading differs from the mileage and the difference is greater than that caused by calibration error, he shall include a statement that the odometer reading does not reflect the actual mileage and should not be relied upon. This statement shall also include a warning notice to alert the transferee that a discrepancy exists between the odometer reading and the actual mileage.

(e) The transferee shall sign the power of attorney form, print his name, and return a copy of the power of attorney form to the transferor.

(f) Upon receipt of the transferor's title, the transferee shall complete the space for mileage disclosure on the title exactly as the mileage was disclosed by the transferor on the power of attorney form. The transferee shall submit the original power of attorney form to the State, with the application for title and the transferor's title.

6. A section 580.14 is added to read as follows:

§ 580.14 Power of attorney to review title documents and acknowledge disclosure.

(a) If the transferor does not have the title document of the vehicle because it is physically held by the lienholder of his transferor and if otherwise permitted by State law, the transferee may give a power of attorney to his transferor to review the title and any reassignment documents for mileage discrepancies, and if no discrepancies are found, to acknowledge disclosure on the title. The power of attorney shall be on a form issued by the State to the transferee that is set forth by means of a secure printing process or other secure process, and shall contain, in Part A, the information required to be disclosed under § 580.13. The form shall also contain, in part B, a space for the information required to be disclosed under paragraphs (b), (c), (d), and (e) of this section and, in Part C, a space for the certification required to be made under § 580.15.

(b) In connection with the transfer of ownership of a motor vehicle, each transferee of a transferor who does not have the title document because it is physically held by the lienholder of his transferor and who was granted a power of attorney by his transferor for the purpose of mileage disclosure, may appoint his transferor as his attorney-in-fact to review the title and any reassignment documents. This power of attorney must include a mileage disclosure from the transferor to the transferee and must be signed by the transferor, including the printed name, and contain the following information:

(1) The odometer reading at the time of transfer (not to include tenths of miles);

(2) The date of transfer;

(3) The transferor's name and current address;

(4) The transferee's name and current address; and

(5) The identity of the vehicle, including its make, model, year, body type, and vehicle identification number.

(c) In addition to the information provided under paragraph (b) of this section, the power of attorney form shall refer to the Federal law and state that providing false information or the transferee's failure to submit the form to the State may result in fines and/or imprisonment. Reference may also be made to applicable State law.

(d) In addition to the information provided under paragraphs (b) and (c) of this section.

(1) The transferor shall certify that to the best of his knowledge the odometer reflects the actual mileage; or

(2) If the transferor knows that the odometer reading reflects mileage in excess of the designated mechanical odometer limit, he shall include a statement to that effect; or

(3) If the transferor knows that the odometer reading differs from the mileage and the difference is greater than that caused by calibration error, he shall include a statement that the odometer reading does not reflect the actual mileage and should not be relied upon. This statement shall also include a warning notice to alert the transferee that a discrepancy exists between the odometer reading and the actual mileage.

(e) The transferee shall sign the power of attorney form, print his name.

(f) The transferor shall give a copy of the power of attorney form to his transferee.

(g) If a transferee elects to return to his transferor to sign the disclosure on the title when the transferor obtains the title from the lienholder and does not

give his transferor a power of attorney to review the title and any reassignment documents, upon the transferee's request, the transferor shall show to the transferee a copy of the power of attorney that he received from his transferor.

(h) Upon subsequent transfer of the vehicle and upon request of the purchaser, the transferor, who was granted the power of attorney by his transferor and who now holds the title to the vehicle in his own name, must show to his purchaser the copy of the previous owner's title and the power of attorney form.

7. A section 580.15 is added to read as follows:

§ 580.15 Certification by person exercising power(s) of attorney.

(a) A person who exercises a power of attorney either under § 580.13 alone, or under §§ 580.13 and 580.14 must complete a certification that he has reviewed the title and any reassignment documents for mileage discrepancies and that no discrepancies exist. This certification shall be under Part C and on the same form as the powers of attorney executed under §§ 580.13 and 580.14, and shall include:

(1) The signature and printed name of the person exercising the power of attorney;

(2) The address of the person exercising the power of attorney; and

(3) The date of the certification.

(b) Any mileage discrepancies void the powers of attorney.

8. An Appendix E is added to read as follows:

Appendix E—Power of Attorney Disclosure Form

Warning: This Form May Be Used Only When Title Is Physically Held By Lienholder. This Form Must Be Submitted To The State By The Person Exercising Powers Of Attorney. Failure To Do So May Result In Fines And/Or Imprisonment.

VEHICLE DESCRIPTION

Year _____ Make _____

Model _____ Body Type _____

Vehicle Identification Number _____

Part A. Power of Attorney to Disclose Mileage

Federal law (and State Law, if applicable) requires that you state the mileage upon transfer of ownership. Providing a false statement may result in fines and/or imprisonment.

I, _____ (transferor's name, Print) appoint _____ (transferee's name, Print) as my attorney-in-fact, to disclose the mileage, on the title for the vehicle described above, exactly as stated in my following disclosure.

I state that the odometer now reads _____ (no tenths) miles and to the best of my knowledge that it reflects the actual mileage unless one of the following statements is checked.

____ (1) I hereby certify that to the best of my knowledge the odometer reading reflect the mileage in excess of its mechanical limits.

____ (2) I hereby certify that the odometer reading is NOT the actual mileage. WARNING—ODOMETER DISCREPANCY.

_____ (Transferor's Signature)

_____ (Printed Name)

Transferor's Address (Street) _____

(City) _____ (State) ____ (ZIP Code) _____

Date of Statement _____

_____ (Transferee's Signature)

_____ (Printed Name)

Transferee's Name _____

Transferee's Address (Street) _____

(City) _____ (State) ____ (ZIP Code) _____

Part B. Power of Attorney to Review Title Documents and Acknowledge Disclosure.

(Part B is invalid unless Part A has been completed.)

I, _____ (transferee's name, Print) appoint _____ (transferor's name, Print) as my attorney-in-fact, to sign the mileage disclosure, on the title for the vehicle described above, only if the disclosure is exactly as the disclosure completed below.

_____ (Transferee's Signature)

_____ (Printed Name)

Transferee's Name _____

Transferee's Address (Street) _____

(City) _____ (State) ____ (ZIP Code) _____

Federal law (and State Law, if applicable) requires that you state the mileage upon transfer of ownership. Providing a false statement may result in fines and/or imprisonment.

I, _____ (transferor's name, Print) state that the odometer now reads _____ (no tenths) miles and to the best of my knowledge that it reflects the actual mileage unless one of the following statements is checked.

____ (1) I hereby certify that to the best of my knowledge the odometer reading reflect the mileage in excess of its mechanical limits.

____ (2) I hereby certify that the odometer reading is NOT the actual mileage. WARNING—ODOMETER DISCREPANCY.

_____ (Transferor's Signature)

_____ (Printed Name)

Transferor's Address (Street) _____

(City) _____ (State) ____ (ZIP Code) _____

Date of Statement _____

Part C. Certification

I, _____, (person exercising above powers of attorney, Print) hereby certify that I have received and reviewed the title for the vehicle described above and that there are no indications of mileage discrepancies.

_____ (Signature)

_____ (Printed Name)

Address (Street) _____

(City) _____ (State) ____ (ZIP Code) _____

Date _____

Issued on March 3, 1989.

Diane K. Steed,

National Highway Traffic Safety Administrator.

[FR Doc. 89-5395 Filed 3-6-89; 10:01 am]

BILLING CODE 4910-59-M

---

49 CFR Part 580

[Docket Number 87-09; Notice 8]

RIN: 2127-AC42

Odometer Disclosure Requirements

AGENCY: National Highway Traffic Safety Administration.

ACTION: Denial of petitions for reconsideration.

SUMMARY: This is in response to five petitions for reconsideration of the National Highway Traffic Safety Administration's final rule concerning odometer disclosure requirements. Numerous letters were also submitted on this subject. These petitions request that NHTSA reconsider the provisions of the final rule that: (1) Prohibit a person from signing the odometer disclosure statement as both the transferor and transferee in the same transaction; (2) require that titles and reassignment documents be set forth by a "secure printing process"; and (3) concern the information included on the odometer disclosure statement.

The petitions concerning the provision that prohibits a person from signing the odometer disclosure statement as both

transferor and transferee requested that NHTSA eliminate this provision. Alternatively, they ask NHTSA to allow a person to use "a special power of attorney" to appoint the other party to the transfer as his attorney-in-fact to sign the disclosure on his behalf. The petitioners consider "a special power of attorney" to be one that is (1) set forth by a secure printing process; (2) contains the appropriate Federal disclosure; (3) is completed, signed, and dated by the transferee; and (4) submitted to the State with the title and all subsequent reassignments. Before NHTSA could fully consider these petitions, Congress passed an amendment to the Truth in Mileage Act, which addresses many of the points raised by these petitions. NHTSA has issued an interim final rule, which appears elsewhere in today's **Federal Register**, to implement the new law. To the extent that they seek changes inconsistent with today's rule, NHTSA has denied the petitions in part, including the requests to eliminate entirely the provision of the final rule that prohibits a person from signing the odometer disclosure statement as the transferor and transferee in the same transaction or to permit the use of a special power of attorney. In addition, the petition concerning the security of documents asked for no specific relief and it is also denied. Finally, we have denied the petition that requested that the exemption from the disclosure requirements for vehicles ten years old and older be included on the disclosure statements.

FOR FURTHER INFORMATION CONTACT: Judith Kaleta, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-1834).

SUPPLEMENTARY INFORMATION:

Background

To implement the Truth in Mileage Act of 1986 and make some needed changes in the Federal odometer rules, the National Highway Traffic Safety Administration (NHTSA) published a notice of proposed rulemaking (NPRM) on July 17, 1987. 52 FR 27022 (1987). The agency received numerous comments on the NPRM, representing the opinions of new and used car dealers, auto auctions, leasing companies, State motor vehicle administrators, and enforcement and consumer protection agencies. Each of the comments was considered and a final rule was published on August 5, 1988. 53 FR 29464 (1988).

As required by the Truth in Mileage Act, the August 1988 final rule requires the transferor of a motor vehicle to provide mileage disclosure on the title document or, if the title document does not include a space for the mileage disclosure (during the phase-in period), or if the vehichle has not been previously titled, it requires the transferor to make a written disclosure of mileage on a separate document. Also as required by that statute, the final rule requires that title documents be manufactured or otherwise set forth by a secure process to deter counterfeiting or alteration; requires that at the time of issue, the titles include the mileage disclosure; adds disclosure requirements for lessors and lessees; and adds retention requirements for lessors and auction companies. In addition, consistent with the statute, this rule amends the form and content of the odometer disclosure statement. The rule also prohibits a person from signing the disclosure as both the transferor and transferee in the same transaction, in order to guard against a situation where only one party to the transaction would be aware of the disclosure. Finally, this rule clarifies the definition of transferor and transferee and extends the record retention requirement for dealers and distributors.

The Agency received seven petitions for reconsideration of the final rule. In addition, we received numerous letters concerning the final rule and supporting the petitions. These petitions requested that NHTSA reconsider the provisions of the final rule that: (1) Prohibit a person from signing the odometer disclosure statement as both the transferor and transferee in the same transaction; (2) define "transferor" and "transferee"; (3) concern the "secure printing process" for titles and reassignment documents; (4) concern the language included on the odometer disclosure statement; and (5) require dealers and distributors to retain, for five years, a copy of every odometer disclosure statement, including the transferee's signature, that they issue and receive. These petitions and letters have been placed in the docket. Before the Agency could fully consider these documents, Congress enacted the Pipeline Safety Reauthorization Act of 1988, Pub. L. 100-561.

Section 401 of the Pipeline Safety Reauthorization Act, which amends section 408(d)(1) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1988(d)(1), concerns the use of certain powers of attorney in connection with the required mileage disclosure. Although the Truth in Mileage Act generally requires that a vehicle seller (or other transferor) make the required disclosure on the vehicle's title, Congress determined that, under certain limited conditions when the title document is physically held by a lienholder, the transferor should not be precluded from making the disclosure on a secure power of attorney form which includes the required odometer disclosure information. This secure power of attorney form would be given to a buyer (transferee), authorizing him to restate, on the title document, the mileage disclosed by the seller on the secure power of attorney form, if State law otherwise permits. Congress found that precluding such uses of powers of attorney could cause an undue burden on dealers when a consumer's title is held by a bank or other lienholder. Because the consumer does not have the vehicle's title document, the consumer would be unable to complete the disclosure on the title unless: (1) The consumer returned to the dealer after the dealer paid off the lien and received the title from the lienholder, or (2) the title was mailed by the dealer to the consumer, completed by the consumer, and mailed back to the dealer. Both of these alternatives were seen by Congress as interfering with usual commercial transactions. 134 Cong. Rec. H10079 (daily ed. October 12, 1988) (remarks of Rep. Dingell).

To resolve this problem and to alleviate potential costs for dealers and consumers, the new amendment specifies that a secure power of attorney form, which includes a mileage disclosure by the transferor, may be used when the transferor's title document is physically held by a lienholder, if otherwise permitted by State law. The new law directs the agency to prescribe the form and content of the power of attorney/disclosure document and reasonable conditions for its use by the transferor, "consistent with this Act and the need to facilitate enforcement thereof." More specifically, the new law requires that the form: (1) Be issued by a State to transferees in accordance with paragraph (2)(A)(i) * * *" (Paragraph (2)(A)(i) concerns the issuance of documents that are set forth by a secure printing process or other secure process.); (2) include an odometer disclosure statement and other information as NHTSA deems necessary; and (3) be submitted to the State by the person granted the power of attorney. It also requires NHTSA's rule to provide for the retention of a copy of the power of attorney and to ensure that the person granted the power of attorney completes the disclosure on the

title consistent with the disclosure on the power of attorney form.

Consistent with this statutory mandate, NHTSA has issued an interim final rule that is published elsewhere in today's **Federal Register**. That rule permits a person to sign an odometer disclosure statement as both the transferor and transferee in the same transaction, if the disclosure is based on a secure power of attorney. In addition, NHTSA has issued an NPRM that is also published in today's **Federal Register**. The NPRM attempts to clarify the definition of transferor and transferee by proposing a new definition for each of those terms. Finally, in response to the two petitions for reconsideration that concern the disclosure and retention requirements, that NPRM proposes to require the transferee to return a copy of a signed odometer disclosure statement to his transferor.

Scope

To the extent the petitions request relief that is not proposed to be granted in the NPRM or is not granted in the interim final rule, this notice denies, in whole or in part, five petitions for reconsideration. These petitions request that NHTSA reconsider the provisions of the final rule that: (1) Prohibit a person from signing the odometer disclosure statement as both the transferor and transferee in the same transaction; (2) require that titles and reassignment documents be set forth by a "secure printing process"; and (3) concern the information included on the odometer disclosure statement.

Security for Motor Vehicle Titles

The Truth in Mileage Act of 1986 requires that, beginning April 29, 1989, each State motor vehicle title must be set forth by a secure printing process or other secure process. To implement this statutory requirement, we proposed to define "secure printing process" and "other secure process" as "any process which deters and detects counterfeiting and/or unauthorized reproduction and allows alterations to be visible to the naked eye". 3M requested that the definition be amended to read, in lieu of "visible to the naked eye", "easily detected under recommended viewing conditions". 3M stated that the definition as proposed could be interpreted to mean without the aid of a verification device and asserted that any verification process that precludes the use of a supporting device was too restrictive. Because the intent of the Truth in Mileage Act is to provide a paper trail for the protection of consumers, we stated that any alteration should be visible to the purchaser who would not routinely have a verification device. We adopted the definition as proposed.

To implement the provisions of the Truth in Mileage Act that require the security of motor vehicle titles, we also proposed the addition of a new § 580.4. This section proposed to require that motor vehicle titles be set forth by a secure printing process or other secure process. It also proposed to require that any documents used to reassign the title be set forth by the same secure process. To assist the States in their efforts to issue motor vehicle titles that comply with the requirements of the Truth in Mileage Act and the regulations implementing the Act, we proposed to include an Appendix A consisting of a list of technologies that we deemed to be secure processes. We proposed that Appendix A would include intaglio, high resolution, and micro-line printing, security paper, erasure sensitive background inks, and security lamination. The comments concerning the proposed § 580.4 and Appendix A were divergent. 3M suggested that NHTSA require the title to be set forth by one of the secure processes in Appendix A and that Appendix A be amended to include all available security processes which would be ranked as to the level of security that they provide. The American Association of Motor Vehicle Administrators (AAMVA) and several member jurisdictions commented that Appendix A was superfluous and unnecessary, and requested that it be deleted. In addition, these commenters also requested that the agency permit reassignment documents to be printed by a secure process, not necessarily the same secure process as the title.

To allow for the maximum administrative discretion on the part of the States, we did not adopt 3M's suggestion to list and rank all secure processes. Appendix A was adopted with minor technical changes. We noted that the States are permitted to choose alternative methods of security beyond those listed in Appendix A. In addition, we adopted the suggestion of AAMVA and its member jurisdictions with regard to reassignment documents. Accordingly, the final rule of August 1988 permits reassignment documents to be set forth by a secure process, but not necessarily the same process as the title.

3M filed a petition for reconsideration. 3M stated, "* * * it is incumbent upon 3M to respond for reconsideration of the final ruling. 3M agrees with the intent of the final ruling, but feels that further clarification is required to prevent any misunderstanding of the assumptions made by NHTSA relative to 3M's security lamination and the consumer protection afforded by its inclusion on title documents issued by individual states." 3M then explained its security lamination and claimed that NHTSA's reference to 3M's security lamination "does not take the consumer verifiable feature into consideration and gives the impression that the intent of the law is not met with its incorporation."

Paragraph 2(b) of Appendix A lists security laminate under the heading: "Methods to allow alterations to be visible to the naked eye." NHTSA finds no inaccuracies concerning security lamination in the preamble to the final rule of August 1988, nor in Appendix A, and 3M fails to be specific in its allegations. Furthermore, 3M has not requested the agency to take any specific action. Therefore, 3M's petition for reconsideration is denied.

Disclosure of Odometer Information: Exemptions

With regard to the information concerning the odometer required to be disclosed by the transferor to the transferee, we proposed a new § 580.5. This section proposed to continue to require certain information that the agency had already required and to include some additional provisions. While the proposed regulation set forth the information which would be disclosed, it also included, in Appendices B and C, sample disclosure forms which could be followed. Appendix B was a sample disclosure form which a State may wish to include on its titles. Appendix C was a sample disclosure form which could be used if the vehicle was not titled on a title that conforms to the law and our regulations (during the phase-in period) or if the vehicle had not been previously titled, such as a new vehicle or a vehicle imported into the United States from a foreign country. With some minor changes, § 580.5 and Appendices B and C were adopted as proposed.

We also proposed a new § 580.6 which proposed to exempt certain transferors from issuing odometer disclosure statements. This section proposed to exempt the transferors that NHTSA currently exempts. Specifically, among other transferors, NHTSA proposed to continue to exempt a transferor of a vehicle that is twenty-five years or older from the requirements of issuing an odometer disclosure statement. We received numerous requests to lower the vehicle's age. AAMVA, several of its member jurisdictions, and a coalition of commenters (the "coalition") consisting

of AAMVA, the National Automobile Dealers Association (NADA), the National Auto Auction Association (NAAA), the National Independent Automobile Dealers Association (NIADA), the Automotive Trade Association, and the American Car Rental Association, suggested that the exemption be given to the transferor of a vehicle that is ten years old and older. The National Association of Consumer Agency Administrators recommended that the absolute maximum age of a vehicle for which the transferor should be required to issue an odometer disclosure statement is fifteen years. The Director of the California Department of Motor Vehicles proposed that the regulation be changed to exempt transferors of vehicles that are six years or older. Oregon noted that the State legislature amended Oregon law to require odometer disclosure information only for vehicles eight years old and newer. NHTSA considered each of the suggestions and the August 1988 final rule exempts a transferor of a vehicle ten years old and older.

A private citizen filed a petition for reconsideration concerning the odometer disclosure requirements and the exemption for a transferor of a vehicle ten years old and older. Referring to Appendices B and C, he recommends that the exemption for vehicles ten years and older be incorporated into the disclosure forms. He feels that a statement noting the exemption would clarify the regulatory requirements for the benefit of persons who buy and sell automobiles for personal use.

While entitling his letter a petition for reconsideration, this individual does not explain why compliance with Appendices B and C of the rule is not practicable, is unreasonable, or is not in the public interest. *See*, 49 CFR 553.35. Rather, he seems to suggest that NHTSA amend the appendices. As noted in the preamble to the final rule, the appendices are examples and do not introduce any new requirements or restrictions into the law. 53 FR 29471 (1988). Therefore, what this individual is actually suggesting is that NHTSA amend the provisions concerning the disclosure of odometer information, § 580.5, to require the transferor to inform his transferee that, because the vehicle is ten years old or older, the transferor is not required to disclose the vehicle's mileage. To adopt this suggestion at this time could impose unnecessary financial burdens on the States that have already begun to revise their titles to conform with the requirements of the Truth in Mileage Act and the final rule. It could also impose similar burdens on dealers and distributors who have already placed orders for separate disclosure statements and/or sales contracts that contain odometer disclosure statements that meet all statutory and regulatory requirements. Furthermore, this suggested statement would not alert buyers and sellers to their legal obligations, but rather merely advise them of an exemption from those obligations. The benefits to be gained from this suggested statement would not outweigh the significant costs that could be imposed on the States and the automobile industry. Therefore, we are denying this petition, but may consider this suggestion at the time of any future rulemaking. We note that the States and dealers, distributors, and other transferors may include a provision of an odometer disclosure statement that a transferor of a vehicle ten years old or older is not required to disclose the vehicle's mileage to his transferee.

Powers of Attorney

A. Background; Misuse in Odometer Fraud Schemes

Although the July 1987 proposed rule to implement the Truth in Mileage Act did not include a regulatory provision explicitly concerning the use of powers of attorney, we stated in the preamble to the proposed rule that we recognize that powers of attorney are necessary in certain transactions. Someone acting on behalf of a deceased or incompetent owner would use a power of attorney from those owners to transfer the vehicles to a third party. In addition, the spouse of overseas military personnel, or of someone out of town or otherwise unavailable, may have a power of attorney from a husband or wife to transfer a vehicle to a third party. However, we emphasized that powers of attorney that allow a person to sign a disclosure as both the transferor and transferee result in only one party to the transaction being aware of the previous mileage disclosures. This could jeopardize the integrity of the "paper trail", the evidence of rollbacks that Congress intended to create by enacting the Truth in Mileage Act. 52 FR 27026 (1987).

The American Association of Motor Vehicle Administrators (AAMVA), the National Association of Consumer Agency Administrators (NACAA), and the Wisconsin Department of Transportation, Motor Vehicle Division. (Wisconsin) agreed with our position. AAMVA noted a power of attorney that allows a person to sign the disclosure as both the buyer and the seller creates a situation ripe for fraud, if that person is intent on rolling back the vehicle's odometer. Several of AAMVA's members concurred in this position. Wisconsin suggested that a new paragraph be added to § 580.5 providing that no person may sign a disclosure as both the transferor and transferee.

Other commenters, concerned that the title had to be present at the time of sale ("title present"), hoped that the use of a power of attorney would ease the burden that title present might have imposed. The coalition suggested the use of a special power of attorney. (Although the coalition used the term "secure power of attorney", we are referring to the coalition's suggestion by the term "special power of attorney". This will help to differentiate between the statutorily permissible secure power of attorney and the power of attorney proposed by the coalition.) The coalition proposed that this special power of attorney would (1) be set forth by a secure process; (2) contain the appropriate Federal odometer disclosure statement; and (3) be fully completed, dated, and signed by the transferee. Upon receipt of the transferor's title, the initial transferee would negotiate the title and complete the transferor's statement based on the transferor's special power of attorney and mileage disclosure thereon. The title, together with the special power of attorney and all subsequent reassignments, would be presented to the State with any application for title.

We reviewed AAMVA's comments and the suggestions of Wisconsin and the coalition in light of our investigative experience which showed that powers of attorney have been abused in the furtherance of odometer fraud schemes. The following two schemes, uncovered during NHTSA's investigations, are illustrative of the use of a power of attorney to commit odometer fraud:

(A) The transferor, a leasing company, sold several vehicles to a wholesale dealer and gave this dealer a power of attorney to execute the odometer disclosure statements on its behalf. The buying dealer rolled back the odometer on the vehicles, entered the lower mileage on the disclosure statements, and signed the disclosures as both the buyer and the seller. The buyer then sent a copy of the statements to the leasing company where they were filed.

(B) A new car dealer purchased a used vehicle and received a separate odometer disclosure statement on which his transferor certified that the odometer reflected the actual mileage of the vehicle. The new car dealer sold the car before he received the title, certifying

that the odometer reflected the vehicle's actual mileage. The new car dealer then received the title, which had a blatantly altered odometer reading in the reassignment space on the reverse side of the title. Using the power of attorney that he received from his buyer, the new car dealer signed the disclosure as both the transferor and transferee. He never advised his buyer of the mileage problem.

Note: Other title problems that could be ignored by unscrupulous persons include higher mileage on the face of the title than on the reassignment on the reverse side and a certification that the odometer reading does not reflect the actual mileage.

Based on the comments from AAMVA, NACAA, and Wisconsin and our own investigative experience, we adopted Wisconsin's suggestion and added a new § 580.5(h). This provision prohibits a person from signing the disclosure as both the transferor and transferee in the same transaction.

We did not adopt the suggestion of the coalition of commenters for several reasons. First, we had modified the proposed requirement in the NPRM of July 1987 that the title be present at the time of transfer of ownership and addressed the primary concern of the commenters by permitting the disclosure to be made "in connection with the transfer of ownership", rather than "at the time of transfer of ownership." Second, we were concerned that the coalition's suggestion would interfere with the integrity of the paper trail, which Congress intended to enhance by enacting the Truth in Mileage Act. Under the coalition's suggestion, only one party to the transfer would see the odometer disclosure (which would have been on the title). The power of attorney could be easily discarded and a new one forged and submitted to the State by any of the subsequent transferees, since the issuance of the special power of attorney forms would not be controlled in any way. Finally, this process would place a burden on State titling offices to review additional documentation, check for conformity of the information contained on the documents, and maintain additional records. Accordingly, the final rule of August 1988 implemented the Truth in Mileage Act, while allowing the States the maximum discretion in complying with these requirements. 53 FR 29469, 29472, 29475 (1988).

B. Petitions for Reconsideration

In petitions filed with the agency, NADA, NIADA, and NAAA asked NHTSA to reconsider § 580.5(h), the provision which prohibits a person from signing the disclosure as the transferor and transferee in the same transaction. The agency also received many letters in support of the petitions. The petitioners correctly noted that this provision would prohibit a seller from giving his buyer, and conversely, a buyer from giving his seller, a power of attorney to sign the disclosure on the title. The basis for the petitions is the fear that customers buying from, and selling to, automobile dealers will not return to the dealers to sign the disclosure on the title, although the customer's failure to sign the title would be in violation of the Federal law and could result in fines and/or imprisonment. The petitioners claimed that customers failing to return to the dealer to sign the disclosure on the title would interfere in the sales of vehicles and result in costs associated with locating these people, administrative costs for mailing and/or duplicating titles, and increased inventory costs in States where the dealer must have the title present at time of sale. This would result in higher vehicle prices as dealers would shift these expenses to the consumer. Alternatively, they argued that if customers did return, this return visit would result in lost time at work, travel time, and other costs. They also claimed that a person signing the disclosure as the buyer and the seller did not create a situation ripe for fraud, that the provision conflicted with State laws and was contrary to Federal law.

The petitioners asked that NHTSA eliminate § 580.5(h). Alternatively, the petitioners suggested that NHTSA permit the use of special powers of attorney or require title sets, a two-part title system where the registered owner holds the title to his vehicle and the lienholder holds a notice of security interest filing.

C. Congressional Mandate

Before the agency could fully consider these petitions, Congress enacted the Pipeline Safety Reauthorization Act, Pub. L. 100-561. Section 401 of the Act, which amends section 408(d)(1) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1988(d)(1), and concerns the use of limited powers of attorney in connection with mileage disclosure. The purpose of this provision is to resolve a technical problem for purchasers of used motor vehicles (dealers), without increasing the burden on States or lessening our ability to fight odometer fraud. 134 Cong. Rec. H10079 (daily ed. October 12, 1988) (remarks of Rep. Whittaker). Congress determined that NHTSA's final rule, which prohibits a person from signing an odometer disclosure statement as both the transferor and transferee in the same transaction, could have the effect of precluding the use of a power of attorney in certain instances. Recognizing that the Truth in Mileage Act of 1986 requires a disclosure, including the transferee's signature, on the title, Congress found that limiting the use of powers of attorney could cause an undue burden on dealers and consumers when a consumer's title is held by a bank or other lienholder. Because the consumer does not have the vehicle's title in these instances, the consumer, as a transferor, would be unable to complete the disclosure on the title unless: (1) The consumer returned to the dealer after the dealer paid off the lien and received the title from the lienholder, or (2) the title was mailed by the dealer to the consumer, completed by the consumer, and mailed back to the dealer. Both of these alternatives were rejected by Congress. "It is not reasonable to assume that the consumer will come back to the dealer several days or weeks later to fill in a title received from the bank by the dealer after paying off the lien. It is also not safe to rely on the mails to send the valuable title document to the consumer or to rely on the consumer to return the document in a timely fashion." 134 Cong. Rec. H10079 (daily ed. October 12, 1988) (remarks of Rep. Dingell).

To resolve the problem and alleviate potential costs for dealers and consumers, the new law specifies that a power of attorney authorizing the dealer to disclose mileage on the title on behalf of the consumer may be used when the transferor's title document is physically held by a lienholder, if otherwise permitted by State law. The new law does not require the States to allow the use of a power of attorney for the purpose of mileage disclosure. However, if a State chooses to permit the use of powers of attorney in connection with mileage disclosure, the State itself must issue the power of attorney form, and the form must be consistent with the requirements of the law and the regulations promulgated thereunder. The new law directs the agency to prescribe the form and content of the power of attorney/disclosure document and reasonable conditions for its use by the transferor. More specifically, the new law requires that the form: (1) "be issued by a State to transferees in accordance with paragraph (2)(A)(i) * * *" (Paragraph (2)(A)(i) concerns the issuance of documents that are set forth by a secure printing process or other secure process.); (2) include an odometer disclosure statement and other information as NHTSA deems

necessary; and (3) be submitted to the State by the person granted the power of attorney. It also requires NHTSA to provide for the retention of a copy of the power of attorney form and to ensure that the person granted the power of attorney completes the disclosure on the title consistent with the disclosure on the power of attorney form.

We note that in some States, a secure power of attorney is not necessary to ensure that the customer trading in a vehicle to a dealer makes a mileage disclosure on the vehicle's title document. For example, some States record all lien information on computerized recordkeeping systems and allow the registered owner to hold the title document. Other States have adopted a two-part title system under which the registered owner holds the title document and the lienholder holds a notice of security interest filing. Under either system, because the vehicle owner would have the title document, he could make the disclosure on the title and would not need to use a power of attorney form. In these States, the provisions of the new law would not apply, and the disclosure signed by the transferor would continue to be required on the vehicle's title document.

To implement section 401 of the Pipeline Safety Authorization Act of 1988, NHTSA has published an interim final rule in today's **Federal Register.** Consistent with the new law, this rule allows the use of a secure power of attorney that would permit a person to sign a disclosure as both the transferor and transferee in the same transactions, in specified instances. NHTSA has also published an NPRM in today's **Federal Register.** Although the NPRM and the rule responds to most of the requests set forth in the petitions for reconsideration, this notice will respond to the issues not addressed in today's NPRM and interim final rule.

D. The Agency Response to the Petitions

1. Costs to Dealers and Consumers

The petitioners claimed that § 580.5(h) would result in significant costs to dealers and consumers and, therefore, that compliance with the section is not practicable, is unreasonable, and is contrary to the public interest. The petitioners claimed that customers would not return to dealers to sign the disclosure on the title, and that this inaction would result in costs associated with locating these people, administrative costs for mailing and/or duplicating titles, and increased inventory costs in States where the dealer must have the title present at time of sale. This would result in higher vehicle prices as dealers would shift these expenses on to the consumer. Alternatively, they argued that if customers did return, this return visit would result in lost time at work and other costs. NIADA estimates that the costs associated with this section are $170,000,000. (17,000,000 used cars sold each year × $10 per car.) NADA estimates the costs of this section to be $365,100,000.

Consistent with section 401 of the Pipeline Safety Reauthorization Act of 1988, and balancing the need for strong odometer laws against the potential business problems in used vehicle sales presented in our original rule, in an interim final rule, we have issued an amendment to § 580.5(h) which permits the use of a secure power of attorney in certain limited instances. The interim final rule is published elsewhere in today's **Federal Register.**

In reviewing these petitions, including the data provided by NIADA and NADA, NHTSA undertook to reanalyze its *Regulatory Evaluation—Final Rule Implementing the Truth in Mileage Act* (April 1988). This new evaluation, *Regulatory Evaluation—Restrictions on Power of Attorney Resulting from Implementation of the Truth in Mileage Act*, has been placed in the docket for this notice and interested persons may obtain a copy by writing to NHTSA Docket Section, 400 Seventh Street, SW., Washington, DC 20590, or by calling the Docket Section at (202) 366–4949. In light of these costs estimates and the interim final rule, the petitioners have not demonstrated that compliance with § 580.5(h) is not practicable, is unreasonable, and is contrary to the public interest.

2. Fraud and § 580.5(h)

NADA claims that the number of instances where franchised dealers have discarded and/or forged separate odometer disclosure statements is insignificant and that there is an insignificant level of fraud by franchised dealers or their employees acting on behalf of customers under powers of attorney. NADA attributes this to the legal sanctions imposed upon those acting in a manner inconsistent with the terms of a power of attorney. NADA argues further that § 580.5(h) may nevertheless promote fraud by unscrupulous dealers. NADA claims that these dealers are likely to forge the transferor's or transferee's signature on the title, in order to transfer a vehicle that a customer has traded-in but for which the customer has not returned to sign the title.

As noted above, section 401 of the Pipeline Safety Reauthorization Act and the interim final rule which is published elsewhere in today's **Federal Register,** permit the use of a secure power of attorney under certain limited conditions when the title documents is physicially held by a lienholder. Therefore, the major portion of NADA's concerns have been addressed. The new law and the interim final rule have balanced the business concern raised in the event that a title document is held by a lienholder against the need for an enhanced paper trial to deter and detect odometer fraud. However, as we have explained above, a person signing a mileage disclosure as both the transferor and transferee creates a situation ripe for fraud when the person signing the disclosure is intent on rolling back the vehicle's odometer. Therefore, neither the law nor the interim final rule permit a person to sign a disclosure statement as the transferor and transferee in the same transaction in the event that title is lost, misplaced or otherwise unavailable; we have amended § 580.5(h), but we have not eliminated it in its entirety. Increasing the number of situations in which the same person is permitted to sign the disclosure as the transferor and transferee increases the opportunity for odometer fraud. Because lost or misplaced titles can be replaced and because we can limit the possible misuse of secure power of attorney forms, we have not proposed to extend the use of secure power of attorney forms to situations in which the transferor's title is lost or misplaced.

3. The Administrative Procedures Act and NHTSA's Rulemaking Regulations

NADA and NIADA assert that the agency must reconsider § 580.5(h) because that section did not appear in the proposed rule published on July 17, 1987. They claim that the agency violated the Administrative Procedures Act, 5 U.S.C. 553, and the agency's regulation concerning rulemaking, 49 CFR Part 553, by failing to provide notice and comment.

Contrary to the petitioners' assertion, the agency did provide notice and an opportunity for comment. The very cases cited by NIADA in support of its allegation find that the Administrative Procedures Act does not require an agency to publish in advance every precise proposal which it may ultimately adopt as a rule. The test of adequacy of notice of proposed rulemaking is whether it fairly appraised interested parties of the issues involved. In the NPRM, we addressed NIADA's question about whether a power of attorney could be granted so that the transferor could sign a disclosure on behalf of the

transferee, to avoid any problems when the vehicle was subject to an existing lien. In response to this inquiry, the preamble to the NPRM discussed that NHTSA recognizes that powers of attorney are necessary in certain transactions. 52 FR 27026 (1987). The coalition, which included these petitioners, commented on the use of a power of attorney that would allow a person to sign the disclosure as the transferor and transferee in the same transaction. The rulemaking record supports our conclusion that they did have notice and were provided an opportunity to comment on the power of attorney issue.

In any event, the NIADA argument is largely moot insofar as titles held by lienholders are concerned. Consistent with section 401 of the Pipeline Safety Reauthorization Act of 1988, as noted above, we have issued an interim final rule amending § 580.5(h) to address the lienholder issue. The interim final rule is published elsewhere in today's **Federal Register**. We have requested comments on the interim final rule. Following the close of the comment period, NHTSA will publish a notice responding to the comments and, if appropriate, NHTSA will amend the provisions of this rule. Thus, NIADA will have an opportunity to comment.

4. The Regulatory Flexibility Act

NADA and NIADA requested that the agency reconsider section 580.5(h) and its regulatory flexibility determination. Both petitioners submit that a power regulatory flexibility analysis would include regulatory alternatives.

At the time the NPRM and final rule were published, the agency certified that neither rulemaking would have a significant economic impact on a substantial number of small entities. No alternatives were presented because the agency cannot impose different requirements on small dealers as opposed to new dealers, or new car dealers as opposed to used car dealers or wholesalers. Odometer fraud is not limited to a particular segment of the automobile industry.

5. Petitioners' Suggested Alternatives

The petitioners request, as they did when commenting on the NPRM, that the agency permit the use of a special power of attorney. This special power of attorney would (1) be set forth by a secure process; (2) contain the appropriate Federal odometer disclosure statement; and (3) be fully completed, dated, and signed by the transferee. Upon receipt of the transferor's title, the initial transferee would negotiate the title and complete the transferor's statement based on the transferor's special power of attorney and mileage disclosure thereon. The title, together with the special power of attorney and all subsequent reassignments, would be presented to the State with any application for title.

We have carefully considered the petitioners' request but have decided to deny it. We have concluded that granting the request would interfere with the integrity of the paper trail, which Congress intended to enhance by enacting the Truth in Mileage Act without providing any compensating commercial advantages that would outweight the law enforcement concern. The special power of attorney could be easily discarded and a new one forged, since the issuance of the special power of attorney forms would not be controlled in any way. For the agency to spend resources to investigate whether the powers of attorneys were, in fact, securely printed when there is no limit on who could print these documents, would detract from the time that could be spent on odometer fraud investigations. Indeed, the agency has experienced investigatory problems pursuing cases involving unsecure powers of attorney. Furthermore, to allow the person granted the power of attorney to reassign the title and pass along the power of attorney could result in a subsequent transferor discarding the actual document and forging a false power of attorney.

The petitioners also requested that NHTSA require the States to adopt a two-part title system or a system that records all lien information on computerized recordkeeping systems and allows the registered owner to hold the title. We have not adopted this alternative. We have allowed the States the maximum administration discretion possible in complying with the Federal requirements. We note that the States may also petition for approval of alternative mileage disclosure requirements under section 580.11 of the August 1988 final rule.

In an interim final rule published in today's **Federal Register**, the agency implements the provisions of the Pipeline Safety Reauthorization Act that concerns the use of a secure power of attorney to disclose mileage. The interim final rule permits a person to sign the disclosure on the title as the transferor and transferee in the same transaction in certain limited circumstances. Congress' action addresses the major problem posed in the petitions and we are implementing that law. A balance has been struck between the potential problem in the sale of used cars and legitimate enforcement concerns.

Except to the extent they are granted in today's interim final rule, NHTSA has concluded that these petitions have not otherwise provided any reasonable basis for changing § 580.5(h) of the final rule published on August 5, 1988. Accordingly, these petitions are denied.

Issued on March 3, 1989.

Diane K. Steed,

National Highway Traffic Safety Administrator.

[FR Doc. 89-5394 Filed 3-6-89; 10:02 am]

BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1105 and 1152

[Ex Parte No. 274 (Sub-No. 8; Sub-No. 10A)]

Environmental Compliance; Out-of-Service Rail Line Exemptions

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission adopts final rules set forth below to codify its policy of routinely staying the effectiveness of out-of-service class exemptions where an informed decision on pending environmental and historic preservation issues cannot be made prior to the date the exemption authority would otherwise become effective; and eliminating the requirement that petitions for stay involving environmental issues be filed within 10 days of the service of the notice. The rules also address procedures regarding environmental issues, and public use conditions. The rules will give the Commission the opportunity to consider and resolve environmental and historic preservation issues before permitting an exemption to become effective, and allow the public a greater opportunity to be heard regarding these matters. A notice of proposed rulemaking in this proceeding was served June 30, 1988 and published in the **Federal Register** on July 1, 1988 at 53 FR 24971.

DATE: The rules will be effective on April 7, 1989.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. (TDD for hearing impaired, (202) 275-1721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202)

289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275-1721.)

These rules will not have a significant adverse effect on the quality of the human environment or energy conservation. Instead, they codify certain procedures (and explain and expand others) that promote heightened environmental scrutiny.

It is certified that these rules will not have significant impact on a substantial number of small businesses.

List of Subjects

49 CFR Part 1105

Environmental impact statements, Reporting and recordkeeping requirements.

49 CFR Part 1152

Administrative practice and procedure, Environmental protection, National resources, Railroads, Reporting and recordkeeping requirements.

Authority: 5 U.S.C. 553 and 559, 42 U.S.C. 4332; and 49 U.S.C. 10321, 10505, 10903, 10904, and 10906.

Decided: February 16, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Simmons. Commissioner Phillips concurred in the result.

Noreta R. McGee,

Secretary.

Title 49, Subtitle B, Chapter X, Parts 1105 and 1152 of the Code of Federal Regulations are amended as follows:

PART 1105—GUIDELINES FOR IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

1. The authority citation for 49 CFR Part 1105 continues to read as follows:

Authority: 49 U.S.C. 10321, 10505, 10903-10906; 16 U.S.C. 1247(d); 42 U.S.C. 4332; and 5 U.S.C. 553 and 559.

2. Section 1105.10 is amended by adding a new paragraph (g)(3) to read as follows:

§ 1105.10 Commission procedures and public involvement.

* * * * *

(g) * * *

(3) In out-of-service rail line exemption proceedings under 49 CFR 1152.50, the Commission, on its own motion, will stay the effective date of individual notices of exemption when an informed decision on pending environmental and historic preservation issues cannot be made prior to the date that the exemption authority would otherwise become effective.

* * * * *

PART 1152—ABANDONMENT AND DISCONTINUANCE OF RAIL LINES AND RAIL TRANSPORTATION UNDER 49 U.S.C. 10903

3. The authority citation for 49 CFR Part 1152 continues to read as follows:

Authority: 5 U.S.C. 553, 559, and 704; 11 U.S.C. 1170; 16 U.S.C. 1247(d); and 49 U.S.C. 10321, 10362, 10505, 10903, 11161, 11162, 11163, *et seq.*

4. Section 1152.50(d)(3) is revised to read as follows:

§ 1152.50 Exempt abandonments and discontinuances of service and trackage rights.

* * * * *

(d) * * *

(3) The Commission, through the Director of the Office of Proceedings, shall publish a notice in the **Federal Register** within 20 days after the filing of the notice of exemption. Petitions to stay the effective date of the notice on other than environmental or historic preservation grounds must be filed within 10 days of the publication. Petitions to stay the effective date of the notice on environmental or historic preservation grounds may be filed at any time but must be filed sufficiently in advance of the effective date in order to allow the Commission to consider and act on the petition before the notice becomes effective. Petitions for reconsideration, comments regarding environmental, energy and historic preservation matters, and requests for public use conditions under 49 U.S.C. 10906 and 49 CFR 1152.28(a)(2) must be filed within 20 days after publication. The exemption will be effective 30 days after publication, unless stayed. If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio* and the Commission shall summarily reject the exemption notice.

5. Section 1152.50(d) is amended by redesignating paragraphs (d)(4) and (d)(5) as paragraphs (d)(5) and (d)(6) and by adding a new paragraph (d)(4) to read as follows:

* * * * *

(d) * * *

(4) In out-of-service rail line exemptioin proceedings under 49 CFR 1152.50, the Commission, on its own motion, will stay the effective date of individual notices of exemption when an informed decision on pending environmental and historic preservation issues cannot be made prior to the date that the exemption authority would otherwise become effective.

6. Newly redesignated § 1152.50(d)(5) is revised to read as follows:

* * * * *

(d) * * *

(5) A request to implement interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29 should be filed with the Commission and served on the railroad within 10 days of publication of the notice of exemption in the **Federal Register**. A notice or decision to all parties will be issued if use of the exemption is made subject to environmental, energy, historic preservation, public use and/or interim trail use and rail banking conditions.

* * * * *

[FR Doc. 89-5288 Filed 3-7-89; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 54, No. 44
Wednesday, March 8, 1989

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

Agricultural Marketing Service

7 CFR Part 51

[Docket Number FV-88-204]

Snap Beans; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action would revise the voluntary U.S. Standards for Grades of Snap Beans. The South Florida Vegetable Exchange (the Exchange), which represents the majority of snap bean growers in South Florida, has requested the standards be revised to bring them into conformity with current cultural and harvesting practices. The Agricultural Marketing Service (AMS), in cooperation with industry, has the responsibility to develop and improve standards of quality, condition, quantity, grade, and packaging in order to encourage uniformity and consistency in commercial practices.

DATE: Comments must be postmarked or courier dated on or before May 8, 1989.

ADDRESS: Interested parties are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Standardization Section, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2056 South Building, Washington, DC 20090-6456. Comments should reference the date and page numbers of this issue of the Federal Register and will be made available for public inpection in the above office during business hours.

FOR FURTHER INFORMATION CONTACT: Paul W. Manol at the above address, or call (202) 447-5410.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been designated as "non-major" under the criteria therein.

Pursuant to the requirements set forth in the Regulatory Flexibility Act, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. The proposed revision of the standards for snap beans will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large businesses.

This action proposes changes to the U.S. Standards for Grades of Snap Beans as set forth in §§ 51.3830–51.3844 (7 CFR 51.3830–51.3844). This proposal is set forth in order to bring the standards into conformity with current harvesting and marketing practices. The United States Standards for Grades of Snap Beans were last revised on August 1, 1936. The Exchange has requested the following revisions which are proposed herein:

First, a general section would be added specifying the types of beans covered by this standard. Although the current standards apply to snap, pole, and wax beans, according to the Exchange, there exists some confusion in the industry as to what types of beans may be certified by the U.S. Standards for Grades of Snap Beans.

Next, the U.S. Combination and Unclassified grades would be eliminated because they are rarely used and may create confusion in the marketplace.

With the majority of beans now being mechanically harvested rather than handpicked, the Exchange indicates that the industry is finding that with the newer, more tender varieties of beans, it is increasingly difficult to meet the requirements of the grade due to the higher percentages of broken beans in any lot resulting from the harvesting process. The current standards for U.S. Fancy and U.S. No. 1 grades allow ten percent total defects, including not more than 5 percent serious damage, including therein not more than 1 percent soft rot. For the U.S. No. 2 grade, ten percent total defects are allowed including not more than 1 percent soft rot. The new standard would be revised as follows:

(a) *U.S. Fancy:* Ten percent for beans in any lot which fail to meet the requirements of the grade, including not more than 3 percent damage by broken beans. Additionally, within the ten percent tolerance, not more than 5 percent shall be allowed for defects causing serious damage, including therein, not more than 1 percent for beans affected by soft rot.

(b) *U.S. No. 1:* Thirteen percent for beans in any lot which fail to meet the requirements of the grade, including not more than ten percent for grade defects other than broken beans, including not more than 5 percent shall be allowed for defects causing serious damage, including therein, not more than 1 percent for beans affected by soft rot.

(c) *U.S. No. 2:* Fifteen percent for beans in any lot which fail to meet the requirements of the grade; including not more than ten percent serious damage by grade defects other than broken beans, including therein, not more than 1 percent for beans affected by soft rot.

Therefore, the proposal would lessen the restriction for broken beans only in the U.S. No. 1 and U.S. No. 2 grades, while further restricting the percentage of broken beans allowed in the U.S. Fancy grade. This further restriction would allow growers who "hand-pick" beans to market their product under a grade that reflects the quality difference due to harvesting and packing techniques.

Currently, the maxium tolerance for defects permitted in any grade is ten percent and individual packages may contain up to one and one-half times this amount. The proposal would allow maxium defects of thirteen percent and fifteen percent in the U.S. No. 1 and U.S. No. 2 grades respectively. Therefore, it would be necessary to revise the application of tolerances whereby individual packages may contain up to one and one-half times the thirteen percent tolerance or the fifteen percent tolerance, provided that the average for the entire lot averages within the maximum tolerance specified for the grade. Thus paragraph (a) of § 51.3836, Application of tolerances, would be revised to read as follows: For tolerances of ten percent or more, individual packages may contain not more than one and one-half times the tolerance specified. *Provided,* that the average for the entire lot is within the tolerance specified for the grade.

Finally, the definition of "Similar Varietal Characteristics" would be updated and simplified. The current definition references specific varieties

that are not among those that are being widely grown. In addition, since varieties change in popularity over time, the Exchange stated that a revised definition should provide that beans of different colors or types shall not be mixed within the same container.

List of Subjects in 7 CFR Part 51

Fresh fruits, Vegetables and Other products (Inspection, certification, and standards).

For reasons set forth in the preamble, the subpart—United States Standards for Grades of Snap Beans, 7 CFR Part 51, shall be amended as follows:

PART 51—FRESH FRUITS, VEGETABLES, AND OTHER PRODUCTS (INSPECTION, CERTIFICATION, AND STANDARDS)

1. The authority citation for 7 CFR Part 51 continues to read as follows:

Authority: Secs 203, 205, 60 Stat. 1087 as amended, 1090 as amended [7 U.S.C. 1622–1624].

1. In Subpart—United States Standards for Grades of Snap Beans, § 51.3829 is added to read as follows:

General

§ 51.3829 General.

These standards can be applied to all beans used in their entirety rather than shelled beans, and includes varieties such as snap, pole, and wax beans. These standards do not apply to varieties such as fava, lima, pinto, or calico beans.

§§ 51.3832 and 51.3834 [Removed and Reserved]

3. Section 51.3832 and 51.3834 are removed and reserved.

4. Paragraphs (a), (b), and (c) of § 51.3835 are revised to read as follows:

Tolerances

§ 51.3835 Tolerances.

* * * * *

(a) *U.S. Fancy.* Ten percent for beans in any lot which fail to meet the requirements of the grade, including not more than 3 percent damage by broken beans. Additionally, within the ten percent tolerance, not more than 5 percent shall be allowed for defects causing serious damage, including therein, not more than 1 percent for beans affected by soft rot.

(b) *U.S. No.* 1. Thirteen percent for beans in any lot which fail to meet the requirements of the grade, including not more than 10 percent for grade defects other than broken beans, including that not more than 5 percent shall be allowed for defects causing serious damage, including therein, not more than 1 percent for beans affected by soft rot.

(c) *U.S. No.* 2. Fifteen percent for beans in any lot which fail to meet the requirements of the grade, including not more than 10 percent serious damage by grade defects other than broken beans, including therein, not more than 1 percent for beans affected by soft rot.

5. Paragraph (a) of § 51.3836 is revised to read as follows:

Application of Tolerances

§ 51.3836 Application of Tolerances.

* * * * *

(a) For tolerances of 10 percent or more, individual packages may contain not more than one and one-half times the tolerances specified: Provided, that the average for the entire lot is within the tolerance specified for the grade.

* * * * *

6. Section 51.3837 is revised to read as follows:

§ 51.3837 Similar varietal characteristics.

"Similar varietal characteristics" means that the beans are of the same color and general type. For example, wax and green beans, or Snap and Pole type beans must not be mixed.

Dated: March 3, 1989.

J. Patrick Boyle,

Administrator.

[FR Doc. 89–5307 Filed 3–7–89; 8:45 am]

BILLING CODE 3410-02-M

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. No. 48 Doc. No. 6577S]

General Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1990 and succeeding crop years, by changing several endorsements to provide that the premium reduction gained by insureds through good insuring experience will extend beyond the present 1989 crop year expiration. The intended effect of this rule is to allow a continuation of good experience discount for all present policyholders who are eligible for a premium reduction while FCIC reviews the entire good experience discount issue for all policyholders.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than April 7, 1989, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as April 1, 1992.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This 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.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Under the provisions of the Potato Crop Insurance Regulations (7 CFR Part 422), an insured may be eligible for a premium reduction in excess of 5

percent based on that individual's insuring experience through the 1983 crop year under the terms and conditions contained in their potato crop insurance policy for 1984. The insured will continue to receive the benefit of such reduction subject to several conditions, one of which being that no premium reduction will be retained after the 1989 crop year.

The FCIC Board of Directors has suggested that the present premium reduction be continued, and directed that a study be made of the entire premium reduction for good experience issue as it might apply to all policyholders.

Accordingly, FCIC herein proposes to amend the Potato Crop Insurance Regulations (7 CFR Part 422) to allow a continuation of the good experience discount provision so that no premium reduction will be retained after the 1991 crop year.

Various amendments to the Potato Crop Insurance Regulations (7 CFR Part 422) were published, some of which contained an incorrect amendment number. While this does not affect the purpose or intent of the rule, it is appropriate that these amendment numbers be corrected. Amendment 2, published in the **Federal Register** on June 22, 1987, at 52 FR 23424, should read Amendment 1. Amendment 4, published on January 24, 1989, at 53 FR 3416, should read Amendment 2.

All written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

General Crop Insurance Regulations.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), proposed to be effective for the 1990 and succeeding crop years, in the following instances:

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

§§ 401.101, 401.103, 401.105, 401.106, 401.111, 401.113, 401.116, 401.117, and 401.124 [Amended]

2. 7 CFR 401.101—Wheat Endorsement; § 401.105—Oat Endorsement; § 401.106—Rye Endorsement; § 401.103—Barley Endorsement; § 401.111—Corn (Grain) Endorsement; § 401.113—Grain Sorghum Endorsement; § 401.116—Flaxseed Endorsement; § 401.117—Soybean Endorsement; and § 401.124—Sunflower Endorsement, are amended by revising subsection 3.b.(1) to read as follows:

3. *Annual Premium.*

* * * * *

b. * * *

(1) No premium reduction will be ratained after the 1991 crop year;

* * * * *

§ 401.114 [Amended]

3. 7 CFR 401.114—Canning and Processing Tomato Endorsement; is amended by revising subsection 4.b.(1) to read as follows:

4. *Annual Premium.*

* * * * *

b. * * *

(1) No premium reduction will be retained after the 1991 crop year;

* * * * *

§ 401.100 [Amended]

4. 7 CFR 401.100—Almond Endorsement; is amended by revising subsection 5.c.(1) to read as follows:

5. *Annual Premium.*

* * * * *

c. * * *

(1) No premium reduction will be retained after the 1991 crop year;

* * * * *

Done in Washington, DC on February 28, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-5316 Filed 3-7-89; 8:45 am]

BILLING CODE 3410-08-M

---

7 CFR Part 402

[Amdt. No. 1; Doc. No. 6600S]

Raisin Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Raisin Crop Insurance Regulations (7 CFR Part 402), effective for the 1990 and succeeding crop years, to provide that the premium reduction gained by insureds through good insuring experience will extend beyond the present 1989 crop year expiration. The intended effect of this rule is to allow a continuation of good experience discount for all present policyholders who are eligible for a premium reduction while FCIC reviews the entire good experience discount issue for all policyholders.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than April 7, 1989, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Department Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is January 1, 1990.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This 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.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Under the provisions of the Raisin Crop Insurance Regulations (7 CFR Part 402), an insured may be eligible for a premium reduction in excess of 5 percent based on that individual's insuring experience through the 1983 crop year under the terms and conditions contained in their raisin crop insurance policy for 1984. The insured will continue to receive the benefit of such reduction subject to several conditions, one of which being that no premium reduction will be retained after the 1989 crop year.

The FCIC Board of Directors has suggested that present premium reduction be continued, and directed that a study be made of the entire premium reduction for good experience issue as it might apply to all policyholders.

Accordingly, FCIC herein proposes to amend the Raisin Crop Insurance Regulations (7 CFR Part 402) to allow a continuation of the good experience discount provision so that no premium reduction will be retained after the 1991 crop year.

FCIC is soliciting public comment for 30 days after publication of the rule in the **Federal Register**.

All written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 402

Crop insurance, Raisins.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the Raisin Crop Insurance Regulations (7 CFR Part 402), proposed effective for the 1990 and succeeding crop years, in the following instances:

PART 402—[AMENDED]

1. The authority citation for 7 CFR Part 402 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. Section 402.7(d) of the Raisin Crop Insurance Regulations (7 CFR 402.7) is amended in subsection 5.c.(1) to read as follows:

§ 402.7 The application and policy.

* * * * *

c. * * *

5. *Annual Premium.*

* * * * *

(d) * * *

(1) No premium reduction will be retained after the 1991 crop year;

* * * * *

Done in Washington, DC on February 28, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-5325 Filed 3-7-89; 8:45 am]

BILLING CODE 3410-08-M

---

7 CFR Part 411

[Amdt. No. 1; Doc. No. 6574S]

Grape Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Grape Crop Insurance Regulations (7 CFR Part 411), effective for the 1990 and succeeding crop years, to provide that the premium reduction gained by insureds through good insuring experience will extend beyond the present 1990 crop year expiration. The intended effect of this rule is to allow a continuation of good experience discount for all present policyholders who are eligible for a premium reduction while FCIC reviews the entire good experience discount issue for all policyholders.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than April 7, 1989, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as April 1, 1990.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This 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.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Under the provisions of the Grape Crop Insurance Regulations (7 CFR Part 411), an insured may be eligible for a premium reduction in excess of 5 percent based on that individual's insuring experience through the 1984 crop year under the terms and conditions contained in their grape crop insurance policy for 1985. The insured will continue to receive the benefit of such reduction subject to several conditions, one of which being that no premium reduction will be retained after the 1990 crop year.

The FCIC Board of Directors has suggested that the present premium reduction be continued, and directed that a study be made of the entire premium reduction for good experience

issue as it might apply to all policyholders.

Accordingly, FCIC herein proposes to amend the Grape Crop Insurance Regulations (7 CFR Part 411) to allow a continuation of the good experience discount provision so that no premium reduction will be retained after the 1991 crop year.

FCIC is soliciting public comment for 30 days after publication of the rule in the **Federal Register.**

All written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 411

Grape Crop Insurance Regulations.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1510 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the Grape Crop Insurance Regulations (7 CFR Part 411), proposed to be effective for the 1990 and succeeding crop years, in the following instances:

PART 411—[AMENDED]

1. The authority citation for 7 CFR Part 411 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. Paragraph (d) of the Grape Crop Insurance Regulations (7 CFR 411.7) is amended by revising subsection 5.c.(1) to read as follows:

§ 411.7 The application and policy.

* * * * *

(d) * * *

5. *Annual Premium.*

* * * * *

c. * * *

(1) No premium reduction will be retained after the 1991 crop year;

* * * * *

Done in Washington, DC on February 28, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-5317 Filed 3-7-89; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 416

[Amdt. No. 2; Doc. No. 6597S]

Pea Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Pea Crop Insurance Regulations (7 CFR Part 416), effective for the 1990 and succeeding crop years, to provide that the premium reduction gained by insureds through good insuring experience will extend beyond the present 1989 crop year expiration. The intended effect of this rule is to allow a continuation of good experience discount for all present policyholders who are eligible for a premium reduction while FCIC reviews the entire good experience discount issue for all policyholders.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than April 7, 1989, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as August 1, 1989. These regulations are currently under review under the procedures established by Departmental Regulations 1512-1 and FCIC will issue a determination as to the need, currency, clarity, and effectiveness of these regulations on or before August 1, 1989.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) an annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with the foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This 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.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Under the provisions of the Pea Crop Insurance Regulations (7 CFR Part 416), an insured may be eligible for a premium reduction in excess of 5 percent based on that individual's insuring experience through the 1984 crop year under the terms and conditions contained in their pea crop insurance policy for 1985. The insured will continue to receive the benefit of such reduction subject to several conditions, one of which being that no premium reduction will be retained after the 1989 crop year.

The FCIC Board of Directors has suggested that the present premium reduction be continued, and directed that a study be made of the entire premium reduction for good experience issue as it might apply to all policyholders.

Accordingly, FCIC herein proposes to amend the Pea Crop Insurance Regulations (7 CFR Part 416) to allow a continuation of the good experience discount provision so that no premium reduction will be retained after the 1991 crop year.

FCIC is soliciting public comment for 30 days after publication of the rule in the **Federal Register.**

All written comments received pursuant to this proposed rule will be available for public inspection and copying in the office of the Manager,

Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 416

Crop insurance; Peas

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the Pea Crop Insurance Regulations (7 CFR Part 416), proposed to be effective for the 1990 and succeeding crop years, in the following instances:

PART 416—[AMENDED]

1. The authority citation for 7 CFR Part 416 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. Section 416.7(d) of the Pea Crop Insurance Regulations (7 CFR 416.7) is amended in paragraph 5.c.(1) to read as follows:

§ 416.7 The application and policy.

* * * * *

(d) * * *

5. *Annual Premium.*

* * * * *

c. * * *

(1) No premium reduction will be retained after the 1991 crop year;

* * * * *

Done in Washington, DC on February 28, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-5326 Filed 3-7-89; 8:45 am]

BILLING CODE 3410-08-M

---

7 CFR Part 422

[Amdt. No. 3; Doc. No. 6599S]

Potato Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Potato Crop Insurance Regulations (7 CFR Part 422), effective for the 1990 and succeeding crop years, to provide that the premium reduction gained by insureds through good insuring experience will extend beyond the present 1989 crop year expiration. The intended effect of this rule is to allow a continuation of good experience discount for all present policyholders who are eligible for a premium while FCIC reviews the entire good experience discount issue for all policyholders.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than April 7, 1989 to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the neeed, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as October 1, 1990.

John Marshall, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This 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.

This action is not expected to have any significant impact of the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Under the provisions of several crop endorsements to the General Crop Insurance Policy, contained in the General Crop Insurance Regulations (7 CFR Part 401), an insured may be eligible for a premium reduction in excess of 5 percent based on that individual's insuring experience through the 1983 or 1984 crop year under the terms and conditions contained in their particular crop insurance endorsement for 1984 or 1985. The insured will continue to receive the benefit of such reduction subject to several conditions, one of which being that no premium reduction will be retained after the 1989 or 1990 crop year.

The FCIC Board of Directors has suggested that the present premium reduction be continued, and directed that a study be made of the entire premium reduction for good experience issue as it might apply to all policyholders.

Accordingly, FCIC herein proposes to amend all listed applicable crop insurance endorsement issued under 7 CFR Part 401 to allow a continuation of the good experience discount provision so that no premium reduction will be retained after the 1991 crop year.

FCIC is soliciting public comment on this proposed rule for 30 days after publication of the rule in the **Federal Register.**

All written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 422

Crop Insurance, Potatoes.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the Potato Crop Insurance Regulations (7 CFR Part 422), proposes to be effective for the 1990 and succeeding crop years, in the following instances:

PART 422—[AMENDED]

1. The authority citation for 7 CFR Part 422 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. Paragraph (d) of the Potato Crop Insurance Regulations (7 CFR 422.7) is amended by revising subsection 5.c.(1) to read as follows:

§ 422.7 The application and policy.

* * * * *

(d) * * *

5. *Annual Premium.*

* * * * *

c. * * *

(1) No premium reduction will be retained after the 1991 crop year;

* * * * *

Done in Washington, DC on February 28, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-5321 Filed 3-7-89; 8:45 am]

BILLING CODE 3410-08-M

---

7 CFR Part 425

[Amdt. No. 1; Doc. No. 6598S]

Peanut Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Peanut Crop Insurance Regulations (7 CFR Part 425), effective for the 1990 and succeeding crop years, to provide that the premium reduction gained by insureds through good insuring experience will extend beyond the present 1989 crop year expiration. The intended effect of this rule is to allow a continuation of good experience discount for all present policyholders who are eligible for a premium reduction while FCIC reviews the entire good experience discount issue for all policyholders.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than April 7, 1989 to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This section has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The Peanut Crop Insurance Regulations (7 CFR Part 425) have been reviewed in their entirety under the procedures established in Departmental Regulation 1512-1 with respect to the need, currency, clarity, and effectiveness of these regulations. The new sunset review date established for these regulations is April 1, 1993.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant econmic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This 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.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Under the provisions of the Peanut Crop Insurance Regulations (7 CFR Part 425), an insured may be eligible for a premium reduction in excess of 5 percent based on that individual's insuring experience through the 1983 crop year under the terms and conditions contained in their peanut crop insurance policy for 1984. The insured will continue to receive the benefit of such reduction subject to several conditions, one of which being that no premium reduction will be retained after the 1989 crop year.

The FCIC Board of Directors has suggested that the present premium reduction be continued and directed that a study be made of the entire premium reduction for good experience issue as it might apply to all policyholders.

Accordingly, FCIC herein proposes to amend the Peanut Crop Insurance Regulations (7 CFR Part 425) to allow a continuation of the good experience discount provision so that no premium reduction will be retained after the 1991 crop year.

FCIC is soliciting public comment for 30 days after publication of the rule in the **Federal Register.**

All written comments received pursuant to this proposed rule will be available for public inspection and copying in the office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 425

Crop Insurance, Peanuts.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Corp Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the Peanut Crop Insurance Regulations (7 CFR Part 425), proposed to be effective for the 1990 and succeeding crop years, in the following instances:

PART 425—[AMENDED]

1. The authority citation for 7 CFR Part 425 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. Paragraph (d) of the Peanut Crop Insurance Regulations (7 CFR 425.7) is amended by revising subsection 5.c(1) to read as follows:

§ 425.7 The application and policy.

* * * * *

(d) * * *

5. *Annual Premium.*

* * * * *

c. * * *

(1) No premium reduction will be retained after the 1991 crop year;

* * * * *

Done in Washington, DC, on February 28, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-5320 Filed 3-7-89; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 430

[Amdt. No. 1; Doc. No. 6601S]

Sugar Beet Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Sugar Beet Crop Insurance Regulations (7CFR Part 430), effective for the 1990 and succeeding crop years, to provide that the premium reduction gained by insureds through good insuring experience will extend beyond the present 1989 crop year expiration. The intended effect of this rule is to allow a continuation of good experience discount for all present policyholders who are eligible for a premium reduction while FCIC reviews the entire good experience discount issue for all policyholders.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than April 7, 1989, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as October 1, 1990.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This 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.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Under the provisions of the Sugar Beet Crop Insurance Regulations (7 CFR Part 430), an insured may be eligible for a premium reduction in excess of 5 percent based on that individual's insuring experience through the 1984 crop year (1985 in Arizona and California) under the terms and conditions contained in their sugar beet crop insurance policy for 1985 (1986 in Arizona and California). The insured will continue to receive the benefit of such reduction subject to several conditions, one of which being that no premium reduction will be retained after the 1990 crop year.

The FCIC Board of Directors has suggested that the present premium reduction be continued, and directed that a study be made of the entire premium reduction for good experience issue as it might apply to all policyholders.

Accordingly, FCIC herein proposes to amend the Sugar Beet Crop Insurance Regulations (7 CFR Part 430) to allow a continuation of the good experience discount provision so that no premium reduction will be retained after the 1991 crop year.

FCIC is soliciting public comment for 30 days after publication of the rule in the **Federal Register.**

All written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 430

Crop insurance; Sugar beets.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the Sugar Beet Crop Insurance Regulations (7 CFR Part 430), proposed to be effective for the 1990 and succeeding crop years, in the following instances:

PART 430—[AMENDED]

1. The authority citation for 7 CFR Part 430 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. Section 430. 7(d) of the Sugar Beet Crop Insurance Regulations (7 CFR 430.7) is amended in subsection 5.c.(1) to read as follows:

§ 430.7 The application and policy.

* * * * *

(d) * * *

5. *Annual Premium.*

* * * * *

c. * * *

(1) No premium reduction will be retained after the 1991 crop year;

* * * * *

Done in Washington, DC on February 28, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-5327 Filed 3-7-89; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 433

[Amdt No. 2; Doc. No. 6576S]

Dry Bean Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Dry Bean Crop Insurance Regulations (7 CFR Part 433), effective for the 1990 and succeeding crop years, to provide that the premium reduction gained by insureds through good insuring experience will extend beyond the present 1989 crop year expiration. The intended effect of this rule is to allow a continuation of good experience discount for all present policyholders who are eligible for a premium reduction while FCIG reviews the entire good experience discount issue for all policyholders.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than April 7, 1989, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as April 1, 1992.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This 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.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Under the provisions of the Dry Bean Crop Insurance Regulations (7 CFR Part 433), an insured may be eligible for a premium reduction in excess of 5 percent based on that individual's insuring experience through the 1984 crop year under the terms and conditions contained in their dry bean crop insurance policy for 1985. The insured will continue to receive the benefit of such reduction subject to several conditions, one of which being that no premium reduction will be retained after the 1989 crop year.

The FCIC Board of Directors has suggested that the present premium reduction for good experience issue as it might be made of the entire premium reduction for good experience issue as it might apply to all policyholders.

Accordingly, FCIC herein proposes to amend the Dry Bean Crop Insurance Regulations (7 CFR Part 433) to allow a continuation of the good experience discount provision so that no premium reduction will be retained after the 1991 crop year.

FCIC is soliciting public comment for 30 days after publication of the rule in the **Federal Register**.

All written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 433

Dry bean crop insurance regulations.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the Dry Bean Crop Insurance Regulations (7 CFR Part 433), proposed to be effective for the 1990 and succeeding crop years, in the following instances:

PART 433—[AMENDED]

1. The authority citation for 7 CFR Part 433 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. Section 433.7(d) of the Dry Bean Crop Insurance Regulations (7 CFR 433.7) is amended in subsection 5.c.(1) to read as follows:

§ 433.7 The application and policy.

* * * * *

(d) * * *

5. *Annual Premium.*

* * * * *

c. * * *

(1) No premium reduction will be retained after the 1991 crop year;

* * * * *

Done in Washington, DC on February 28, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR. Doc. 89-5328 Filed 3-7-89; 8:45 am]

BILLING CODE 3410-08-M

---

7 CFR Part 435

[Amdt. No. 1; Doc. No. 6605S]

Tobacco (Quota Plan) Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Tobacco (Quota Plan) Crop Insurance Regulations (7 CFR Part 435), effective for the 1990 and succeeding crop years, to provide that the premium reduction gained by insureds through good insuring experience will extend beyond the present 1989 crop year expiration. The intended effect of this rule is to allow a continuation of good experience discount for all present policyholders who are eligible for a premium reduction while FCIC reviews the entire good experience discount issue for all policyholders.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than April 7, 1989, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1989. These regulations are presently under review in accordance with Departmental Regulation 1512-1 and FCIC will issue a determination

under those procedures as to the need, currency, clarity, and effectiveness of these regulations on or before August 1, 1989.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This 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.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Under the provisions of the Tobacco (Quota Plan) Crop Insurance Regulations (7 CFR Part 435), an insured may be eligible for a premium reduction in excess of 5 percent based on that individual's insuring experience through the 1983 crop year under the terms and conditions contained in their tobacco crop insurance policy for 1984. The insured will continue to receive the benefit of such reduction subject to several conditions, one of which being that no premium reduction will be retained after the 1989 crop year.

The FCIC Board of Directors has suggested that the present premium reduction be continued and directed that a study made of the entire premium reduction for good experience issue as it might apply to all policyholders.

Accordingly, FCIC herein proposes to amend the Tobacco (Quota Plan) Crop Insurance Regulations (7 CFR Part 435) to allow a continuation of the good experience discount provision so that no premium reduction will be retained after the 1991 crop year.

FCIC is soliciting public comment for 30 days after publication of the rule in the **Federal Register**.

All written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 435

Crop insurance, Tobacco (quota plan).

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the tobacco (Quota Plan) Crop Insurance Regulations (7 CFR Part 435), proposed to be effective for the 1990 and succeeding crop years, in the following instances:

PART 435—[AMENDED]

1. The authority citation for 7 CFR Part 435 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. Section 435.7(d) of the Tobacco (Quota Plan) Crop Insurance Regulations (7 CFR 435.7) is amended in subsection 5.c.(1) to read as follows:

§ 435.7 The application and policy.

* * * * *

(d) * * *

5. *Annual Premium.*

* * * * *

c. * * *

(1) No premium reduction will be retained after the 1991 crop year;

* * * * *

Done in Washington, DC on February 28, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-5329 Filed 3-7-89; 8:45 am]

BILLING CODE 3410-08-M

---

7 CFR Part 436

[Amdt. No. 1; Doc. No. 6603S]

Tobacco (Guaranteed Production Plan) Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Tobacco (Guaranteed Production Plan) Crop Insurance Regulations (7 CFR Part 436), effective for the 1990 and succeeding crop years, to provide that the premium reduction gained by insureds through good insuring experience will extend beyond the present 1989 crop year expiration. The intended effect of this rule is to allow a continuation of good experience discount for all present policyholders who are eligible for a premium reduction, while FCIC reviews the entire good experience discount issue for all policyholders.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than April 7, 1989, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1989. These regulations are currently under review under the procedures established by Departmental Regulations 1512-1 and FCIC will issue a determination as to the need, currency, clarity, and effectiveness of these regulations on or before August 1, 1989.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (1) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and

other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This 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.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Under the provisions of the Tobacco (Guaranteed Production Plan) Crop Insurance Regulations (7 CFR Part 436), an insured may be eligible for a premium reduction in excess of 5 percent based on that individual's insuring experience through the 1983 crop year under the terms and conditions contained in their tobacco crop insurance policy for 1984. The insured will continue to receive the benefit of such reduction subject to several conditions, one of which being that no premium reduction will be retained after the 1989 crop year.

The FCIC Board of Directors has suggested that the present premium reduction be continued, and directed that a study be made of the entire premium reduction for good experience issue as it might apply to all policyholders.

Accordingly, FCIC herein proposes to amend the Tobacco (Guaranteed Production Plan) Crop Insurance Regulations (7 CFR Part 436) to allow a continuation of the good experience discount provision so that no premium reduction will be retained after the 1991 crop year.

FCIC is soliciting public comment for 30 days after publication of the rule in the **Federal Register**.

All written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 436

Crop insurance, Tobacco (guaranteed production plan).

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *ex seq.*), the Federal Crop Insurance Corporation proposes to amend the Tobacco (Guaranteed Production Plan) Crop Insurance Regulations (7 CFR Part 436), proposed to be effective for the 1990 and succeeding crop years, in the following instances:

PART 436—[AMENDED]

1. The authority citation for 7 CFR Part 436 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. Section 436.7(d) of the Tobacco (Guaranteed Production Plan) Crop Insurance Regulations (7 CFR 436.7) is amended in subsection 5.c.(1) to read as follows:

§ 436.7 The application and policy.

* * * * *

(d) * * *

5. *Annual Premium.*

* * * * *

(c) * * *

(1) No premium reduction will be retained after the 1991 crop year;

* * * * *

Done in Washington, DC on February 28, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-5330 Filed 3-7-89; 8:45 am]

BILLING CODE 3410-08-M

---

7 CFR Part 437

[Amdt. No. 1; Doc. No. 6602S]

Sweet Corn Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Sweet Corn Crop Insurance Regulations (7 CFR Part 437), effective for the 1990 and succeeding crop years, to provide that the premium reduction gained by insureds through good insuring experience will extend beyond the present 1989 crop year expiration. The intended effect of this rule is to allow a continuation of good experience discount for all present policyholders who are eligible for a premium reduction while FCIC reviews the entire good experience discount issue for all policyholders.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than April 7, 1989 to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as June 1, 1989. These regulations are currently under review under the procedures established by Departmental Regulations 1512-1 and FCIC will issue a determination as to the need, currency, clarity and effectiveness of these regulations on or before August 1, 1989.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This 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, Supart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Under the provisions of the Sweet Corn Crop Insurance Regulations (7 CFR Part 437), an insured may be eligible for a premium reduction in excess of 5 percent based on that individual's insuring experience through the 1983 crop year under the terms and conditions contained in their sweet corn crop insurance policy for 1984. The insured will continue to receive the benefit of such reduction subject to several conditions, one of which being that no premium reduction will be retained after the 1989 crop year.

The FCIC Board of Directors has suggested that the present premium reduction be continued and directed that a study be made of the entire premium reduction for good experience issue as it might apply to all policyholders.

Accordingly, FCIC herein proposes to amend the Sweet Corn Crop Insurance Regulations (7 CFR Part 437) to allow a continuation of the good experience discount provision so that no premium reduction will be retained after the 1991 crop year.

FCIC is soliciting public comment for 30 days after publication of the rule in the **Federal Register.**

All written coments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 437

Crop insurance; Sweet corn.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the Sweet Corn Crop Insurance Regulations (7 CFR Part 437), proposed to be effective for the 1990 and succeeding crop years, in the following instances:

PART 437—[AMENDED]

1. The authority citation for 7 CFR Part 437 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.]

2. Paragraph (d) of the Sweet Corn Corp Insurance Regulations (7 CFR 437.7) is amended by revising subsection 5.c.(1) to read as follows:

§ 437.7 The application and policy.

* * * * *

(d) * * *

5. *Annual Premium.*

* * * * *

c. * * *

(1) No premium reduction will be retained after the 1991 crop year;

* * * * *

Done in Washington, DC on February 28, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-5319 Filed 3-7-89; 8:45 am]

BILLING CODE 3410-08-M

---

7 CFR Part 443

[Amdt. No. 1; Doc. No. 6543S]

Hybrid Seed Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Hybrid Seed Crop Insurance Regulations (7 CFR Part 443), effective for the 1990 and succeeding crop years, to provide that the premium reduction gained by insureds through good insuring experience will extend beyond the present 1989 crop year expiration. The intended effect of this rule is to allow a continuation of good experience discount for all present policyholders who are eligible for a premium reduction while FCIC reviews the entire good experience discount issue for all policyholders.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than April 7, 1989, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1521-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of those regulations under those procedures. The sunset review date established for these regulations is established as October 1, 1990.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices of consumers, individual industries, federal, State, or local governments, or a geographical region, or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based exterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officals. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Under the provisions of the Hybrid Seed Crop Insurance Regulations (7 CFR Part 443), an insured may be eligible for a premium reduction in excess of 5 percent based on that individual's insuring experience through the 1983 crop year under the terms and conditions contained in their hybrid seed crop insurance policy for 1984. The insured will continue to receive the benefit of such reduction subject to several conditions, one of which being that no premium reduction will be retained after the 1989 crop year.

The FCIC Board of Directors has suggested that the present premium

reduction be continued, and directed that a study be made of the entire premium reduction for good experience issue as it might apply to all policyholders.

Accordingly, FCIC herein proposes to amend the Hybrid Seed Crop Insurance Regulations (7 CFR Part 443) to allow a continuation of the good experience discount provision so that no premium reduction will be retained after the 1991 crop year.

FCIC is soliciting public comment for 30 days after publication of the rule in the **Federal Register.**

All written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 443

Crop insurance, Hybrid seed.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the Hybrid Seed Crop Insurance Regulations (7 CFR Part 443), proposed to be effective for the 1990 and succeeding crop years, in the following instances;

PART 443—[AMENDED]

1. The authority citation for 7 CFR Part 443 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. Section 443.7(d) of the Hybrid Seed Crop Insurance Regulations (7 CFR 443.7) is amended in subsection 5.c.(1) to read as follows:

§ 443.7 The application and policy.

* * * * *

(d) * * *

5. *Annual Premium.*

* * * * *

c. * * *

(1) No premium reduction will be retained after the 1991 crop year;

* * * * *

Done in Washington, DC, on February 28, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-5331 Filed 3-7-89; 8:45 am]

BILLING CODE 3410-08-M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 89-015]

Protocols for Importation of Swine From China Through the Harry S Truman Animal Import Center

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend our regulations on the importation of swine from the People's Republic of China by adding two protocols to allow the Agricultural Research Service of the United States Department of Agriculture to import swine from the People's Republic of China through the Harry S Truman Animal Import Center (HSTAIC) during calendar year 1989. These protocols specify requirements for importations through HSTAIC of swine from China. The swine should improve the germplasm of breeding animals in the United States, eventually improving the productivity and international competitiveness of U.S. swine.

DATES: Consideration will be given only to comments postmarked or received on or before March 23, 1989.

ADDRESSES: Send an original and two copies of written comments to Helene R. Wright, Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 98-015. Comments received may be inspected at USDA, 14th and Independence Avenue SW., Room 1141, South Building, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Samuel S. Richeson, Senior Staff Veterinarian, Import-Export Products Staff, Veterinary Services, APHIS, USDA, Room 759, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8144.

SUPPLEMENTARY INFORMATION:

Background

On July 25, 1988, was published in the **Federal Register** (53 FR 27846-27847, Docket Number 88-107) an interim rule that amended the regulation in 9 CFR Part 92, § 92.41, by granting the Agricultural Research Service (ARS) of the United States Department of Agriculture the exclusive right to use the Harry S Truman Animal Import Center (HSTAIC) for an importation of swine from the People's Republic of China during calendar year 1989. We have affirmed that interim rule in a document (Docket Number 88-153) published in this issue of the **Federal Register.** We took that action to enable ARS to capitalize on a singular opportunity to proceed with a swine-importation project expected to improve the germplasm of breeding animals in the United States. This improved breeding stock should benefit breeders in the private sector.

The interim rule allows ARS to import swine from the People's Republic of China through HSTAIC in calendar year 1989, in accordance with procedures determined by the Secretary of Agriculture. The interim rule also stated that protocols governing the procedures for this importation would be published for comment prior to the importation.

This proposed rule publishes the protocol determined by the Secretary of Agriculture for overseas quarantine of swine from China prior to their importation. This proposed rule also published a second protocol describing procedures required for the swine from the time they leave China until their release from quarantine at HSTAIC.

The two protocols concern the origin, handling, isolation, examination, testing, and shipment of the swine, as well as other matters related to their importation through HSTAIC. Organizations with responsibilities detailed in the protocols include the official veterinary organization of the People's Republic of China, USDA, APHIS, and the importer.

The protocols would be added to the new paragraph (g) of 9 CFR 92.41 that was established by the interim rule of July 25, 1988, and which provides that ARS may, in calendar year 1989, import swine from the People's Republic of China into the United States through the Harry S Truman Animal Import Center in accordance with procedure determined by the Secretary of Agriculture.

The protocols are designed to allow importation of swine from China without presenting a significant risk of introducing foot-and-mouth disease (FMD) or other foreign animal diseases into the United States. The purpose and operation of the protocols' provisions are discussed below.

Responsibilities

The official veterinary organization (OVO) of the People's Republic of China (PRC) would be responsible for implementing a pre-shipment quarantine of the swine in China, and for issuing certificates concerning the diseases that exist in China and certain other matters.

Specifically, the OVO of the PRC would certify that the People's Republic of China is free of rinderpest and African swine fever, and that Teschen's disease has never been diagnosed on the premises of origin and there has been no clinical evidence of that disease on the premises of origin during the isolation period. The OVO of the PRC would also designate laboratories to perform the tests required by the protocol while the swine are in isolation in China. The OVO of the PRC would also certify that the swine were kept in isolation for a minimum of 60 days and that, during that time, the animals remained healthy with no evidence of communicable disease affecting swine and that all tests and conditions as stated in this protocol have been met.

USDA would be responsible for sending veterinarians to the premises of origin of export swine, related isolation premises, testing laboratories, and isolation facilities to cooperate with PRC veterinarians in conducting quarantine procedures. USDA would issue the permits required by 9 CFR Part 92 for importation of the swine, and would conduct certain tests required for the swine while in isolation in China (FMD microtiter virus neutralization tests for types C and Asia FMD and swine vesicular disease (SVD) virus neutralization test) because the test antigen for conducting these tests are not permitted in the PRC, but they are available at the USDA Foreign Animal Disease Diagnostic Laboratory. USDA would provide the PRC with antigens and protocols for the brucellosis card test, a test developed by USDA. USDA would also be responsible for quarantine and testing of the swine at HSTAIC after their arrival in the United States, and for making the final determination on whether the swine may be released into the United States.

The OVO of the PRC and USDA would be jointly responsible for making certain determinations about the disease status of the swine and their premises of origin, and for supervising the movement of the swine from the isolation facility in China to the exporting carrier. The OVO of the PRC would be responsible for the disinfection of the trucks moving the swine to the exporting carrier, using a 4 percent sodium carbonate solution used in accordance with applicable label instructions.

The ARS would be responsible for all costs involved in the isolation, testing, transportation, and embarkation quarantine of the swine in China, their transportation to HSTAIC, and quarantine costs at HSTAIC. The U.S. importer would also be responsible for the cost of all swine that test positive to the tuberculosis intradermal test and are necropsied.

Premises of Origin

USDA and PRC veterinarians would work in cooperation to determine that the premises of origin of the swine met certain standards designed to minimize the possibility that the swine were exposed to disease. The three most serious swine diseases that may occur in China and that do not occur in the United States are foot-and-mouth disease (FMD), swine vesicular disease (SYD), and hog cholera. The protocols propose to require that the premises of origin must be at the center of an area of 16-km radius that has been free of these diseases for three years prior to quarantine of the swine, and that no cases of these diseases occurred on the premises of origin or adjacent premises for at least five years previous to quarantine of the swine. The protocols would also require that no animal has been introduced into the herd of origin from farms affected with these diseases for three years previous to the quarantine of the swine.

Other diseases of concern in China include brucellosis, tuberculosis, and pseudorabies, and the protocols propose to require that there has been no evidence of these diseases on the premises of origin or adjacent premises for one year previous to the quarantine of the swine.

To minimize the exposure of swine for export to other animals and other sources of disease, the swine would have to originate on farms which are solely swine breeding operations and must not have left the farm on which they were born and reared, except for movement to the isolation facility.

Isolation Period in China

The protocols propose that the swine be isolated in China for 60 days prior to export, in a facility on premises approved by the OVO of the PRC. This period would allow continual observation of the swine for signs of disease and would eliminate possible contact with other animals that may be capable of spreading disease. This period would also be used to conduct tests for diseases, discussed below. The facility would be cleaned, and disinfected using a 4 percent sodium carbonate solution used in accordance with applicable label instructions, prior to the start of the isolation. During the isolation period, personnel handling the animals would not have contact with other domestic farm livestock (this term does not include pets such as dogs and cats). Raw animal food wastes (garbage) would not be allowed to be fed to the animals in isolation, because feeding of garbage is known to spread many animal diseases. Feed and bedding used during the isolation period and during transport would have to come from areas free from epizootic diseases, and would have to meet veterinary hygienic requirements established by the OVO of the PRC concerning freedom of the materials from contamination that could transmit diseases. These provisions would help ensure that the swine are not infected with diseases of concern prior to export.

Testing for Disease

During their isolation in China, and again during quarantine at HSTAIC, all swine would be tested for seven diseases that are of concern under animal importation regulations and that may occur in China.[1] No swine would be accepted for export that have been vaccinated for FMD, SVD, or hog cholera, because vaccination for these diseases can cause false positive results in the tests for these diseases.

All the tests used are internationally recognized as standard procedures. They are also recognized by the American Association of Veterinary Laboratory Technicians (AAVLD), the principal organization in the United States to establish the validity of laboratory diagnostic procedures for animals. Most of the tests are based on identification of antibodies in the animals' blood serum against the various diseases. Reaction of the serum with the test materials of various dilutions constitutes a positive reaction, with the dilution varying according to the disease. For example, reaction of a 1:4 serum dilution constitutes a positive reaction to the pseudorabies test, reaction of a 1:16 dilution constitutes a positive reaction to the hog cholera test, and reaction of a 1:40 dilution constitutes a positive reaction to the SVD test. These dilutions are recognized as standard by AAVLD for determining positive reactions to these tests.

The type and number of tests to be conducted, in China and at HSTAIC, are described below:

[1] Technical information on laboratory methods and procedures for these tests may be obtained from the Administrator, APHIS, c/o Director, National Veterinary Services Laboratories, P.O. Box 844, Ames, IA 50010.

	No. of tests in China	No. of tests at HSTAIC
FMD microtiter virus neutralization (VN) test for types A, O, C, and Asia	1	2
FMD agar gel immunodiffusion (AGID) test using virus infection associated antigen (VIAA) in serum	1	3
Brucellosis standard tube test (STT) at less than 30 IU/ml	1	2
Brucellosis card test (antigen and protocol to be supplied by USDA)	1	2
Swine vesicular disease virus neutralization (VN) test at 1:40 dilution (serums to be tested at FADDL)	1	2
Hog cholera fluorescent antibody neutralization (FAN) test at 1:16 dilution	1	2
Japanese B encephalitis hemagglutination inhibition (HI) test	1	2
Pseudorabies virus neutralization (VN) test at 1:4 dilution	1	2
Tuberculosis intradermal test using bovine PPD tuberculin (positive animals will be necropside and examined for lesions)	1	2

During their quarantine at HSTAIC, all swine would undergo each test twice, at an interval of 60 days, except for the FMD AGID–VIAA test. The swine would undergo the FMD AGID–VIAA test three times, at intervals of 21 and 60 days after the first application of this test at HSTAIC. The tests at 60 days would detect any animals that were infected during isolation in China or during shipment and had not developed serological responses in a quantity sufficient to be detected at the time of the first tests at HSTAIC. For all the diseases in question, 60 days after infection is sufficient time for serological responses to develop that can be detected by the tests. The FMD AGID–VIAA test would be administered three times instead of twice to ensure that a distinction is made between animals that have developed antibodies to FMD without being infected and animals that are actually infected with live FMD virus.

The FMD microtiter VN test is a test on animal blood serum to detect antibody to FMD virus. If FMD virus has been introduced into the swine, its immune system will produce antibodies against the disease. When mixed with FMD virus in the laboratory at a 1:10 or greater dilution, serum with FMD antibody will neutralize the effects of the FMD virus on test materials, while serum without FMD antibody (i.e. from animals that have not been in contact with FMD virus) will not neutralize the effects of the FMD virus on test materials. This test may produce positive results when used on animals that have been vaccinated against FMD, but are not necessarily infected with FMD.

The FMD AGID–VIAA test is the ager gel immunodiffusion test with virus infection associated antigen. When an animal becomes infected with the field strain of FMD, the live virus replicates in the animal's body. The animal's immune system produces a specific antibody at this time to help stop the viral replication. The VIAA antigen has been developed to detect the presence of this antibody; thus, if the test is positive, it shows that the animal has experienced active FMD infection, rather than antibody production as a result of vaccination against FMD.

Animals must test negative to both FMD tests, and be free from clinical signs of FMD, or they will be prohibited export.

The brucellosis STT test is the standard tube agglutination test. If the animal is infected with brucellosis organisms, the test demonstrates the presence of antibodies against brucellosis. The *Brucella* cells in the antigen, when mixed with serum, will be agglutinated, or clumped, by the action of the antibody in the animal's serum. If the animal is free of brucellosis, no agglutination will occur in the serum sample.

The brucellosis card test is a rapid field test for brucellosis that may be performed on while blood. A positive reaction will cause agglutination on the special card developed for the test. An obvious advantage is that the test results are immediately available at the test site with no need to be sent to a laboratory. This test has been used with special success in testing swine.

The SVD VN test is a test of serum to detect antibodies against the SVD virus. In a positive test result, serum from an animal that has been infected with SVD neutralizes the effect of the SVD virus in specific laboratory materials.

The hog cholera FAN test is the fluorescent antibody neutralization test. It is based on direct microscopic examination. If hog cholera antibodies are present in serum from swine, it will neutralize the fluorescence caused by the viral antigen in infected tissue. If no antibody is present, the tissue will exhibit fluorescence.

The Japanese B encephalitis HI test is a hemagglutination test of serum. If antibody against Japanese B encephalitis is present it neutralizes the ability of the viral antigen to cause agglutination in the serum sample.

The pseudorabies VN test is a virus neutralization test. It is a plate agglutination test, conducted with antigen particles bonded to latex. In the presence of pseudorabies antibodies, agglutination occurs.

The tuberculosis intradermal test is done by injecting an antigen called tuberculin into the skin of the animal to be tested. If antibodies against tuberculosis are present in the animal, the point of injection will react with swelling and redness within 48 hours. This reaction shows that the animal has been exposed to the tuberculosis organism and is probably infected. Positive animals would be necropsied and examined for TB lesions as conclusive proof of infection. If no lesions are found, the remaining swine would be eligible for export.

In addition, while at HSTAIC the swine would share their pens with contact sentinel animals (pigs and calves that are known to be susceptible to the above diseases and that are known not to possess antibodies to these diseases). The contact sentinel animals would provide an additional test for infection of the imported swine, as they would be regularly examined for clinical signs of disease and their serum would be tested for antibodies that would indicate exposure to diseases carried by the imported swine. Approximately 60 days after the contact sentinel animals are placed with the imported swine, the sentinel pigs would be inoculated with blood from the imported swine to ensure exposure to any pathogens present in the swine. Approximately 90 days after the contact sentinel animals are placed with the imported swine, serum from the sentinel pigs would be tested for signs of exposure to the seven diseases for which the imported swine were tested.

Transportation

The protocols contain requirements to ensure that the imported swine would not come in contact during transport with any animals or other materials that could infect the swine with disease, and to ensure that the swine could not infect any other animals with diseases they may carry. All crates and parts of vehicles, ships, or aircraft used to hold livestock for transport or handling of the swine while in China must be cleaned, and disinfected prior to use with a 4 percent sodium carbonate solution used in accordance with applicable label instructions. During movement from the premises of origin to the isolation facility, and from the isolation facility to HSTAIC, the swine may not have contact with, or exposure to, animals

not included in the group at the isolation facility. Exposure consists of contact with yards, pens, or other facilities or vehicles that have been in contact with other animals and have not been cleaned and disinfected as described above. In China, the swine would be moved under joint supervision by the OVO of the PRC and USDA directly from the isolation facility to the exporting carrier by trucks or other carriers that have been cleaned, and disinfected using a 4 percent sodium carbonate solution used in accordance with applicable label instructions, under joint OVO/USDA supervision. The swine would be examined clinically within 24 hours prior to loading for export by a USDA veterinarian and must be healthy and free of signs of infectious and contagious diseases. During movement from China to HSTAIC, if the swine transit countries affected with FMD, rinderpest, hog cholera, SVD, or African swine fever, they would be refused entry on arrival at HSTAIC, unless they were accompanied en route by a USDA inspector who certifies that no disease exposure occurred during shipment. As a safeguard against spreading foreign animal diseases into the United States, the swine would not transit through the United States, or any of its territories, en route to U.S. quarantine, except as specifically provided for in an import permit issued by APHIS.

The landing of the swine in the United States would be carried out in accordance with instructions given by a USDA veterinary officer at HSTAIC. All vessels or aircraft from which the imported swine were landed would be immediately cleaned, and disinfected using a 4 percent sodium carbonate and 0.1 percent sodium silicate solution used in accordance with applicable label instructions, in the presence of a USDA veterinary officer.

Ectoparasites and Precautionary Treatments

Swine are subject to infestation with ticks, lice, and mange organisms and other ectoparasites, and to leptospirosis, a communicable disease of swine, humans, and many other animals. While infestation with ectoparasities or leptospirosis does not preclude swine from being imported under the regulations, they are a general health hazard for swine, and the protocols therefore require examination and treatments for ectoparasites, and a precautionary treatment for leptospirosis. While in isolation in China, all swine offered for exportation would be clinically examined and treated for ectoparasites with a pesticide approved by the OVO of the PRC used in accordance with applicable label instructions, and given an intramuscular injection of dihydrostreptomycin at a rate of 25 mg/kg dosage twice at an interval of 14 days as a precautionary treatment for leptospirosis. This treatment is an internationally recognized standard procedure for leptospirosis. All imported swine would be examined for ectoparasites on arrival at HSTAIC and, if found free of infestation, would receive a precautionary spray with coumaphos, used in accordance with applicable label instructions, in a wettable powder or 0.06 emulsified concentrate solution spray form. If found to be infested, all affected and exposed swine would be treated until found free of infestation.

Release or Disposal of the Swine

USDA would make the final determination on the eligibility of Chinese swine to be exported to the United States, and their eligibility to be released from quarantine at HSTAIC into the United States. The swine would be quarantined at HSTAIC under the supervision of a veterinary officer of USDA for a period of at least 120 days after arrival and until all tests required by the protocols have been successfully completed. To qualify for release, an animal must have negative test results. If any imported or sentinel animals showed clinical symptoms of, or the causative organism was isolated for, FMD, rinderpest, SVD, or hog cholera, USDA would cause all imported and sentinel animals to be slaughtered and the carcasses disposed of as prescribed by USDA to prevent the spread of disease. These diseases constitute major risks to the health of the U.S. animal industries, and if one animal in a consignment tests positive for one of these diseases the level of risk justifies destruction and disposal of all animals in the consignment, even those that tested negative for the diseases. This provision would guard against the slight possibility that animals that tested negative for these diseases were so recently infected that the tests would be unable to detect the infection, or that noninfected animals carried viable disease viruses externally. If any imported or sentinel animals showed clinical symptoms of, or were considered exposed to, any other disease, or were classified as positive to any of the tests conducted during the quarantine period, USDA may cause any or all of the animals to be slaughtered and the carcasses disposed of as prescribed by USDA to prevent the spread of disease.

As part of monitoring the imported swine for clinical signs of disease, HSTAIC personnel would take the temperatures of all imported swine daily for seven days after arrival and thereafter at the discretion of the quarantine officers in charge.

No animals would be allowed to be moved from HSTAIC until duly discharged by APHIS.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Our proposal would enable ARS to import 144 swine for research on the possibility of improving the germplasm of breeding swine in the United States. If improved breeding stock is developed, it should eventually benefit breeders in the private sector.

In December 1986, the swine population of the United States was approximately 51,000,000, of which approximately 6,612,000 were intended for breeding purposes. The ARS shipment is very small compared to this population, and is destined for research facilities instead of the normal market channels in the United States.

There are two potential effects resulting from adoption of this proposed rule, one immediate and one long-term. The first impact is the costs involved in importing the shipment of Chinese swine in accordance with the proposed rule, estimated at $497,000. All costs associated with the importation of the swine would be borne by ARS.

The second possible impact is indirect and could occur only after years of research and development involving the import swine. This impact would be development of improved breeds of U.S. swine incorporating desirable traits of the imported Chinese swine. If such development is successful, productivity of U.S. swine could increase, resulting in savings for swine producers and decreases in domestic consumer prices

for pork and pork products. Since over 98 percent of U.S. swine producers qualify as small entities, higher swine productivity would have a beneficial effect on small entities. Higher swine productivity may be achieved only if numerous activities outside the scope of this rule occur, such as successful research results, development of improved breeds that are marketable, and acceptance and distribution of improved breeds by the marketplace.

Under these circumstances, the Administrator of the animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this proposal contain on information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmetnal consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

Comment Period

The Administrator of the Animal and Plant Health Inspection Service has determined that this rulemaking proceeding should be expedited by allowing a 15-day comment period on the proposal. The Agricultural Research Service and the People's Republic of China have already selected swine to be imported in accordance with this rule, and delay would jeopardize arrangements to import these swine, which will be used in research to benefit United States swine breds. In addition, delay would lengthen the period during which use of the HSTAIC facility is devoted exclusively to use by the Agricultural Research Service for importation of swine from China.

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

Accordingly, we are proposing to amend 9 CFR Part 92 as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for Part 92 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

2. Paragraph (g) of § 92.41 would be revised to read as follows:

§ 92.41 Requirements for the importation of animals into the United States through the Harry S Truman Animal Import Center

* * * * *

(g) The Agricultural Research Service may, in calandar year 1989, import swine from the People's Republic of China into the United States through the Harry S Truman Animal Import Center in accordance with the following protocols.

Protocol for Quarantine and Health Requirements for Porcine Animals Exported From the People's Republic of China to the United States of America

1. The official veterinary organization (OVO) of the People's Repulic of China (PRC) shall be responsible for the implementation of quarantine procedures in the PRC and the issuance of certificates concerning the disease status of the swine and certain other matters required by the regulations in this Part 92.

2. The U.S. Department of Agriculture (USDA) shall send veterinarians to the premises of origin of export swine, related isolation premises, testing laboratories, and quarantine facilities to cooperate with PRC veterinarians in conducting quarantine procedures.

3. The premises of origin of export swine shall meet the following requirements:

a. For the last 3 years the premises of origin was located in an area with a 16-km radius which was free of foot-and-mouth disease (FMD), swine vesicular disease (SVD), and hog cholera (HC).

b. For the last year, there has been no evidence of brucellosis, tuberculosis, or pseudorabies on the premises of origin or on premises adjacent to the premises of origin.

c. For the last 5 years, there have been no cases of FMD, SVD, or HC.

d. For the last 3 years, no animal has been introduced into the herd of origin from farms affected with FMD, SVD, or HC.

e. Raw animal food wastes (garbage) have not been fed to the animals for export while in isolation.

4. Animals offered for exportation shall originate from farms which are solely swine breeding operations and shall not have left the farm on which they were born and reared, except as necessary for movement to an approved isolation facility.

5. Animals offered for exportation shall not have been vaccinated for FMD, SVD, or HC.

6. Animals offered for exportation shall pass a 60-day isolation period in a facility on premises approved by the OVO of the PRC. The facility shall be cleaned and disinfected, using a 4 percent sodium carbonate solution used in accordance with applicable label instructions, prior to the start of the isolation. During the isolation period, personnel handling the animals shall not have contact with other domestic farm livestock. The term "domestic farm livestock" does not include pets such as dogs and cats.

7. During the 60-day isolation period, the animals offered for exportation shall be found negative to the following tests [1]:

a. Food-and-mouth disease.	1. Microtiter virus neutralization (VN) test for types A, O, C, and Asia. (The PRC will test for types A and), and the United States will test for types C and Asia at the USDA Foreign Animal Disease Diagnostic Laboratory (FADDL)). 2. Agar gel immunodiffusion (AGID) test using virus infection associated antigen (VIAA) in serum. (Animals having responses to the AGID test or reacting to the VN test at 1:10 dilution or greater shall be prohibited from export. Other animals shall be retested within 30 days If the whole group does not have the above responses and there is no clinical evidence of FMD, the group shall be eligible for export. Otherwise, the whole group shall be prohibited from export.)
b. Brucellosis:.....	1 Standard tube test (STT) at less than 30 IU/ml. 2. Card test (antigen and protocol to be supplied by USDA).
c. Swine vesicular disease.	Virus neutralization test at 1:40 dilution (serums to be tested at FADDL).
d. Hog cholera.....	Fluorescent antibody neutralization (FAN) test at 1:16 dilution.
e. Japanese B encephalitis.	Hemagglutination inhibition (HI) test,

[1] Technical information on laboratory methods and procedures for these tests may be obtained from the Administrator, APHIS, c/o Director, National Veterinary Services Laboratories, P.O. Box 844, Ames, IA 50010.

negative according to PRC standards.

f. Pseudo- rabies..... Virus neutralization at 1:4 dilution.

g. Tuberculosis..... Intradermal test using bovine PPD tuberculin (Positive animals will be necropsied. If there are lesions of TB in the test positive pigs, the whole group will be ineligible for export. If no lesions are found, the rest of the pigs will be eligible for export. Note: All swine sacrificed for diagnosis of tubercolosis will be at the importer's expense.)

All samples of the above tests, except as noted in items 7a, 7c, and 7g, will be submitted to laboratories designated by the OVO of the PRC.

8. All animals offered for exportation during the isolation period must be clinically examined and treated for ectoparasites with a pesticide approved by the OVO of the PRC, used in accordance with applicable label instructions, and given an intramuscular injection of dihydrostreptomycin at a rate of 25 mg/kg dosage twice at an interval of 14 days as a precautionary treatment for leptospirosis.

9. All crates and parts of vehicles and ships used to hold livestock for transport or handling of animals shall be cleaned and disinfected prior to use with a 4 percent sodium carbonate solution used in accordance with applicable label instructions. All aircraft used to transport animals shall be cleaned and disinfected prior to use with a 4 percent sodium carbonate and 0.1 percent sodium silicate solution used in accordance with applicable label instructions.

10. Feed and bedding to be used during the 60-day isolation and during transport shall not originate from epizootic disease infected areas and must meet applicable veterinary hygienic requirements established by the OVO of the PRC concerning freedom of the feed and bedding from contamination that could transmit diseases.

11. The OVO of the PRC shall certify that the People's Republic of China is free of rinderpest and African swine fever, that Teschen's disease has never been diagnosed on the presmises of origin and that there has been no clinical evidence of Teschen's disease on the premises of origin during the isolation period.

12. The animals to be exported shall be examined clinically within 24 hours prior to loading for export by a USDA veterinarian and be healthy and free of signs of infectious and contagious diseases.

13. During the isolation period on the premises of origin and all transport from the isolation facility on the premises or origin to the port of embarkation (including loading), export animals shall not have contact with, or exposure to, animals not included in the group at the isolation facility. Exposure consists of contact with yards, pens, or other facilities or vehicles that have been in contact with animals and have not been cleaned and disinfected.

14. USDA, APHIS representatives will make the final determination on the eligibility of Chinese swine not to be exported to the United States.

Protocol for Quarantine of Swine From China at the Harry S. Truman Animal Import Center

Shipment to the United States

1. On successful completion of the 60-day isolation period on the premises of origin, the swine shall be accepted for shipment to the United States provided that the official veterinary organization (OVO) of the People's Republic of China (PRC) issues or endorses an official health certificate to the effect that the swine have been kept in isolation for a minimum of 60 days and that, during that time, the animals remained healthy with no evidence of communicable disease affecting swine and that all tests and conditions as stated in this protocol have been met.

2. The swine shall be moved under joint supervision by the OVO of the PRC and U.S. Department of Agriculture (USDA) direct from the isolation facility to the exporting carrier by trucks or other carriers that have been cleaned and disinfected using a 4 percent sodium carbonate solution used in accordance with applicable label instructions under joint OVO/USDA supervision.

3. If the swine transit countries affected with foot-and-mouth disease (FMD), rinderpest, hog cholera, swine vesicular disease (SVD), or African swine fever en route to the United States, they will be refused entry on arrival at the Harry S. Truman Animal Import Center (HSTAIC), unless they were accompanied en route by a USDA inspector who certifies that no disease exposure occurred during shipment.

4. The swine may not transit through the United States or any of its territories en route to U.S. quarantine, except as specifically provided for in an import permit issued by APHIS under the authority of 21 U.S.C. 135.

5. The landing of the swine shall be carried out in accordance with instructions given by a USDA veterinary officer at HSTAIC.

6. All vessels or aircraft from which the imported swine are landed shall be immediately cleaned and disinfected using a 4 percent sodium carbonate and 0.1 percent sodium silicate solution used in accordance with applicable label instructions, in the presence of a USDA veterinary officer.

Quarantine and Testing Procedures at HSTAIC

1. The swine shall be quarantined in the import center under the supervision of a veterinary officer of USDA for a period of at least 120 days after arrival and until all tests have been successfully completed.

2. The temperature of all imported swine will be taken daily for 7 days after arrival and thereafter at the discretion of the quarantine officers in charge.

3. All imported swine shall be examined for ectoparasites on arrival at HSTAIC and, if found free of infestation, receive a precautionary spray with coumaphos, used in accordance with applicable label instructions, in the form of a wettable powder or 0.06 emulsified concentrate spray solution. If found to be infested, all affected and exposed swine shall be treated until found free of infestation.

4. During the initial portion of quarantine, the imported swine shall be subjected to the tests listed below.[2] The tests will be performed at the Foreign Animal Disease Diagnostic Laboratory (FADDL). To qualify for release, every animal must have negative test results.

* a. Foot-and-mouth disease.	1. Microtiter virus neutralization (VN) test for types A, O, C, and Asia. 2. AGID test using virus infection associated antigen (VIAA) in serum.
b. Brucellosis.....	1. Standard tube test (STT) at less than 30 IU/ml. 2. Card test.
*c. Swine vesicular disease.	Virus neutralization test at 1:40 dilution.
*d. Hog cholera.	Fluorescent antibody neutralization (FAN) test at 1:16 dilution.
e. Japanese B encephalitis.	Hemagglutination inhibition (HI) test at 1:10 dilution.
f. Pseudo-rabies.	Virus neutralization at 1:4 dilution.
g. Tuberculosis..	Intradermal test using bovine PPD tuberculin and read at 48 hours post injection (positive animals will be necropsied. If there are lesions of TB in the test positive pigs, the whole group may be ineligible for release until it is determined they are free of tuberculosis).

h. Any other tests determined to be necessary by the Administrator. All tests on collected specimens will be conducted at FADDL, unless authorized by USDA to be conducted at HSTAIC. Imported swine with less than negative test results that are not definitely considered to be infected will be retested if retesting is ordered by APHIS.

* If any imported swine are determined to be infected with these diseases based on test results and other data, they will be refused entry and destroyed, and all other imported swine in HSTAIC will be refused entry and destroyed.

5. Twenty-one days after initial collection of samples for FMD testing a second sample will be taken from each imported swine for a FMD virus infection associated antigen (VIAA) test. All tests listed in items 4a through 4h will be repeated on imported swine at approximately 60 days following the initial collection of test samples.

6. Within seven days of arrival of the imported swine, contact sentinel animals shall be placed with the imported animals at the ratio of at least one contact calf and one contact pig to eight imported swine. The sentinel pigs and calves shall have been found negative to the tests listed in items 4a through 4h prior to their entry into the animal import center.

7. Following the 60-day tests required by item 5, 10 ml of heparinized blood shall be drawn from each imported swine and used to inoculate sentinel pigs, in the ratio of one sentinel pig for each eight imported swine. Each sentinel pig shall be inoculated with

[2] Technical information on laboratory methods and procedures for these tests may be obtained from the Administrator, APHIS, c/o Director, National Veterinary Services Laboratories, P.O. Box 844, Ames, IA 50010.

blood from eight different imported swine, in eight separate subcutaneous sites. The identity of each imported swine used to inoculate each sentinel pig shall be recorded in order to trace possible reactions.

8. Approximately 90 days after arrival of the imported swine, serum from the sentinel pigs and calves will be collected and submitted to FADDL to be tested for the same diseases for which the imported swine were tested.

9. If any imported or sentinel animals show clinical symptoms of, or the causative organism is isolated for, FMD, rinderpest, swine vesicular disease, or hog cholera, USDA shall cause all imported and sentinel animals to be slaughtered and the carcasses disposed of as prescribed by USDA. If any imported or sentinel animals show clinical symptoms of, or are considered exposed to, any other disease, or are classified as positive to any of the tests conducted during the quarantine period, USDA may cause any or all of the animals to be slaughtered and the carcasses disposed of as prescribed by USDA.

10. No animals shall be moved from HSTAIC until duly discharged by APHIS.

11. The ARS will be directly responsible for the payment of all costs involved in the isolation, testing, transportation, and embarkation quarantine of the swine in China, their transportation to HSTAIC, and all applicable quarantine costs at HSTAIC.

Done in Washington, DC, this 3rd day of March 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-5312 Filed 3-7-89; 8:45 am]

BILLING CODE 3410-34-M

9 CFR Parts 145 and 147

[Docket No. 89-023]

National Poultry Improvement Plan and Auxiliary Provisions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of reopening and extension of comment period.

SUMMARY: We are reopening and extending the comment period for a proposed to (1) expand the National Poultry Improvement Plan (referred to below as the Plan) to include a new "U.S. Sanitation Monitored, Turkeys" program for reducing Salmonella levels in turkey flocks and products and (2) make other amendments in order to increase the effectivenss of the Plan's monitoring and testing procedures, and to keep the Plan current with the latest improvements in poultry disease technology. Extending the comment period will give interested persons additonal time to prepare comments.

DATE: Consideration will be given only to written comments that are postmarked or received on or before April 7, 1989.

ADDRESSES: Send an original and two copies of written comments to Helene R. Wright, Chief, Regulatory Analysis and Development, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 86-110. Comments received may be inspected at USDA, 14th and Independence Avenue, SW., Room 1141, South Building, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. I. L. Peterson, Sheep, Goat, Equine, and Poultry Diseases Staff, VS, APHIS, USDA, Room 771, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7768.

SUPPLEMENTARY INFORMATION: On January 6, 1989, we published in the **Federal Register** (54 FR 418-427, Docket 86-110) a proposal to amend 9 CFR Parts 45 and 147 by (1) expanding the National Poultry Improvement Plan (referred to below as the Plan) to include a new "U.S. Sanitation Monitored, Turkeys" program for reducing Salmonella levels in turkey flocks and products, and (2) making other amendments in order to increase the effectiveness of the Plan's monitoring and testing procedures, and to keep the Plan current with the latest improvements in poultry diseases technology. Comments on the proposal were to be postmarked or received on or before February 6, 1989.

Three commenters indicated, generally, that the original comment period would not allow sufficient time to survey the industry, formulate a consensus, and write comments. Also, the turkey industry has been involved in a number of conventions, leaving inadequate time to respond to the proposed rule within the original comment period. In response to these requests for an extension, we are reopening and extending the comment period for an additonal 30 days from the date of publication of this notice. We will consider all written comments that are postmarked or received on or before April 7, 1989. The new deadline will give interested persons additional time to prepare comments.

Done at Washington, DC, this 3rd day of March 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-5310 Filed 3-7-89; 8:45 am]

BILLING CODE 3410-34-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-26580; File No. S7-27-88]

Net Capital Requirements for Brokers and Dealers

AGENCY: Securities and Exchange Commission.

ACTION: Extension of comment period.

SUMMARY: The Securities and Exchange Commission is extending from March 1, 1989 to April 3, 1989 the date by which comments on Securities Exchange Act Release No. 34-26402 (December 28, 1988) 54 FR 315 (January 5, 1989) should be received.

DATE: Comments on Release No. 34-26402 should be received by April 3, 1989.

ADDRESS: Persons wishing to express their views should submit their comments in triplicate addressed to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Mail Stop 6-9, Washington, DC 20549. Reference should be made to File No. S7-27-88.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli (202) 272-2904, Michael P. Jamroz (202) 272-2372, or Jerry W. Carpenter (202) 272-3128, Division of Market Regulation, 450 5th Street, NW., Mail Stop 5-1, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: In Securities Exchange Act Release No. 34-26402, the Commission requested written comments on the proposed amendments to its net capital rule, Rule 15c3-1 (17 CFR 240.15c3-1), that would make the rule applicable to all specialists, other than certain market makers, on national securities exchanges and would allow specialists one business day to meet the haircuts on positions in their specialty securities. In response to requests for additional time in which to comment on the proposed rule amendments and in order to receive the benefit of comments from the greatest number of interested persons, the Commission is extending the comment period for Release No. 34-26402 from March 1, 1989 to April 3, 1989.

By the Commission.

Jonathan G. Katz,

Secretary.

March 1, 1989

[FR Doc. 89-5296 Filed 3-7-89; 8:45 am]

BILLING CODE 8010-01-M

17 CFR Part 270

[Rel. No. IC-16842; File No. S7-5-89]

Time Period During Which the Board of Directors of a Registered Management Investment Company Must Select the Company's Independent Public Accountant

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule and request for comment.

SUMMARY: The Commission is publishing for public comment a rule proposal that would expand the time period during which certain registered management investment companies must select an independent public accountant ("accountant"). Currently, each such company must select its accountant at a board of directors' meeting held within 30 days before or after the beginning of the company's fiscal year (the "60 day window") or before the annual meeting of shareholders in that year. The proposed rule would set out the following alternative time periods during which the accountant may be selected: (a) 90 days before or after the beginning of the fiscal year (the "180 day window"), or (b) 30 days before or 90 days after the beginning of the fiscal year (the "120 day window"). The 180 day window would be available only to registered management investment companies that are part of a family of investment companies ("family") whose members have staggered fiscal year ends, are organized in a jurisdiction not requiring them to hold annual meetings of shareholders, and do not in fact hold such meetings. Registered management investment companies that are not part of a family (or are part of a family whose members have identical fiscal year ends) may use the 120 day window if organized in jurisdiction not requiring the company to hold annual meetings of shareholders, and the company does not in fact hold such a meeting. The Commission makes this proposal because of numerous applications that have been filed seeking an exemption from the 60 day window. If adopted, the proposed rule could reduce significantly the need for registered management investment companies to obtain individual exemptions in this area.

DATE: Comments must be received on or before May 8, 1989.

ADDRESS: Send comments in triplicate to Johanthan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments should refer to File No. S7-5-89. All comments will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Brian P. Kindelan, Special Counsel, (202) 272-2048, or Christopher Sprague, Staff Attorney, (202) 272-7779, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is asking for public comment on proposed rule 32a-3 under section 32(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) (the "Act"). The proposed rule would enlarge the time period during which the boards of directors of certain registered management investment companies must select an independent public accountant.

Executive Summary

Section 32(a)(1) of the Act (15 U.S.C. 80a-31(a)(1)) requires the independent public accountant ("accountant") who issues a report as to financial statements to be filed with the Commission by a registered management investment company ("company") to be selected at a board of directors' meeting held within 30 days before or after the beginning of the company's fiscal year (the "60 day window") or before the annual meeting of stockholders in that year.[1] The 60 day window is less pertinent to a company that, consistent with prevailing industry practice, holds its annual shareholders' meeting several months after the beginning of its fiscal year, because the board of such a company may select the accountant at any time up to the date of the annual shareholders' meeting. However, where an investment company is not required by state law to hold annual meetings of shareholders and does not in fact hold such meetings, it must comply with the 60 day window. Presently, corporate statutes in several states permit investment companies to forego annual meetings of shareholders. In addition, investment companies organized as business trusts are typically not required to hold annual shareholders' meetings.

In series of applications for exemption from section 32(a)(1), some open-end management investment companies ("mutual funds") organized in states not requiring annual meetings of shareholders have argued that the 60 day window is impractical for mutual funds within a family of investment companies ("family") whose members have staggered fiscal year ends. These mutual funds have sought permission to select their accountants instead during a period running from 90 days before to 90 days after the beginning of their fiscal years (a "180 day window"). The Commission has granted the exemptions, based primarily on the applicants' representations that this relief would allow such mutual funds to avoid duplicative board meetings called to select the accountant. Proposed rule 32a-3 would codify these exemptions for companies within a family whose members have staggered fiscal year ends.

Other applicants have requested and received exemptive orders on the ground that a 120 day window (*i.e.*, a period commencing 30 days before and ending 90 days after the beginning of the company's fiscal year) would allow the board of directors to review the accountant's audit of the previous year's operations, and thereby make a better informed decision as to whether to retain that accountant. As discussed more fully below, auditing and preparing financial reports for a company is more complex and time-consuming today than in 1940, when a 60 day window appeared sufficient. Accordingly, proposed rule 32a-3 would codify these exemptions to give companies not qualifying for the 180 day window an additional 60 days to select their accountants. As is the case with companies that would have a 180 day window available, those companies that would have a 120 day window available to them must be organized in a state that does not require annual shareholders' meetings (and must not, in fact, hold such a meeting in the fiscal year in which the exemption is relied on). Since the 60 day window has little import for companies that hold annual meetings of shareholders, the proposal would not extend to such companies.

Proposed rule 32a-3 would be prospective in effect and is intended to set forth for all open-end and closed-end management investment companies the Commission's standards for exemption from the statutory 60 day window for accountant selection. If adopted, rule 32a-3 would supersede all prior Commission orders that exempted such companies from the 60 day window. Receipients of such prior orders should, therefore, avail themselves of the

[1] This requirement also applies to registered face-amount certificate companies. However, because no such company has sought relief from the 60 day window, registered face-amount certificate companies are not within the scope of the proposed rule.

comment process on proposed rule 32a-3, if they so desire.

The Commission believes that the proposed rule would benefit management investment companies by removing the need to file applications for exemption from section 32(a)(1). At the same time, the proposed rule would not contravene the legislative intent of that section of harm shareholders.

Background

Section 32(a)(1) of the Act states that it shall be unlawful for any registered management company or registered face-amount certificate company to file with the Commission any financial statement signed or certified by an independent public accountant, unless such accountant shall have been selected at a meeting held within thirty days before or after the beginning of the fiscal year or before the annual meeting of stockholders in that year by the vote, cast in person, of a majority of those members of the board of directors who are not "interested persons" of such registered company.[2] At issue in proposed rule 32a-3 is the requirement in section 32(a)(1) that an investment company's board of directors select the accountant "at a meeting held within thirty days before or after the beginning of the fiscal year or before the annual meeting of stockholders in that year * * *."

The accountant selection requirement was part of the Act as originally enacted.[3] However, the original legislative history of the Act has no discussion of why Congress chose a 60-day window.[4] The discussion of section 32(a) focuses only on the rationale for the shareholder ratification requirement of section 32(a)(2) (15 U.S.C. 80a-31(a)(2)).[5] Section 32(a)(2) requires that where an investment company holds annual meetings, the board's selection of an accountant must be ratified at the next such meeting following selection.

Today, a large number of investment companies are organized as Maryland corporations or Massachusetts business trusts,[6] and, as such, are not required to convene an annual meeting of shareholders.[7] Unless such a company decided to hold an annual shareholders' meeting as a means of obtaining certain approvals required by the Act[8] or for some other reason, section 32(a)(1) would require its board of directors to select the accountant within the 60-day window. This requirement may be impractical for mutual fund families, which typically employ staggered fiscal year ends for funds within the family to facilitate the economic utilization of resources for the accounting personnel of both the investment manager and the accountant.[9] Overlapping boards of directors also are used by many mutual fund families to reduce the costs associated with board meetings.[10] One apparent effect of the 60-day window on mutual funds with these characteristics is that their boards of directors are required to hold more frequent meetings, sometimes for the sole purpose of selecting the accountant.[11] The fact that directors must cast their votes "in person" at these meetings adds to the expense of time and money.[12]

In both no-action letters and exemptive orders, companies have received relief from the 60 day window of section 32(a)(1). The Division of Investment Management ("Division") has taken no-action positions in several cases where special circumstances made compliance with section 32(a)(1) impractical.[13] Commencing in 1987,[14] there began a series of exemptive orders allowing mutual funds within families whose members had staggered fiscal year ends to select their accountants as much as 90 days before or after the beginning of the fiscal year.[15] These

[2] The term "interested person" is defined in section 2(a)(19) of the Act (15 U.S.C. 80a-2(a)(19)).

[3] Investment Company Act of 1940, Pub. L. No. 76-768, section 32(a)(1), 54 Stat. 789, 838 (1940).

[4] There is also no discussion of the rationale for the 60-day window in the legislative history to the 1970 amendments to the Act. The Investment Company Amendments Act of 1970 amended section 32 to its present form. Pub. L. No. 91-547, 84 Stat. 1413, 1427-28 (1970). The 1970 amendments were generally designed to substitute a new defined term—"interested person"—for the term "affiliated person", and to require that directors vote in person. Investment Company Amendments Act of 1970: Report of the Committee on Interstate and Foreign Commerce, H.R. Rep. No. 1382, 91st Cong., 2d Sess. at 36 (1970).

[5] In their testimony before a Senate subcommittee, both Commissioner Healy and David Schenker (counsel to the Commission's Investment Trust Study) pointed out that the approval mechanism set out in section 32(a) was intended to emphasize that the accountant acts for the security holders rather than for management. Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcomm. of the Senate Comm. on Banking and Currency, 76th Cong., 3d Sess. 305, 1119 (1940). *See also id.* at 920 (at which William Werntz, Chief Accountant of the Commission, testified that the shareholder approval mechanism "will give the auditor a greater sense of direct responsibility to the stockholders * * *.").

[6] Of the 2,511 funds that were the basis for an unpublished survey conducted in the fall of 1988 by Lipper Analytical Securities Corporation, 1,309 were organized in Massachusetts (the vast majority as business trusts) and 734 were organized in Maryland. Looking to other states that also have no annual shareholders' meeting requirement, 90 funds were organized in Minnesota and 33 were organized in California.

[7] *See* Gould and Lins, *Unit Investment Trusts*, 43 Bus. Law. 1177, 1179 (Aug. 1988); Md. Corps. & Ass'ns Code § 2-501 (Michie Supp. 1985). Of course, some companies in existence in 1940 also were allowed under state law to forego annual shareholders' meetings. Thus, the impetus for the proposed rule has more to do with the increased number and size of fund families and the added difficulty of accounting tasks today, as discussed at notes 16 and 23 *infra*, respectively.

[8] *See infra* note 26 and accompanying text, discussing generally the shareholder approvals required by the Act, which may be obtained at an annual shareholders' meeting.

[9] *See* Letter from Kathy D. Ireland of the Investment Company Institute to Kathryn B. McGrath, Director, Division of Investment Management (June 10, 1988) ("ICI Letter").

[10] ICI Letter.

[11] ICI Letter.

[12] The Division of Investment Management has interpreted the "in person" requirement of section 32(a)(1) of the Act so that meetings by telephone conference call have been held not to satisfy the statutory requirement. *See* Overseas Securities Co. (pub. avail. Mar. 12, 1981). *See also* S. Rep. No. 184, 91st Cong., 1st Sess. 39 (1969) (discussing an earlier version of the section of the Investment Company Amendments Act of 1970 that amended section 32(a) to require that directors be personally present at a meeting held to select the accountant).

[13] In Farm Bureau Growth Fund, Inc., (pub. avail. Feb. 8, 1980) the company's board of directors selected the accountant for the ensuing fiscal year and also made an immediately effective change to its fiscal year. The requisite board approval of the accountant was ultimately obtained for the original and revised fiscal years, although not in compliance with section 32(a)(1). The Division granted a no-action position, noting these "unique circumstances." The Division also took a no-action position in South Bay Corporation, (pub. avail. Apr. 7, 1977) despite the selection of the accountant outside the time period prescribed by section 32(a)(1). That closed-end company requested special treatment because it was in the process of being liquidated. Finally, in League Investment Fund, Inc., (pub. avail. May 10, 1974) all the shares of League Investment Fund, Inc. were owned by ICU Services Corporation. By way of a no-action position, the Division sanctioned the board's selection of the accountant outside the time period prescribed by section 32(a)(1), because written approval of the accountant by the sole shareholder was obtained. *But see* John Nuveen & Co. Inc., (pub. avail. Nov. 18, 1986) in which the Division declined to take a no-action position regarding a mutual fund family's proposal to select the accountant at its regular board meeting rather than within the 60 day window, suggesting that the fund instead seek an exemptive order. In support of its request for a no-action position, the mutual fund family had proffered arguments similar to those made in the series of applications for exemptive orders that ultimately followed (*e.g.*, that given the varying fiscal year ends and overlapping boards of directors for the funds within the family, strict compliance with the 60 day window would entail duplication of effort).

[14] IDS Mutual, Inc., Investment Company Act Rel. Nos. 15812 (June 16, 1987) (52 FR 23504, June 22, 1987) (notice of application) and 15874 (July 16, 1987) (order).

[15] Other exemptive orders that granted a 180 day window include: The Pierpont Money Market Fund, Investment Company Act Rel. Nos. 16575 (Sept. 28, 1988) (53 FR 39010, Oct. 4, 1988) (notice of application) and 16612 (Oct. 26, 1988) (order); PaineWebber America Fund, Investment Company Act Rel. Nos. 16554 (Sept. 8, 1988) (53 FR 35574, Sept. 14, 1988) (notice of application) and 16581 (Oct. 4, 1988) (order); Alex. Brown Cash Reserve Fund, Investment Company Act Rel. Nos. 16524 (Aug. 12, 1988) (53 FR 31795, Aug. 19, 1988) (notice of application) and 16550 (Sept. 7, 1988) (order); Pilgrim Adjustable Rate Fund, Investment Company Act

Continued

applications involved mutual funds organized in states not requiring them to hold annual shareholders' meetings. The applicants noted that fewer board meetings would have to be called if a 180 day window were in effect, thereby reducing expenses ultimately borne by the shareholders. Applicants also asserted that as a general matter, unlike the mutual funds in existence at the time the Act was drafted, the mutual funds of today typically are part of families [16] characterized by staggered fiscal year ends and overlapping boards of directors, for which a 60 day window is inappropriate.

Another recent class of exemptive applicants consists primarily of mutual funds that were not in a family (or were in a family having identical fiscal year ends) and were organized in a state not requiring annual shareholders' meetings. These companies argued that expanding to 90 days the portion of the window occurring after the beginning of the fiscal year would allow their boards of directors to review the accountant's audit of the previous fiscal year's operations, and thereby make a better-informed decision on whether to retain that accountant.[17] This argument is also germane to companies eligible to rely on the 180 day window.

Discussion

Proposed rule 32a-3 would offer an expanded time period in which to select an accountant to any company organized in a state that does not require annual shareholders' meetings, where the company does not in fact hold such a meeting in the fiscal year in which reliance on the rule is sought. A company within a family of investment companies [18] whose members have staggered fiscal year ends would be allowed to select the accountant during the period from 90 days before to 90 days after the beginning of its fiscal year. This 180 day window would help such companies to minimize redundant board of directors' meetings.[19] A company not within a family (or a company within a family whose members have identical fiscal year ends)—a "stand-alone company"— [20] would be allowed to select the accountant during the period from 30 days before to 90 days after the beginning of its fiscal year. This 120 day window would promote an objective shared by all the companies that would be eligible to rely on the proposed rule: The opportunity to review the accountant's audit of the previous fiscal year's financial statements before having to decide whether to retain that accountant. Comment is specifically requested, however, on whether the proposed windows should be expanded or shortened.

Proposed rule 32a-3, if adopted, would be within the Commission's exemptive power under section 6(c) of the Act (15 U.S.C. 80a-6(c)). Section 6(c) provides that the Commission, by rules and regulations upon its own motion, may, among other things, conditionally or unconditionally exempt any person or any class or classes of persons, from any provision of the Act, "if and 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. Mutual fund structure and accounting in the eligible companies display a degree of complexity that would have been exceptional in 1940. As discussed more fully below, the exemption provided by proposed rule 32a-3, if adopted, would be appropriate in the public interest by responding to these developments and allowing eligible companies additional time to review the accountant's work and by minimizing duplicative board of directors' meetings. Of particular importance is the absence of any legislative history, contemporaneous Commission interpretive releases, or other evidence indicating that the 60 day window, rather than some other time period, reflected a particular judgment by Congress. In light of these considerations, and because the regularity with which directors select the accountant would not be reduced significantly, the Commission believes the rule would be consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Despite the absence of legislative history explaining the need for only a 60 day window, the Commission has considered whether expansion of the window to 180 days for companies in a family with staggered fiscal year ends

Rel. 16470 (July 5, 1988) (53 FR 26352, July 12, 1988) (notice of application) and 16505 (July 29, 1988) (order); American Capital California Tax-Exempt Trust, Investment Company Act Rel. Nos. 16398 (May 11, 1988) (53 FR 17526, May 17, 1988) (notice of application) and 16424 (June 6, 1988) (order); The Rodney Square Benchmark U.S. Treasury Fund, Inc., Investment Company Act Rel. Nos. 16381 (Apr. 26, 1988) (53 FR 15942, May 4, 1988) (notice of application) and 16409 (May 23, 1988) (order); AIM Convertible Securities, Inc., Investment Company Act Rel. Nos. 16328 (Mar. 21, 1988) (53 FR 9838, Mar. 25, 1988) (notice of application) and 16369 (Apr. 18, 1988) (order); Command Government Fund, Investment Company Act Rel. Nos. 16270 (Feb. 12, 1988) (53 FR 5069, Feb. 19, 1988) (notice of application) and 16314 (Mar. 14, 1988) (order); Nuveen Tax-Free Bond Fund, Inc., Investment Company Act Rel. Nos. 15869 (July 13, 1987) (52 FR 27099, July 17, 1987) (notice of application) and 15909 (Aug. 6, 1987) (order). *But see* MacKay-Shields Mainstay Series Fund, Investment Company Act Rel. Nos. 16675 (Dec. 2, 1988) (53 FR 49810, Dec. 9, 1988) (notice of application) and 16733 (Dec. 30, 1988) (order), in which a 180 day window was granted to an open-end series investment company and all companies organized in the future without any requirement as to staggered fiscal year ends.

[16] Over the past few decades, an increasing proportion of mutual funds have been created as part of a family. A study of mutual funds submitted to the Congress in 1962 revealed that of the 156 open-end companies surveyed, only 86 companies (or 55%) were part of a multicompany unit. *See* A Study of Mutual Funds, prepared for the Securities and Exchange Commission by the Wharton School of Finance and Commerce, 87th Cong., 2d Sess., Report of the House Committee on Interstate and Foreign Commerce 41-42 (Comm. Print 1962). The study did note, however, that "the number of multifirm groups and members of existing groups would be somewhat enlarged if account were taken of the companies excluded because of small size (and occasionally other reasons)". *Id.* at 42, n.11. In contrast, a 1988 survey revealed that 2,305 of 2,458 mutual funds surveyed (or 94%) were in a complex containing at least two funds. *See* Lipper Directors' Analytical Data, Summary Table by Complex, Lipper Analytical Securities Corporation (Fall 1988).

[17] *See* USAA Mutual Fund, Inc., Investment Company Act Rel. Nos. 16324 (Mar. 18, 1988) (53 FR 9842, Mar. 25, 1988) (notice of application) and 16362 (Apr. 13, 1988) (order); Midwest Income Trust, Investment Company Act Rel. Nos. 16625 (Nov. 7, 1988) (53 FR 45839, Nov. 14, 1988) (notice of application) and 16672 (Dec. 2, 1988) (order) (expanding the window to 90 days after the beginning of each company's fiscal year); MBL Growth Fund, Inc. and MAP Government Fund, Inc., Investment Company Act Rel. Nos. 16649 (Nov. 21, 1988) (53 FR 47896, Nov. 28, 1988) (notice of application) and 16727 (Dec. 30, 1988) (order) (expanding the window to 60 days after the beginning of each fund's fiscal year); Growth Industry Shares, Inc., Investment Company Act Rel. Nos. 16666 (Nov. 30, 1988) (53 FR 49262, Dec. 6, 1988) (notice of application) and 16713 (Dec. 27, 1988) (order) (expanding the window to 90 days after the beginning of each fund's fiscal year). One item of form N-SAR, the semiannual report of registered management investment companies, is based on the audit examination conducted by the accountant. Form N-SAR must be filed with the Commission no later than the sixtieth day after the end of the fiscal period to which the report relates. The audited financial statements for the fiscal year are required to be mailed to shareholders within the same 60 day period. Providing the board 90 days after the beginning of the company's fiscal year to select the accountant would thus allow it to review the accountant's audit examination for the just-ended fiscal year and also the form N-SAR item for which the examination serves as the basis.

[18] Paragraph (b)(1) of the proposed rule defines "family of investment companies" as "any two or more registered management investment companies which share the same investment adviser or principal underwriter and hold themselves out to investors as related companies for purposes of investment and investor services".

[19] The Commission seeks comment on the costs associated with such board of directors' meetings in quantitative terms, and on alternatives other than the proposed rule that would allow such companies to reduce these costs.

[20] Paragraph (b)(2) of the proposed rule defines "stand-alone company" as "any registered management investment company that is not in a family of investment companies, or is in a family, each of whose members has the same fiscal year end."

might cause selection of the accountant to become more perfunctory. Under the proposed rule, it may become common for the accountant for several companies within a family to be selected at a single board of directors's meeting. Arguably, this could result in the individualized accounting needs of each company being overlooked. The Commission believes, however, that the risk of overlooking a particular company's accounting needs is slight, and that, in any event, investment company directors will continue to give thorough consideration to the selection of an appropriate accountant for each company. This belief is supported by the fact that to the Commission's knowledge, no problems of this nature have arisen in the operation of rule 18f-2(e) [17 CFR 270.18f-2(e)] under the Act, which provides that each series of a series investment company is not required to vote separately on the selection of the accountant (because their interests in that regard are consistent).[21]

The Commission also has considered the consequences of expanding to 120 days the current 60 day window for companies that are not in a family whose members have staggered fiscal year ends, but are organized in states not requiring such companies to hold annual shareholders' meetings (and in fact hold no annual meetings). The only apparent risk in that expansion is that should a change of accountants become necessary, it may not be accomplished in as prompt a fashion as might otherwise be the case. The Commission does not believe that this risk is significant, however, and is persuaded by the argument that the accountant's audit of the previous fiscal year's operations is important to the issue of accountant selection, and that such audit is generally incomplete 30 days after the beginning of the fiscal year.[22] Applicants have argued that the auditing and preparation of financial reports for companies may be more complex and time-consuming today than in 1940.[23]

Unlike the applicants that sought a 180 day window,[24] those seeking a 120 day window focused on the need to expand the portion of the window occurring after the beginning of the fiscal year to provide additional time in which to review the accountant's work.[25] Thus, there is no need to expand the portion of the window occurring before the beginning of the fiscal year for such companies, and the proposed rule would not do so.

The Commission has considered whether to allow companies organized in a state requiring annual shareholders' meetings or companies that simply choose to hold annual shareholders' meetings to rely on the propose rule. A company could choose to hold an annual shareholders' meeting to elect its directors even though section 16(a) of the Act (15 U.S.C. 80a-16(a)) requires investment companies to hold an annual or special shareholders' meeting in only two situations: (1) To elect the initial board of directors, and (2) to elect directors to fill existing vacancies on the board in the event that less than a majority of directors were elected by shareholders.[26]

Under section 32(a)(1), the boards of directors of companies holding shareholders' meetings may select the accountant either within 30 days before or after the beginning of the fiscal year, or at any time before the annual shareholders' meeting in that fiscal year. Given the discretion that companies have in when to hold their annual shareholders' meetings, the board's ability under the section to make its accountant selection any time before the shareholders' meeting would generally give a company holding such meetings great flexibility in the time period for selection. For example, a calendar-year company that holds annual shareholders' meetings in June or later in the year would have a time period for accountant selection that equals or exceeds the windows of the proposed rule. Viewed another way, under the section, such a company with a meeting after March 31 (90 days after the beginning of the company's fiscal year) could still make its accountant selection any time before that meeting, while the rule would permit selection to be made only up until March 31.[27] Because there appears to be no public interest to be served by extending the proposed rule to companies that hold annual meetings, the proposal would not be available to them.

The Commission, however, seeks comment on whether there is a substantial need for companies that hold annual shareholders' meetings to use the expanded windows. If there is significant persuasive comment answering this question affirmatively, the Commission may modify the rule to exempt those companies.

Finally, the Commission believes that the proposed rule should apply to both open-end and closed-end management investment companies. Although virtually all of the exemptive orders and no-action letters involved open-end companies, one of the exemptive orders involved closed-end companies.[28]

---

[21] In the release proposing rule 18f-2(e), the Commission stated that "[s]uch a matter [voting on the accountant] is not one in which series would generally have inconsistent interests since their primary concern is obtaining the services of a competent accountant who will give them an accurate picture of the financial condition of their series and company." Investment Company Act Rel. No. 6998 (Feb. 17, 1972) (37 FR 4219, Feb. 29, 1972).

[22] *See supra* note 17.

[23] This increased complexity may be attributable to a variety of innovations appearing since 1940 which must be reviewed by the accountant. In addition, the variety of securities held by investment companies has increased, thereby complicating the task of valuing the portfolio. *See also* application of MBL Growth Fund, Inc. and MAP Government Fund (File No. 812-7170), *supra* note 17, in which the applicants represented that "[g]iven the increased complexities in both the audit and reporting of financial information of the Funds, both in the daily accounting along with the ever changing tax laws, it is not feasible that work can be accomplished and reviewed to everyone's satisfaction and be presented to the Boards of Directors within a thirty day period."

[24] *See supra* note 15.

[25] *See supra* note 17.

[26] *See* John Nuveen & Co., Inc. (pub. avail. Nov. 18, 1986). Other sections of the Act also require approvals, which may be obtained at an annual shareholders' meeting. Section 32(a)(2) requires the directors' selection of the accountant to be submitted for ratification or rejection at the next succeeding annual meeting of stockholders, if such meeting be held. Section 15 (15 U.S.C. 80a-15) requires that the investment advisory contract be approved initially by the vote of a majority of outstanding voting securities of the registered investment company. Section 15 also requires that the contracts governing a company's investment adviser and principal underwriter shall continue in effect for a period more than two years from the date of execution only if specifically approved at least annually by the company's board of directors or by the vote of a majority of the company's outstanding voting securities.

[27] Of course, if a company held its annual shareholders' meeting very early in the fiscal year, it could have a narrower window for accountant selection under section 32(a)(1) than that available under the proposed rule. For example, assume a calendar-year company has its annual meeting on March 1. Under the statute, selection would have to be made by that time. If the proposal was available, however, selection could also be made between March 1 and March 31 (*i.e.*, up to 90 days after the beginning of the fiscal year). In that circumstance, a year or more could pass before ratification of that choice by the shareholders, which need only be at the *next* annual meeting (*i.e.*, accountant selection and shareholder ratification need not occur in the same fiscal year). Under the statute, that type of delay would result only if the shareholders' meeting was held before 30 days after the beginning of the fiscal year.

[28] Cigna Funds Group, Investment Company Act Rel. Nos. 16726 (Dec. 29, 1988) (54 FR 345, Jan. 5, 1989) (notice of application) and 16772 (Jan. 23, 1989) (order) (The closed-end funds included in the order held annual shareholders' meetings to comply with the listing requirements of the New York Stock Exchange. Accordingly, those funds were entitled to relief only in the event that they ceased holding annual shareholders' meetings.) In addition, many of the exemptive orders applied to "future investment companies", and thus were not limited to open-end companies.

Cost/Benefit of Proposed Action

Proposed rule 32a-3 would not impose any significant additional burdens on investment companies. On the contrary, investment companies to which the rule would apply would generally file fewer applications for exemption and would be able to hold fewer board of directors' meetings. The proposed rule also would allow the board of directors of eligible companies to make better-informed decisions concerning the selection of an accountant. The Commission would benefit from the proposed rule because its staff would review fewer applications for exemption in this area. Comments are requested on these matters, however, and on the costs or benefits of any other aspect of the proposed action.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act [5 U.S.C. 605(b)], the Chairman of the Commission has certified that proposed rule 32a-3 will not, if adopted, have a significant impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release.

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule

Part 270 of Chapter II of Title 17 of the Code of Federal Regulations is proposed to be amended as shown.

PART 270—RULE AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The Authority citation for Part 270 is amended by adding the following citation:

Authority: Secs. 38, 40, 54 Stat. 841, 842; 15 U.S.C. 80a-37, 80a-39; The Investment Company Act of 1940, as amended, 15 U.S.C. 80a-1 *et seq.*; unless otherwise noted. * * * § 270.32a-3 is also issued under sec. 6(c) (15 U.S.C. 80a-6(c)).

2. By adding 270.32a-3 to read as follows:

§ 270.32a-3 Exemption from provision of Section 32(a)(1) regarding the time period during which a registered management investment company must select an independent public accountant.

(a) A registered management investment company ("company") organized in a jurisdiction that does not require it to hold annual meetings of its stockholders, and which does not hold an annual stockholders' meeting in a given fiscal year, shall be exempt in that fiscal year from the requirement of section 32(a)(1) of the Act (15 U.S.C. 80a-31(a)(1)) that the independent public accountant ("accountant") be selected at a board of directors' meeting held within 30 days before or after the beginning of the fiscal year or before the annual meeting of stockholders in that year, *provided,* that such company is either:

(1) In a family of investment companies as defined in paragraph (b)(1), where not all the member companies of such family have an identical fiscal year end and where such company selects an accountant at a board of directors' meeting held within 90 days before or after the beginning of its fiscal year; or

(2) A stand-alone company as defined in paragraph (b)(2) of this section, where such company selects an accountant at a board of directors' meeting held within 30 days before or 90 days after the beginning of its fiscal year.

(b) For purposes of this rule:

(1) "Family of investment companies" means any two or more registered management investment companies which share the same investment adviser or principal underwriter and hold themselves out to investors as related companies for purposes of investment and investor services; and

(2) "Stand-alone company" means any registered management investment company that is not in a family of investment companies, or is in a family, each of whose members has the same fiscal year end.

By the Commission.

Jonathan G. Katz,

Secretary.

March 1, 1989.

Regulatory Flexibility Act Certification

I, David S. Ruder, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that proposed rule 32a-3 under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*), concerning the selection of independent public accountants by certain registered management investment companies, will not, if promulgated, have a significant impact on a substantial number of small entities. The proposed rule in certain cases would allow an investment company that is a small entity to avoid the expense of one additional board of directors meeting each year. The resulting expense saving, however, would not be a significant proportion of the investment company's expenses.

David S. Ruder,

Chairman.

Dated: March 1, 1989.

[FR Doc. 89-5294 Filed 3-7-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 761

Areas Unsuitable for Mining; Areas Designated by Act of Congress; Reopening of Public Comment Period on Proposed Rule and Draft Environmental Impact Statement Supplement

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of reopening of public comment period.

SUMMARY: The Office of Surface Mining Reclamation and Enforcment (OSMRE) of the Department of the Interior is reopening the comment period on a proposed rule and the accompanying draft environmental impact statement (EIS) supplement. The proposed rule would amend those portions of OSMRE's permanent program regulations that address (1) the circumstances which constitute valid existing rights to mine in areas where Congress has otherwise prohibited mining and (2) the applicablility of the mining prohibitions to subsidence resulting from underground mining. This action will afford additional time for public comment on the proposed rule and on the draft EIS supplement.

DATES: The comment period is extended until 3:30 p.m. Eastern time April 24, 1989. Comments received after the close of the comment period may be considered in preparation of the final rule or the final EIS supplement.

ADDRESSES: *Written comments on the proposed rule*: Hand deliver to the office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131, 1100 L Street NW., Washington, DC; or mail of OSMRE, Administrative Record, Room 5131L, 1951 Constitution Avenue NW., Washington, DC 20240.

Written comments on the draft EIS supplement: Hand deliver to the office of Surface Mining Reclamation and Enforcement, Room 5121, 1100 L Street, NW., Washington, DC; or mail to Catherine Roy, OSMRE, Room 5121L,

1951 Constitution Avenue NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: For information concerning the proposed rule: Patrick W. Boyd, (202 or FTS) 343-1864; for information concerning the draft EIS supplement: Catherine Roy, (202 or FTS) 343-5143.

SUPPLEMENTARY INFORMATION: On December 27, 1988, OSMRE published in the **Federal Register** a proposed rule that would amend those portions of its permanent program regulations at 30 CFR Part 761 which address the circumstances which constitute valid existing rights (VER) to mine in areas where Congress has otherwise prohibited mining under section 522(e) of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (the Act). At the same time, OSMRE also issued for comment a proposal on the applicability of the prohibitions in section 522(e) of the Act to subsidence resulting from underground mining. The proposal stated that comments would be accepted until 5:00 p.m. local time on March 7, 1989 (53 FR 52374). Interested persons should also refer to the Departmental policy statement to prevent coal mining in the national parks and similarly protected areas, which was also published on December 27, 1988.

On January 11, 1989, OSMRE published in the **Federal Register** a notice of the availability of and a request for comments on a draft EIS supplement addressing the proposed revisions to the permanent program rules. The notice stated that comments would be accepted until 3:30 p.m. local time on March 3, 1989. (54 FR 989)

The Secretary of the Interior is very concerned about the complex and difficult problem of valid existing rights to mine in areas otherwise protected from mining by the Act. Therefore, he has decided to Reopen the comment period on the proposed rule and on the draft EIS supplement for a additional 45 days of ensure that everyone has an adequate opportunity to comment. He hopes that interested parties will take this opportunity to suggest additional options that they believe may solve this problem. If other viable options are suggested, the Secretary may decide to repropose the rule and solicit additional comments on those suggestions. Also, the Secretary wants the final EIS to be the best possible technical product. He hopes everyone with relevant information will submit it to OSMRE to assist us in developing an EIS that addresses the public's concerns.

Dated: March 1, 1989.

Robert H. Gentile,

Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 89-5258 Filed 3-7-89; 8:45 am]

BILLING CODE 4310-05-M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM89-3]

Rules of Practice and Procedure Relating to Documentation of Statistical and Volume Evidence

March 1, 1989.

AGENCY: Postal Rate Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes to amend Rule 31(k)(2) of its rules of practice to require improved documentation of econometric and other statistical studies offered in evidence, to amend Rule 54(j) of its rules of practice to require improved documentation of volume estimates offered in evidence by the Postal Service, and to amend Rule 102(b) to require the Postal Service to report on a current basis revisions to certain data relating to volumes.

DATES: Comments must be received on or before April 24, 1989.

ADDRESS: Comments and correspondence relating to this Notice should be sent to Charles L. Clapp, Secretary of the Commission, Suite 300, 1333 H Street, NW., Washington, DC 20268. (Telephone: 202/789-6840).

FOR FURTHER INFORMATION CONTACT: David F. Stover, General Counsel, Postal Rate Commission, Suite 300, 1333 H Street, NW., Washington DC 20268: (202) 789-6820.

SUPPLEMENTARY INFORMATION: We propose to amend rule 31(k)(2) of our rules of practice (39 CFR 3001.31(k)(2)), which governs the statistical presentations of all parties to our proceedings; rule 54(j) of our rules of practice (39 CFR 3001.54(j)), which governs the Postal Service's presentation of projected volumes in our proceedings; and Rule 102(b) of our rules of practice (39 CFR 3001.102(b)), which governs periodic data reporting requirements to the Commission. Our proposed amendments set forth initial documentation standards for these categories of evidence that are clearer and more specific than those contained in the current rules. Our purpose in doing so is to expedite discovery and cross-examination of such evidence and facilitate its analysis in the limited time available in our rate hearings.

Amendments to Rule 31(k)(2)

The Commission's rules of practice setting documentation standards for statistical evidence were drafted in the early 1970s. If adequate then, they have proven to be too vague and general to meet the current needs of the Commission and the parties in this area. Certain statistical evidence submitted in recent proceedings has become too complex and sophisticated to be effectively understood and tested in the limited time available in our proceedings, given the current level of initial documentation required by our rules. If the Commission is to conduct adequate discovery and cross-examination of such evidence in the time allotted by statute, clear and thorough documentation must accompany it at the time it is filed.

The improved documentation that we propose to require for statistical evidence focuses on econometric evidence. The econometric evidence submitted in our proceedings, especially that underlying the Postal Service's volume forecasts, has become the most difficult form of statistical evidence to evaluate within the hearing time allotted. This is due to its highly technical nature, its ever increasing quantity, and its documentation, which, at times, has been inadequate. Therefore, econometrics is the statistical area where improved documentation standards are needed most.

The standard econometric approach involves several steps. It begins with a model that summarizes theories about economic relationships in a form convenient for measurement and empirical testing. It specifies the characteristics of the model, develops and refines relevant data, and then applies appropriate econometric techniques to the refined data to estimate model parameters.[1]

Our proposed documentation standards reflect these steps, as they are employed in the standard econometric approach, by requiring explicit documentation of each step. They are also drafted to strengthen specific weaknesses in documentation of econometric models, particularly volume forecasting models, that have hindered our evaluation of such models in recent rate proceedings.

A significant weakness of our current rules that has been made apparent by past rate hearings is the vagueness of current rule 31(k)(2)(ii) governing econometric investigations. With respect

[1] See, *e.g.*, M. Intriligator, *Econometric Models, Techniques, & Applications*, chapter 1 (1978).

to the Postal Service's volume forecasts, for example, the principal obstacle to effective review by the Commission has been the inadequate support offered for the numerous subjective judgments that the Postal Service has employed in developing the econometric models upon which its forecast is based. In the past the Commission often has been put in the position of having to "take or leave" the Postal Service's volume forecast, and some unsupported judgments that underlie it, because there has been no viable alternative to the Postal Service's econometric demand models.

Examples of the technical choices that the Postal Service has sometimes made on the basis of subjective judgment in building its demand models including selecting variables, selecting equation forms, assembling data sets, selecting techniques for estimating parameters, and assigning values to parameters that are not estimated. The reasonableness of these judgmental choices could not be effectively evaluated in past hearings for two reasons: (1) Alternatives that the Postal Service considered and rejected were not preserved, presented and explained and, (2) there was little inquiry into the Postal Service's failure to consider plausible alternatives, because a procedure for such inquiry was not readily available.

In addition, statistical measures needed to evaluate the reliability of the model's results such as coefficient estimates, standard errors and t-values, goodness of fit and other test statistics, variance/covariance matrices of estimates, computed residuals, etc., have not always been made available in past proceedings, even where they have been repeatedly requested. Ideally, the Commission should have all relevant measures of reliability available to it not only for the Postal Service's model but for likely model variations against which the reasonableness of the Postal Service's version could be judged. The same applies to the econometric models submitted by other parties.

It is because the parties have preserved little of the "choice trail" followed in their econometric investigations, and because there has been no practical procedure for testing the result of their investigations with independently selected choices, that the Commission has been placed in the position of having to "take or leave" their models on the strength of subjective assertions of their reasonableness.

To remedy this situation, we propose to amend current rule 31(k)(2)(ii) (which we propose to renumber as 31(k)d(2)(iii)) to clearly require that the part of the "choice trail" that is relevant to sustaining judgments about the reasonableness of the model would be retained, and would be provided during discovery if other parties or the Commission request it.

Proposed rule 31(k)(2)(iii)(*d*) would require researchers to retain and produce those portions of their work product that comprise the empirical basis for judgments that were made in the course of their investigations. Witness Tolley's use of Shiller Smoothness Priors in Docket No. R87-1 provides an example of how this proposed requirement would be applied in a rate proceeding. Witness Tolley's procedure for selecting a value for the Shiller Prior is described at USPS-T-2, pp. A11-A12, and again, in his response to DMA interrogatory 6.

There he makes it clear that the submitted product of his investigations consisted only of a single estimated demand equation for each class of postal service for which the selected Shiller Prior just achieved an "admissible" pattern. Yet it is also celar that other estimates corresponding to other values of the Shiller Priors were computed and studied to reach the judgment that the pattern of price responses has been constrained "just enough to achieve an admissible pattern." This illustrates how our current rules fail to clearly require researchers to preserve sufficient work product to support critical technical judgments. Had it been in effect, the proposed rule would have clearly imposed the burden on witness Tolley of preserving and, on request, producing a selection of his alternative estimates that would be sufficient to allow an independent verification of his judgments.

In addition, proposed rule 31(k)(2)(iii)(*j*) would provide that opposing parties or the Commission could specify plausible variations in the model, data set, or estimation methodology, to investigate the reasonableness of judgments made in the course of the econometric investigation. Alternatives that could serve this purpose include adding, transforming, or redefining a variable, altering a parameter whose value had been assigned for the purpose of compiling the sample or computing coefficient estimates, adding or replacing a set of related observations in the sample, or using an alternative standard estimating technique.

The purpose of proposed subsection (*j*) is to provide a means of validating an offered econometric model by observing the impact of such independently specified alternatives on modelled results. The results obtained would be strictly limited to that purpose. We contemplated that the Presiding Officer would approve requests for such validation only where they are made well in advance of cross-examination, where the requesting party has made a convincing showing of the likely value of its request in validating the specific judgment being probed, and where the impact of the specified alternative can be observed by a reasonably simple substitution of input data and execution of an otherwise unmodified data processing program.

With these proposed rules the Commission hopes to avoid being put again in the position of having to adopt a forecasting model whose support rests in important respects on the researcher's unverified judgment.

The other major objective of our proposed amendments to rule 31(k)(2) is to require that documentation of econometic and other statistical studies, including volume forecasting models, be adequate to enable opposing parties or the Commission to replicate them. An ability to replicate statistical studies is necessary if their reasonableness is to be evaluated.

Subsection (*e*) of proposed rule 31(k)(2)(iii) is intended to exclude the use of ad hoc econometric techniques in our proceedings that have not undergone review in the professional literature, or whose application in the context of postal ratemaking has no counterpart in related fields. This proposed subsection is based upon the belief that it is inappropriate for the Commission to assume the role of a technical reviewer of statistical methods.

Subsection (*g*) of proposed rule 31(k)(2)(iii) lists the statistics that the Commission considers necessary to evaluate econometric studies, and requires the sponsoring party to provide them at the outset.

Amendments to Rule 54(j)

Rule 54(j) applies specifically to the Postal Service's volume presentations contained in its formal rate requests. The amendments and additions to rule 54(j) that we propose would improve our ability to apply the Postal Service's volume methodology to scenarios that include our own recommendations concerning rate and other factors that impact on volumes. These proposed rule changes would require the Postal Service to provide: quarterly computations of projected volumes (proposed rule 54(j)(5)); seasonal adjustments of observed and projected volumes; a computer implementation of

the Postal Service's volume- and revenue-forecasting methodology (proposed rule 54(j)(6)); and the input files and programs, in computer-readable form, needed to replicate or verify the econometric demand analysis submitted by the Postal Service (proposed rule 54(j)(7)).

More specifically, our subsections (ii) and (iii) of proposed rule 54(j)(5) would require the Postal Service to provide volume estimates for both prefiled and proposed rates by quarter, from the last reported quarter to one year beyond the end of the test year. The Postal Service's current practice is to compute quarterly volume estimates from the last reported quarter to the end of the test year, but include only aggregated test year volumes in its filing. Subsection (iv) would require the Postal Service to report the observed and estimated quarterly volumes that subsections (ii) and (iii) would require in seasonally adjusted form, at annual rates.

There are substantial benefits to having seasonally adjusted quarterly volume data. It would bring the Postal Service's volume data into conformity with economic data reported throughout the remainder of the Federal government, which is reported on a seasonally adjusted basis. It would bring consistency to the volume data that is used in postal ratemaking, since the adjusted data would come from the same source as other volume data. The primary benefit of adjusted data, of course, would be that the major non-economic source of variation in the volume data would be removed, isolating the economic variations for analysis.

Adjusted volume data provided by quarter would allow participants to make judgments concerning volume trends and the accuracy of volume forecasts without having to wait for a full year of volume data to accumulate. Because our proposed amendments would require quarterly volume projections that extend beyond the test year by four quarters, they would provide a means that is not currently available for checking the reasonableness and consistency of the Postal Service's forecasting method during the course of the rate hearing, as well as for the post test-year life of the new rate structure.

Subsection (v) of proposed rule 54(j)(5) would require the Postal Service to calculate confidence intervals for its volume estimates. While these would not reflect all sources of uncertainty affecting the reliability of its volume forecast, it would indicate the degree of uncertainty that is attributable to statistical factors. Without a confidence interval, the Commission has not been able to determine whether actual revenues have been within the expected error of the applicable revenue forecast that the Postal Service's econometric model had produced.

Proposed rule 54(j)(6) would require the Postal Service to derive its volume projections from an econometric demand analysis that conforms strictly to the one that it must provide to satisfy proposed subsection 54(j)(5)(i). In past rate proceedings there have been some unacknowledged differences between the Postal Service's demand model as presented, and its model as implemented in making the forecasts required by the current rule.

Subsections (iii) and (iv) of proposed rule 54(j)(6) would require the Postal Service to provide a computer implementation of its volume- and revenue-estimating methodology that would allow the Commission to calculate volumes and revenues for alternative postal rates and for alternative non-rate factors that impact upon volumes. Proposed subsection (v) makes it clear that this computer implementation must satisfy the Commission's rules concerning documentation of computer-based evidence.

In past rate proceedings, the Commission has found it necessary to reconstruct the Postal Service's volume and revenue forecasting methodology in order to determine the impact that alternative rates, fees, and other relevant assumptions being considered would have on volumes and revenues. Because examining the impact of alternative rates is a necessary step in our deliberations, it is appropriate that we have the tools necessary to apply the Postal Service's forecasting methodology correctly. Proposed subsections 54(j)(6) (iii) and (iv) are intended to make it clear that a "turn key" computer implementation of the forecasting methodology is required.

Item (*c*) of proposed subsection (iv) contemplates the possibility that projected economic determinants such as those prepared by DRI that are incorporated in the Postal Service's forecast could be rendered obsolete over the course of the hearing by changed economic conditions. Item (*c*) would enable the Commission to substitute a current for an obsolete projection in that circumstance. Where the Postal Service has resorted to unverifiable judgments in selecting parameter values, Item (*d*) of proposed subsection (iv) is intended to allow the Commission to analyze the effect of employing such judgments and to substitute alternative judgments.

Proposed rule 54(j)(7) would be an addition to current rule 54(j). It is intended to make it clear that the Postal Service should include in its initial filing the computer input files and programs needed to generate the estimates that proposed rules 54(j)(5) requires.

Amendments to Rule 102(b)

Proposed paragraph (4) of Rule 102(b) would require the Postal Service to report, on a current basis, any extensions and revisions of explanatory variables used in the econometric demand study required by proposed Rule 54(j)(5)(i). Proposed paragraph (5) of Rule 102(b) would require the reporting of current revisions of the actual quarterly volumes required by proposed rule 54(j)(5)(iv).

Typically the Postal Service's omnibus rate filing includes major extensions and revisions to the data employed in its econometric demand study. Our proposed additions to Rule 102(b) would allow prospective participants in our rate hearings to examine such extensions and revisions prior to an omnibus rate hearing. This would ease the considerable burden currently imposed upon participants to evaluate these revisions within the narrow span of our omnibus rate proceedings.

Impact of proposed changes. Pursuant to Executive Order 12291, the Commission finds that these proposed rule changes do not, individually or collectively, constitute a "major rule." They affect only rules of practice governing hearing procedures. Their economic impact will be negligible, including their impact on the costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions. Additionally, these rule changes will have no measurable effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The above analysis that these rule changes do not constitute a major rule applies, as well, to the Regulatory Flexibility Act.

These proposed rule changes do not contain policies with Federalism implications, and therefore do not warrant preparation of a Federalism assessment under E.O. 12612.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedures, Postal Service.

Proposed Rules

For the reasons set forth above, the Commission proposes to amend its rules of practice and procedure as follows:

PART 3001—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for 39 CFR Part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b), 3603, 3622–3624, 3661, 3662, 84 Stat. 759–762, 764, 90 Stat. 1303; (5 U.S.C. 553), 80 Stat. 383.

2. Sections 3001.31(k)(2) introductory text, and (k)(2)(ii)–(iv) and 3001.54(j) (5)–(7) are revised and 3001.102(b) (4) and (5) are added to read as follows:

§ 3001.31 Evidence.

* * * * *

(k) * * *

(2) *Statistical studies.* All statistical studies offered in evidence in hearing proceedings or relied upon as support for other evidence shall include a comprehensive description of the assumptions made, the study plan utilized and the procedures undertaken. Where a computer analysis is employed to obtain the result of a statistical study or might reasonably be employed to replicate the study result, all of the submissions required by § 3001.31(k)(3) shall be furnished, upon request. For example, for each of the following types of statistical studies, the indicated information should be furnished:

* * * * *

(ii) *Experimental analyses. (a)* A complete description of the experimental design, including a specification of the controlled conditions and how the controls were realized;

(b) A complete description of the methods of making observations and the adjustments, if any, to observed data.

(iii) *Econometric Studies. (a)* A presentation of the economic theory underlying the study;

(b) A complete description of the econometric model(s) and the reasons for each major assumption and specification;

(c) The definition of the variables selected and the justification for their selection;

(d) A summary description of any alternative models employing different assumptions or specifications that have been tested and rejected;

(e) A reference to a detailed description in a text or manual for every econometric technique utilized in the estimation process and the reasons for selecting the technique;

(f) Summary descriptions and source citations for all input data. Complete descriptions of any alternations made to the data as received from the original sources and the reasons for making the alterations;

(g) A complete report of the econometric results including, where applicable:

(1) Coefficient estimates,

(2) Standard errors and t-values,

(3) Goodness-of-fit statistics,

(4) Other appropriate test statistics,

(5) The variance/covariance matrix of the estimates,

(6) Computed residuals;

(h) Descriptions of all statistical tests of hypotheses and the results of such tests;

(i) Upon request, the computed econometric results with any alternative models as described in paragraph (k)(2)(iii)(*d*) of this section;

(j) Upon request, the computed econometric results that would be obtained if the econometric model, the sample used to fit the model, on the estimation procedure employed by the model, were altered as specified by a participant or the Commission, where such results can be computed without undue burden and may be expected to confirm or refute judgments made in the course of the econometric investigation.

(iv) *All other studies involving statistical methodology. (a)* The formula used for statistical estimates;

(b) The standard errors of each component estimated;

(c) Test statistics and the description of statistical tests and all related computations, and final results; and

(d) Summary descriptions of input data, and upon request the actual input data shall be made available at the offices of the Commission.

§ 3001.54 Contents of formal requests.

* * * * *

(j) * * *

(5) Subject to paragraph (a)(2) of this section, there shall be furnished in every formal request, for each class and subclass of mail and postal service, the following:

(i) An econometric demand study relating postal volumes to their economic and noneconomic determinants including postal rates, discounts and fees, personal income, business conditions, competitive and complementary postal services, competitive and complementary nonpostal activities, population, trend, seasonal patterns and other factors.

(ii) The actual or estimated volume of mail at the prefiled rates for each postal quarter beginning with the first quarter of the most recent complete fiscal year and ending one year beyond the last quarter of the future fiscal year.

(iii) The estimated volume of mail assuming the effectiveness of the suggested rates for each postal quarter beginning with the quarter in which the rates are assumed to become effective and ending one year beyond the last quarter of the future fiscal year.

(iv) Seasonally adjusted quarterly totals at annual rates for all actual and estimated quarterly volumes referred to in paragraphs (j)(5) (ii) and (iii) of this section.

(v) Confidence intervals or other suitable measures of statistical reliability for all estimated volumes referred to in paragraphs (j)(5) (ii) and (iii) of this section.

(6) The estimated volumes and revenues referred to in paragraphs (j) (2), (3) and (5) of this section shall be derived from the econometric demand study referred to in paragraph (j)(5)(i) of this section. The assumptions and specifications used to estimate volumes and revenues shall conform exactly to the assumptions and specifications used in the econometric demand study.

(i) Subject to paragraph (a)(2) of this section, there shall be furnished in every formal request a detailed explanation of the methodology employed to forecast volumes for each class and subclass of mail and postal service.

(ii) Subject to paragraph (a)(2) of this section, there shall be furnished in every formal request a detailed explanation of the methodology employed to forecast changes in revenues for each class and subclass of mail and postal service resulting from changes in rates and fees.

(iii) Subject to paragraph (a)(2) of this section, there shall be furnished in every formal request a computer implementation of the methodology employed to forecast volumes and revenues for each class and subclass of mail and postal service.

(iv) The computer implementation described in paragraph (j)(6)(iii) of this section shall be able to compute forecasts of volumes and revenues compatible with those referred to in paragraphs (j) (2), (3) and (5) of this section for:

(*a*) Any set of rates and fees within a reasonable range of the prefiled and suggested rates,

(*b*) any date of implementation within the range spanned by the assumed date and the start of the future fiscal year,

(*c*) alternative forecasts of the economic determinants of postal volumes other than postal rates and fees, and

(*d*) alternative values of any parameters with assigned values that are based upon unverifiable judgments.

(v) The computer implementation described in paragraph (j)(6)(iii) of this

section shall comply with § 3001.31(k)(3).

(7) Subject to paragraph (a)(2) of this section, there shall be made available at the offices of the Commission with every formal request, in a form that can be read directly by a standard digital computer, the following:

(i) All of the input files and programs needed to replicate the econometric demand study referred to in paragraph (j)(5)(i) of this section;

(ii) Any input files prepared in the process of testing alternative models for the econometric demand study referred to in paragraph (j)(5)(i) of this section;

(iii) Any input files and programs employed to derive a price index for any class or subclass of mail or postal service from postal rates, discounts and fees;

(iv) Any input files and programs employed to seasonally adjust quarterly postal volumes or to convert quarterly totals to their equivalent annual rates;

(v) Any input files and programs used to prepare data for use in the econometric demand study referred to in paragraphs (j)(5)(i) of this section.

§ 3001.102 Filing of reports.

* * * * *

(b) * * *

(4) Current extensions and revisions in the values of all explanatory variables used in the econometric demand studies submitted by the Postal Service in compliance with § 3001.54(j)(5)(i) for the most recent formal request for a change in rates or fees.

(5) Current extensions and revisions of the unadjusted and seasonally adjusted actual quarterly volumes submitted by the Postal Service in compliance with § 3001.54(j)(5)(iv) for the most recent formal request for a change in rates or fees.

By the Commission.

Charles L. Clapp,

Secretary.

[FR Doc. 89-5283 Filed 3-7-89; 8:45 am]

BILLING CODE 7715-01-M

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

Special Rules Applicable to Surface Coal Mining Hearings and Appeals

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Proposed rule.

SUMMARY: In order to achieve uniformity of procedures and to provide for expedited administrative review of all permit-related decisions, the Office of Hearings and Appeals proposes to amend the procedural rules for review of the Office of Surface Mining Reclamation and Enforcement (OSMRE) decisions on applications for new permits, permit revisions, permit renewals, the transfer, assignment, or sale of rights granted under permit, and coal exploration permits. In addition, the method of notifying an appplicant, operator, or permittee of OSMRE's written decision would be changed from publication in a local newspaper to certified mail.

DATES: Comments are due on or before April 7, 1989.

ADDRESS: Comments may be mailed or delivered in person to: Director, Office of Hearings and Appeals, U.S. Department of the Interior, Room 1111, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Phone 703-235-3750.

SUPPLEMENTARY INFORMATION: In October 1987 the Office of Hearings and Appeals (OHA) adopted rules providing procedures for administrative review of decisions of the Office of Surface Mining Reclamation and Enforcement (OSMRE) concerning (1) applications for new permits (43 CFR 4.1360-4.1369), (2) applications for permit revisions, permit renewals, the transfer, assignment, or sale of rights granted under permit, and permit revisions ordered by OSMRE (43 CFR 4.1370-4.1379), and (3) applications for coal exploration permits (43 CFR 4.1380-4.1388). 52 FR 39521-39531 (Oct. 22, 1987). OHA proposes to remove the rules in 43 CFR 4.1370-4.1379 and 4.1380-4.1388 and to revise the rules in 43 CFR 4.1360-4.1369 so they will include review of decisions presently provided for by 43 CFR 4.1370-4.1379 and 4.1380-4.1388.

In addition § 4.1351 would be amended by adding a sentence providing that notice of OSMRE's preliminary finding shall be provided by certified mail or by overnight delivery service, if the applicant or operator has agreed to bear the expense for this service, and § 4.1391(b) would be revised by providing for notice of OSMRE's written determination by certified mail or by overnight delivery service, if the applicant or permittee has agreed to bear the cost for this service, rather than by publication in a local newspaper.

Determination of Effects

Because these rules only set forth the details of procedures for conducting hearings and appeals of decisions of OSMRE under the Surface Mining Control and Reclamation Act of 1977, the Department has determined that they are not major, as defined by Executive Order 12291, and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*].

National Environmental Policy Act

The Department has determined that these rules will not significantly affect the quality of the human environment on the basis of the categorical exclusion of regulations of a procedural nature set forth in 516 DM 2, Appendix 1, section 1.10.

Paperwork Reduction Act

These rules contain no information collection requirements requiring Office of Management and Budget approval under 44 U.S.C. 3501 *et seq.*

The author of these regulations is Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, Office of Hearings and Appeals.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure, Mines, Public Lands, Surface mining.

For the reasons set forth in the preamble, Subpart L of Part 4 of Title 43 of the Code of Federal Regulations is proposed to be amended as set forth below.

Dated: March 3, 1989.

James L. Byrnes,

Director.

43 CFR Part 4 is amended as follows:

PART 4—[AMENDED]

1. The authority citation for Part 4, Subpart L, continues to read as follows:

Authority: 30 U.S.C. 1256, 1260, 1261, 1264, 1268, 1271, 1272, 1275, 1293; 5 U.S.C. 301.

2. Section 4.1351 is revised to read as follows:

§ 4.1351 Preliminary finding by OSMRE.

If OSMRE determines during review of the permit application that the applicant or operator specified in the application controls or has controlled mining operations with a demonstrated pattern of willful violations of such nature and duration with such resulting irreparable damage to the environment

as to indicate an intent not to comply, OSMRE shall issue the applicant or operator a notice of such preliminary finding. Notice by OSMRE shall be provided by certified mail, or by overnight delivery service if the applicant or operator has agreed to bear the expense for this service. The notice shall state with specificity the violations upon which the preliminary finding is based.

3. Sections 4.1360–4.1369 and the table of contents for those sections are revised to read as follows:

Sec.
4.1360 Scope.
4.1361 Who may file.
4.1362 Where to file; when to file.
4.1363 Contents of request; amendment of request; responses.
4.1364 Time for hearing; notice of heraing; extension of time for hearing.
4.1365 Status of decision pending administrative review.
4.1366 Burdens of proof.
4.1367 Requests for temporary relief.
4.1368 Determination by the administrative law judge.
4.1369 Petition for discretionary review; judicial review.

Request for Review of Approval or Disapproval of Applications for New Permits, Permit Revisions, Permit Renewals, the Transfer, Assignment or Sale of Rights Granted Under Permit (Federal Program; Federal Lands Program; Federal Program for Indian Lands) and for Coal Exploration Permits (Federal Program)

§ 4.1360 Scope.

These rules set forth the procedures for review of decisions by OSMRE concerning—

(a) Applications for new permits, including applications under 30 CFR Part 785, and the terms and conditions imposed or not imposed in permits by those decisions. They do not apply to decisions on applications to mine on Federal lands in States where the terms of a cooperative agreement provide for the applicability of alternative administrative procedures (see 30 CFR 775.11(c)), but they do apply to OSMRE decisions on applications for Federal lands in states with cooperative agreements where OSMRE as well as the state issue Federal lands permits;

(b) Applications for permit revisions, permit renewals, and the transfer, assignment, or sale of rights granted under permit;

(c) Permit revisions ordered by OSMRE; and

(d) Applications for coal exploration permits.

§ 4.1361 Who may file.

The applicant, permittee, or any person having an interest which is or may be adversely affected by a decision of OSMRE set forth in § 4.1360 may file a request for review of that decision.

§ 4.1362 Where to file; when to file.

(a) The request for review shall be filed with the Hearings Division. Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203 (phone 703–235–3800), within 30 days after the applicant or permittee is notifed by OSMRE of the written decision by certified mail or by overnight delivery service if the applicant or permittee has agreed to bear the expense for this service.

(b) Failure to file a request for review within the time specified in paragraph (a) of this section shall constitute a waiver of a hearing and the request shall be dismissed.

§ 4.1363 Contents of request; amendment of request; responses.

(a) The request for review shall include—

(1) A clear statement of the facts entitling the one requesting review to administrative relief;

(2) An explanation of each specific alleged error in OSMRE's decision, including reference to the statutory and regulatory provisions allegedly violated;

(3) A request for specific relief;

(4) A statement whether the person requests or waives the opportunity for an evidentiary hearing; and

(5) Any other relevant information.

(b) All interested parties shall file an answer or motion in response to a request for review, or a statement that no answer or motion will be filed, within 15 days of receipt of the request specifically admitting or denying facts or alleged errors stated in the request and setting forth any other matters to be considered on review.

(c) A request for review may be amended once as a matter of right prior to filing of an answer or motion or statement filed in accordance with paragraph (b) of this section. Thereafter, a motion for leave to amend the request shall be filed with the administrative law judge. An administrative law judge may not grant a motion for leave to amend unless all parties agree to an extension of the date of commencement of the hearing under § 4.1364. A request for review may not be amended after a hearing commences.

(d) An interested party shall have 10 days from filing of a request for review that is amended as a matter of right or the time remaining for response to the original request, whichever is longer, to file an answer, motion, or statement in accordance with paragraph (b) of this section. If the administrative law judge grants a motion to amend a request for review, the time for an interested party to file an answer, motion, or statement shall be set forth in the order granting it.

(e) Failure of any party to comply with the requirements of paragraphs (a) or (b) of this section may be regarded by an administrative law judge as a waiver by that party of the right to commencement of a hearing within 30 days of the filing of a request for review if the administrative law judge concludes that the failure was substantial and that another party was prejudiced as a result.

§ 4.1364 Time for hearing; notice of hearing; extension of time for hearing.

Unless all parties agree in writing to an extension or waiver, the administrative law judge shall commence a hearing within 30 days of the date of the filing of the request for review or amended request for review and shall simultaneously notify the applicant or permittee and all interested parties of the time and place of such hearing before the hearing commences. The hearing shall be of record and governed by 5 U.S.C. 554. An agreement to waive the time limit for comencement of a hearing may specify the length of the extension agreed to.

§ 4.1365 Status of decision pending administrative review.

The filing of a request for review shall not stay the effectiveness of the OSMRE decision pending completion of administrative review.

§ 4.1366 Burdens of proof.

(a) In a proceeding to review a decision on an application for a new permit—

(1) If the permit applicant is seeking review, OSMRE shall have the burden of going forward to establish a prima facie case as to failure to comply with the applicable requirements of the Act or the regulations or as to the appropriateness of the permit terms and conditions, and the permit applicant shall have the ultimate burden of persuasion as to entitlement to the permit or as to the inappropriateness of the permit terms and conditions.

(2) If any other person is seeking review, that person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the permit application fails in some manner to comply with the applicable requirements of th Act or the

regulations, or that OSMRE should have imposed certain terms and conditions that were not imposed.

(b) In a proceeding to review a permit revision ordered by OSMRE, OSMRE shall have the burden of going forward to establish a prima facie case that the permit should be revised and the permittee shall have the ultimate burden of persuasion.

(c) In a proceeding to review the approval or disapproval of an application for a permit renewal, those parties opposing renewal shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the renewal application should be disapproved.

(d) In a proceeding to review the approval or disapproval of an application for a permit revision or an application for the transfer, assignment, or sale of rights granted under a permit—

(1) If the applicant is seeking review, OSMRE shall have the burden of going forward to establish a prima facie case as to failure to comply with applicable requirements of the Act or the regulations, and the application requesting review shall have the ultimate burden of persuasion as to entitlement to approval of the application; and

(2) If any other person is seeking review, that person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the application fails in some manner to comply with the applicable requirements of the Act and the regulations.

(e) In a proceeding to review a decision on an application for a coal exploration permit—

(1) If the coal exploration permit applicant is seeking review, OSMRE shall have the burden of going forward to establish a prima facie case as to failure to comply with the applicable requirements of the Act or the regulations, and the permit applicant shall have the ultimate burden of persuasion as to entitlement to the approval.

(2) If any other person is seeking review, that person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the application fails in some manner to comply with the applicable requirements of the Act or the regulations.

§ 4.1367 Request for temporary relief.

(a) Where review is requested pursuant to § 4.1362, any party may file a request for temporary relief at any time prior to a decision by an administrative law judge, so long as the relief sought is not the issuance of a permit where a permit application has been disapproved in whole or in part.

(b) The request shall be filed with the administrative law judge to whom the case has been assigned. If no assignment has been made, the application shall be filed in the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203 (phone 703–235–3800).

(c) The application shall include—

(1) A detailed written statement setting forth the reasons why relief should be granted;

(2) A statement of the specific relief requested;

(3) A showing that there is a substantial likelihood that the person seeking relief will prevail on the merits of the final determination of the proceeding; and

(4) A showing that the relief sought will not adversely affect the public health or safety or cause significant, imminent environmental harm to land, air, or water resources.

(d) The administrative law judge may hold a hearing on any issue raised by the application.

(e) The administrative law judge shall issue expeditiously an order or decision granting or denying such temporary relief. Temporary relief may be granted only if—

(1) All parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;

(2) The person requesting such relief shows a substantial likelihood of prevailing on the merits of the final determination of the proceeding; and

(3) Such relief will not adversely affect the public health or safety or cause significant, imminent environmental harm to land, air, or water resources.

(f) Appeals of temporary relief decisions.

(1) Any party desiring to appeal the decision of the administrative law judge granting or denying temporary relief may appeal to the Board, or, in the alternative, may seek judicial review pursuant to section 526(a), 30 U.S.C. 1276(a), of the Act.

(2) The Board shall issue an expedited briefing schedule and shall issue a decision on the appeal expeditiously.

§ 4.1368 Determination by the administrative law judge.

Unless all parties agree in writing to an extension or waiver, the administrative law judge shall issue a written decision in accordance with § 4.1127 within 30 days of the date the hearing record is closed by the administrative law judge. An agreement to waive the time limit for issuing a decision may specify the length of the extension agreed to.

§ 4.1369 Petition for discretionary review; judicial review.

(a) Any party aggrieved by a decision of an administrative law judge may file a petition for discretionary review with the Board within 30 days of receipt of the decision or, in the alternative, may seek judicial review in accordance with 30 U.S.C. 1276(a)(2) (1982). A copy of the petition shall be served simultaneously on the administrative law judge who issued the decision, who shall forthwith forward the record to the Board, and on all other parties to the proceeding.

(b) The petition shall set forth specifically the alleged errors in the decision, with supporting argument, and shall attach a copy of the decision.

(c) Any party may file a response to a petition for discretionary review within 20 days of receipt of the petition.

(d) The Board shall issue a decision denying the petition or granting the petition and deciding the merits within 60 days of the deadline for filing responses.

§§ 4.1370 through 4.1379 and 4.1380 through 4.1388 [Removed]

4. 43 CFR 4.1370–4.1379 and 43 CFR 4.1380–1388 are removed.

5. Section 4.1391 is revised to read as follows:

§ 4.1391 Who may file; where to file; when to file; filing of administrative record.

(a) The permit applicant or any person with an interest which is or may be adversely affected by a determination of OSMRE that a person holds or does not hold a valid existing right, or that surface coal mining operations did or did not exist on the date of enactment of the Act, or that surface coal mining operations may be permitted within the boundaries of a national forest, may file a request for review of that determination with the office of the OSMRE official whose determination is being appealed and at the same time shall send a copy of the request to the Board of Land Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203 (phone 703–235–3750). The OSMRE official shall file with the Board the complete administrative record of the decision under review as soon as practicable.

(b) The request for review shall be filed within 30 days after the applicant

or permittee is notified by OSMRE of the written determination. Notice by OSMRE shall be provided by certified mail or by overnight delivery service if the applicant has agreed to bear the expense for this service.

(c) Failure to file a request for review within the time specified in paragraph (b) of this section shall constitute a waiver of the right to review and the request shall be dismissed.

[FR Doc. 89-5373 Filed 3-7-89; 8:45 am]

BILLING CODE 4310-79-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 73-20; Notice 13]

RIN 2127-AC58

Federal Motor Vehicle Safety Standards; Fuel System Integrity

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: Mr. Thomas Feaheny submitted a petition for rulemaking to amend Federal Motor Vehicle Safety Standard No. 301, *Fuel System Integrity*, to set performance requirements that would ensure that the fuel system as a whole, or an appropriate part thereof (e.g., the tank), is capable of performing in a manner equivalent to fuel systems incorporating high density polyethylene plastic fuel tanks with reguard to: (1) Resisting hydrostatic rupture, which the petitioner states is a phenomenon likely to result in massive fuel leakage in a crash; (2) avoiding a "flame-throwing characteristic" when the system is heated externally; and, (3) resisting puncture. NHTSA granted the petition in a letter dated September 8, 1988, stating that the granting of the petition signified that the agency believes that a further review of the issues raised in the petition appears to have merit. This notice requests comments to assist the agency in analyzing the safety and practicability issues of possible proposals relating to the performance capabilities of non-metallic (e.g., high density polyethylene plastic) fuel tanks and of fuel systems having such fuel tanks.

DATE: Comments must be received on or before May 8, 1989.

ADDRESSES: Comments should refer to the docket and notice numbers set forth above and be submitted (preferably in 10 copies) to the Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590 (Docket hours are from 8 a.m. to 4 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Ms. Margaret Gill, NRM-12, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC, 20590. Telephone: (202) 366-6651.

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard No. 301, *Fuel System Integrity*, limits the amount of fuel spillage that can occur from fuel systems during and for a 30-minute period following front, rear, and lateral barrier impact tests. Briefly, these limits are: (1) From impact until the vehicle has ceased motion, spillage must not exceed one ounce; (2) for a five-minute period following cessation of motion, fuel spillage must not exceed five ounces; and, (3) for the following 25-minute period, fuel spillage during any one-minute interval must not exceed one ounce. The standard is intended to reduce deaths and injuries occurring from firs that result from fuel spillage during and after motor vehicle crashes. The standard applies to new passenger cars, and to multipurpose passenger vehicles, trucks, and buses (including school buses) with a gross vehicle weight rating (GVWR) of 10,000 pounds or less, and to school buses with a GVWR greater than 10,000 pounds. Specific performance requirements for individual components of the fuel system, such as the fuel tank, are not currently included in the standard.

Mr. Thomas Feaheny submitted a petition for rulemaking to amend Standard No. 301 to set performance requirements that would ensure that the fuel system as a whole, or an appropriate part thereof (e.g., the tank), is capable of performing in a manner equivalent to a fuel system having a high density polyethlene (HDPE) plastic fuel tank with regard to: (1) Resisting a phenomenon called hydrostatic rupture, which the petitioner states is a likely cause of massive fuel leakage in a crash; (2) avoiding a "flame-throwing characteristic" when the system is heated externally; and, (3) resisting puncture. A result of adopting the petitioner's suggested amendment could be to require the incorporation of HDPE fuel systems on all vehicles affected by the rule.

According to the petitioner, HDPE fuel tanks are inherently safer than steel fuel tanks because HDPE tanks are "substantially immune" to hydrostatic rupture. As to the cause and consequences of "hydrostatic rupture," Mr. Feaheny states:

> * * *[L]iquid is basically incompressible. If a steel tank holding ten gallons of gasoline is distorted so the resulting shape can only hold nine gallons, enormous "hydro-static" internal pressures are developed that will typically burst the steel tank. In a similar situation, the HDPE plastic simply stretches itself into a new configuration to still contain ten gallons.

Mr. Feaheny refers to "drop tests" in his petition in which both steel and HDPE fuel tanks were dropped from a height of 20 feet onto a concrete surface. Petitioner states that in these tests, "[t]he steel tanks *always* burst hydrostatically and spilled their contents. The HDPE tanks bounced like a lopsided football and *never* spilled a drop of liquid." (Emphases in text.) According to the petitioner, the superior performance of HDPE tanks over steel tanks have been demonstrated in dynamic testing of passenger cars as well. The petitioner says that in some tests, HDPE tanks have been shown to withstand crashes which steel tanks had failed either by puncture or by hydrostatic rupture.

In his petition, Mr. Feaheny also described a phenomenon which he called a "flame-throwing characteristic" that is allegedly potentially associated only with steel, and not HDPE, fuel tanks. According to the petition, a fuel system using a steel tank can behave similarly to a flame-thrower when exposed to a raging under-car fire. When exposed to such extreme heat, the steel tank quickly (due to its ability to conduct heat rapidly) boils the gasoline contained therein, but cannot expand enough to accommodate the accompanying pressure build-up. Plastic or synthetic rubber components in the fuel system (e.g., hose, gaskets, connectors, etc.) quickly melts or burn away in the extreme heat, leaving openings, or vents, through which burning gasoline can be sprayed. Petitioner states that, in tests of HDPE material tanks this "flame-thrower" effect was not exhibited. With HDPE fuel tanks, "the temperature rise was slower than that with steel and the HDPE material expanded to reach an equilibrium pressure substantially lower than that reached in the steel tank, and not sufficient to expunge fuel from openings." As opposed to the flame-throwing characteristic, the petitioner states that in the face of a raging under-car fire, an HDPE tank would slowly melt and discharge its fuel by dropping it into the fire, presumably in a safer manner relative to the flame-throwing

characteristic of metallic tanks. The petitioner believes that at least one hundred deaths or injuries could have been prevented since 1979 by use of fuel tanks with the performance capabilities of HDPE tanks.

Additionally, petitioner states that HDPE fuel tanks are less likely to be punctured directly by impact since they can be fabricated from thick (three-sixteenths of an inch) plastic. Mr. Feaheny also states that HDPE fuel tanks have an added benefit of "totally eliminat[ing] rust and corrosion failures."

NHTSA granted the petition in a letter dated September 8, 1988, stating that the granting of the petition signified that the agency believes that a further review of the issues raised in the petition appears to have merit. This ANPRM requests comments to assist the agency in analyzing the safety and practicability issues relating to possible proposals to amend Standard No. 301 with regard to new performance requirements directly evaluating the ability of fuel systems to withstand hydrostatic rupture and puncture. NHTSA emphasizes that it has issued this ANPRM to obtain information on issues raised by the petition for rulemaking. If the agency were ultimately to issue a final rule, it would do so only after a notice of proposed rulemaking and an opportunity for interested parties to comment thereon.

In 1979, NHTSA issued an ANPRM (June 11, 1979; 44 FR 33441) concerning a petition for rulemaking from Ford Motor Company to amend Standard No. 301 to incorporate performance requirements from the Economic Commission for Europe regulations for plastic fuel tanks. In that notice, NHTSA announced that it wished to explore whether the performance requirements for motor vehicle fuel systems established by Standard No. 301 were sufficient to ensure the integrity of the fuel system, given what appeared to be the advent of plastic fuel tanks in the near future. NHTSA was concerned whether a minimum level of safety should be established for non-metallic fuel tanks exposed to fires from external sources. In particular, the agency wished to explore whether there was a safety problem associated with the softening or burning of non-metallic fuel tanks exposed to heat or flame.

In July 1981, after considering the comments on the ANPRM, NHTSA terminated the rulemaking proceeding on the Ford petition. (July 27, 1981; 46 FR 38392.) The agency determined from the comments and other information that there was no evidence to indicate vehicle fuel-fed fire incidents could be associated with non-metallic tanks. Also, data available at the time of the termination notice indicated that non-metallic tanks were used by only about two percent of the vehicle population. In light of these factors, NHTSA determined that there was insufficient need to regulate non-metallic fuel tanks.

The issues presented by Mr. Feaheny's petition contrast with those raised by the Ford petition in two respects. First, as opposed to Ford, which was concerned about whether non-metallic fuel tanks achieve an acceptable level of safety, Mr. Feaheny believes that HDPE plastic fuel tanks exhibit superior performance over steel tanks with regard to resistance to hydrostatic rupture and puncture and the safe venting of fuel vapor pressure (which allows HDPE tanks to avoid the flame-throwing effect when heated externally). Second, at the time of the Ford petition, there apparently was very little known about plastic fuel tanks because those tanks were only used on a limited number of vehicles. Current indications now show that many foreign and domestic manufacturers have been or will be installing plastic fuel tanks in a substantial portion of their vehicle fleet. For example, by 1995, indications are that Ford will use HDPE plastic fuel tanks on virtually all of its cars and trucks. (Automotive News, June 6, 1988, at 4.)

In view of the increasing presence of non-metallic fuel tanks in the vehicle market, the agency is interested in obtaining more information about these fuel tanks, especially information that would be helpful in determining whether to amend Standard No. 301 along the lines suggested by the petitioner. In particular, NHTSA is interested in obtaining information on the safety need for, and practicability of, performance requirements in Standard No. 301 for resistance to hydrostatic rupture, resistance to puncture, and avoidance of a flame-throwing reaction when the fuel system is heated externally, and on whether those requirements can be stated in objective terms.

Issues

Safety. The agency notes that an effectiveness evaluation of Standard No. 301 for passenger cars, which NHTSA conducted in 1983, fund that the standard appears to have substantially reduced crash fires and the fatalities and injuries resulting therefrom. ("Evaluation of Federal Motor Vehicle Safety Standard 301–75, Fuel System Integrity: Passenger Cars," DOT HS–806–335, January 1983.) Notwithstanding the demonstrated effectiveness of the present fuel system integrity standard, the agency believes it should fully consider whether the likelihood of crash fires or the risk or death or serious injury in a crash can be further reduced through reasonable and practicable means, such as by use of HDPE or other non-metallic fuel tanks. The agency also wishes to explore whether there are negative safety effects that are associated with non-metallic fuel tanks, but *not* with metallic tanks. NHTSA requests comments and data on the following questions relating to safety:

1. The agency desires to analyze data from NHTSA's Fatal Accident Reporting System (FARS) to compare the fire involvement rate of vehicles equipped with non-metallic fuel tanks against the fire involvement rate of vehicles with metallic fuel tanks, and the death and injury rates associated with fire in these vehicles, for the 1980–1988 model year period. However, in order to conduct such a comparative analysis, detailed information is needed by NHTSA to identify the vehicles in the FARS file which were equipped with non-metallic fuel tanks, and those with metallic fuel tanks. NHTSA requests information from manufacturers on the makes, models, and identification numbers (VIN's) of vehicles having non-metallic fuel tanks and those having metallic fuel tanks for the 1980–1988 model years.

It would be helpful if commenters provided lists of VIN's in a computer compatible format (i.e., magnetic tape or disk) in addition to hard copy. NHTSA asks that commenters planning to provide the VIN's in the suggested format contact the agency to discuss further the format for the VIN's and the manner in which the data should be submitted.

2. The petitioner believes that HDPE fuel tanks are "substantially immune" to hydrostatic rupture and are more puncture-resistant than metal tanks, and are therefore much safer in a crash than the latter. Is the petitioner correct in believing that the performance of HDPE tanks is superior to that of steel tanks in crashes with regard to hydrostatic rupture, resistance to puncture, and avoidance of a "flame-throwing effect"? If yes, do non-metallic fuel tanks made from material other than HDPE plastic perform similarly to HDPE tanks with regard to the three aspects of performance mentioned above? Are non-metallic (e.g., HDPE) fuel tanks superior to steel tanks in other aspects? If so, which aspect(s)? Please provide all available technical research data on the performance of non-metallic fuel tanks and comparable data on metallic tanks.

3. Are there general aspects of performance for which non-metallic fuel

tanks are inferior to steel tanks? Please identify these and explain how the tanks are inferior. Do non-metallic fuel tanks negatively affect safety in any manner, and if so, how? Please provide all available real-world, fire-related accident data involving vehicles with non-metallic fuel tanks.

4. How should the standard be amended to reasonably improve the crash performance of the fuel tank on light weight vehicles?

Current and future use. As mentioned above, it appears that many foreign and domestic manufacturers have been or will be installing plastic fuel tanks in a substantial portion of their vehicle fleet. For example, by 1995, indications are that Ford will use HDPE plastic fuel tanks on just about all of its cars and trucks. NHTSA requests comments from motor vehicle manufacturers, and other interested persons, on the following questions relating to the current and future use of non-metallic fuel tanks:

5. What is the current population of light-weight vehicles (10,000 pounds or under GVWR) having non-metallic fuel tanks? What is the projected population of such vehicles in 1995?

6. If you are currently using non-metallic fuel tanks in your motor vehicle fleet, do you plan to continue using them? Why or why not?

7. If you are not currently using non-metallic fuel tanks in your motor vehicle fleet, do you contemplate using them in the near future? Why or why not?

8. What plant changes would you have to make (or have made) in order to install non-metallic fuel tanks on your motor vehicle fleet?

9. If you are or will be installing non-metallic fuel tanks in your vehicle fleet, why did you decide to use them? For example, is it more cost effective to use non-metallic fuel tanks instead of steel tanks?

10. What problems, if any, have you encountered with the availability of HDPE materials? Are there non-metallic fuel tanks made from materials other than high density polyethylene? If yes, what are these materials, and how readily available (and costly) are they?

11. In deciding whether to issue a proposal on non-metallic fuel tanks, NHTSA will consider the extent to which non-metallic fuel tanks are or will be incorporated by manufacturers in the absence of the suggested amendment, and how that voluntary use of the tanks would affect the safety need for possible rulemaking. Should NHTSA proceed with a rulemaking that could have the effect of forcing the conversion to non-metallic fuel tanks if needed there are indications that manufacturers are voluntarily incorporating such tanks on their new vehicles? Why or why not? Would the superior performance characteristics attributed to non-metallic fuel tanks be exhibited by any non-metallic tank, regardless of design, or only those non-metallic tanks built to ensure the presence of those characteristics?

Feasibility of an objective standard. The petitioner requests NHTSA to consider amending Standard No. 301 to set minimum performance requirements for certain aspects of safety that can be achieved by fuel systems having HDPE fuel tanks. Presumably, currently manufactured fuel systems using metallic tanks cannot achieve the performance desired by the petitioner. The agency would like to obtain more information on possible performance requirements for the aspects of performance identified by the petitioner as being capable of improvement through the use of HDPE fuel tanks. This desire is based on the assumptions that there is a safety need for improving the rupture, puncture and venting characteristics of the metallic fuel tanks typically found on most automobiles today, that the petitioner is correct with regard to the alleged superior safety performance of HDPE fuel tanks over metallic tanks, and that the costs associated with the contemplated requirements are not unreasonable.

12. Compliance with Standard No. 301, a "vehicle" standard, is currently determined in a crash test of the entire vehicle. Should Standard No. 301 incorporate an entirely different dynamic test to assess the integrity of the fuel system with regard to the aspects of performance identified by the petitioner, assuming such a test can be developed and can satisfy the requirements of the Vehicle Safety Act? Alternatively, should the standard incorporate additional tests of component parts of the fuel system? For example, would it be appropriate to incorporate a "drop test" such as the one established by the Federal Highway Administration (FHWA) for side-mounted liquid fuel tanks? (*See*, 49 CFR § 393.67(e)(1). Briefly, under the FHWA "drop test," a fuel tank may not leak more than a total of one ounce by weight of water per minute after being dropped 30 feet on its corner onto an unyielding surface.) What tests should be considered and how do they relate to the safety of the fuel tank?

13. In the event NHTSA tentatively determines there is a safety need to proceed with a proposed rule on the aspects of performance targeted by Mr. Feaheny as candidates for rulemaking, would it be possible to state the desired performance requirements using objective criteria, as is required by the National Traffic and Motor Vehicle Safety Act? If yes, what should those requirements be?

Impacts

NHTSA has considered the impacts of this action in accordance with the Department of Transportation's regulatory policies and procedures and has concluded that it is nonsignificant within the meaning of those procedures. The expected impacts are too indeterminate at this time to conclude whether a regulatory evaluation would be appropriate. Should the agency decide to proceed with a notice of proposed rulemaking, the decision whether to prepare a regulatory evaluation would be made at that time.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Before issuing a notice of proposed rulemaking, the agency would evaluate the action for the purposes of E.O. 12291, the Regulatory Flexibility Act, and the National Environmental Policy Act.

Comments

Interested persons are invited to submit comments. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible,

comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

(15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50)

Issued on March 2, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89-5424 Filed 3-7-89; 8:45 am]

BILLING CODE 4910-59-M

---

49 CFR Part 580

[Docket No. 87-09; Notice 7]

RIN: 2127-AC42

Odometer Disclosure Requirements

AGENCY: National Highway Traffic Safety Administration.

ACTION: Grant of petitions for reconsideration; notice of proposed rulemaking.

SUMMARY: This is in response to four petitions for reconsideration of the National Highway Traffic Safety Administration's final rule concerning odometer disclosure requirements. Numerous letters were also submitted on this subject. These petitions requested that NHTSA reconsider the provisions of the final rule which: (1) Define "transferor" and "transferee" and (2) require dealers and distributors to retain, for five years, a copy of every odometer statement, including the transferee's signature, that they issue and receive.

This notice proposes to clarify the definitions of transferor and transferee with regard to the person who acts as an agent for the transferor or transferee. In addition, this notice proposes to require a transferee to return to his transferor, a signed copy of the odometer disclosure statement that he received from his transferor. Finally, this notice also proposes to require that title reassignment documents be isssued by the States.

DATE: Comments on this NPRM are due no later than April 7, 1989.

ADDRESS: Written comments should refer to the docket number of this notice and should be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are 8:00 a.m. to 4:00 p.m.)

FOR FURTHER INFORMATION CONTACT: Judith Kaleta, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-1834).

SUPPLEMENTARY INFORMATION:

Background

To implement the Truth in Mileage Act of 1986 and to make some needed changes in the Federal odometer regulations, the National Highway Traffic Safety Administration (NHTSA) published a notice of proposed rulemaking (NPRM) on July 17, 1987. 52 FR 27022 (1987). The agency received numerous comments on the NPRM, representing the opinions of new and used car dealers, auto auctions, leasing companies, State motor vehicle administrators, and enforcement and consumer protection agencies. Each of the comments was considered and a final rule was published on August 5, 1988. 53 FR 29464 (1988).

As required by the Truth in Mileage Act, the final rule requires the transferor of a motor vehicle to provide a mileage disclosure on the title document or, if the title document does not include a space for the mileage disclosure (during the phase-in period), or if the vehicle has not been previously titled, it requires the transferor to make a written disclosure of mileage on a separate document. Also as required by that statute, the final rule requires that title documents be manufactured or otherwise set forth by a secure process to deter counterfeiting and alteration; requires that at the time of issue, the titles include the mileage disclosure; adds disclosure requirements for lessors and lessees; and adds retention requirements for lessors and auction companies. In addition, consistent with the statute, the rule amends the form and content of the odometer disclosure statement. The rule also prohibits a person from signing the disclosure as both the transferor and transferee in the same transaction in order to guard against a situation where only one party to the transaction would be aware of the disclosure. Finally, the final rule clarifies the definition of transferor and transferee and extends the record retention requirement for dealers and distributors.

The Agency received seven petitions for reconsideration of the final rule. In addition, we received numerous letters concerning the final rule and supporting the petitions. These petitions requested that NHTSA reconsider the provisions of the final rule that: (1) Prohibit a person from signing the odometer disclosure statement as both the transferor and transferee in the same transaction; (2) define "transferor" and "transferee"; (3) define "secure printing process"; (4) concern the language included on the odometer disclosure statement; and (5) require dealers and distributors to retain, for five years, a copy of every odometer disclosure statement, including the transferee's signature, that they issue and receive. These petitions and letters have been placed in the docket. Before the Agency could fully consider the petitions, Congress enacted the Pipeline Safety Reauthorization Act of 1988, Pub. L. 100-561.

Section 401 of the Pipeline Safety Reauthorization Act, which amends section 408(d)(1) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1988(d)(1), concerns the use of certain powers of attorney in connection with the required mileage disclosure. The new law directs the agency to prescribe the form and content of the power of attorney/disclosure document and reasonable conditions for its use by the transferor, "consistent with this Act and the need to facilitate enforcement thereof." It also requires NHTSA's rule to provide for the retention of a copy of the power of attorney and to ensure that the person granted the power of attorney completes the disclosure on the title consistent with the disclosure on the power of attorney form.

Scope

Consistent with the statutory mandate, this notice grants, in whole or in part, four of the petitions for reconsideration. Generally, two of these petitions concern the definition of transferor and transferee with regard to

the person who acts as an agent for the transferor or transferee. The other two petitions concern the relationship between the retention requirement applicable to dealers and distributors and the requirement that the transferee's signature appear on the odometer disclosure statements. The most significant points of the four petitions are addressed below.

In an interim final rule also published in today's **Federal Register**, NHTSA grants, in whole or in part, three petitions for reconsideration of the portion of the final rule that provides that a person shall not sign a disclosure statement as the transferor and transferee in the same transaction and implements the portion of the Pipeline Safety Reauthorization Act of 1988 that concerns the use of powers of attorney to disclose mileage.

NHTSA has denied, in whole or in part, three petitions for reconsideration of the final rule published on August 5, 1988, because they are inconsistent with the new statute. For reasons discussed in the document denying the petitions, two other petitions were also denied. The denial notice is published in today's **Federal Register**.

Definitions

To clarify that the liability for issuing a false odometer disclosure statement could be placed on a person acting as an agent for the owner of a vehicle, in a notice issued on July 17, 1987, we proposed to amend the definition of "transferor" and the definition of "transferee", contained in § 580.3, to include the agent of the transferor and transferee. 52 FR 27023 (1987). Although one commenter feared that the definitions could be misconstrued to require that every agent who participates in the transfer must issue an odometer disclosure statement, we felt that the preamble to the final rule permitted us to clarify the meaning of the definition without changing the regulatory language, and the definitions were adopted as proposed.

The National Independent Automobile Dealers Association (NIADA) and the National Auto Auction Association (NAAA) have requested that NHTSA reconsider the definitions of transferor and transferee adopted in the final rule.

NIADA asserts that the definitions should be expressly limited to a principal or an agent who signs the required disclosure on behalf of the owner. Without this limitation, NIADA believes that that the definitions in the final rule may subject agents of the transferor to liability for failure to comply with the odometer disclosure requirements, whether or not they have any responsibility for issuing an odometer disclosure statement. Likewise, NAAA claimed that the definitions were ambiguous. NAAA's argument was based upon an apparent inconsistency in the preamble to the final rule. NAAA noted that while NHTSA defined "transferor" to include "any person, who as agent, transfers the ownership of another", 53 FR 29476 (1988), NHTSA also stated that "transfer of ownership under State laws may not occur at one point in time, but is a process." 53 FR 29468 (1988). Therefore, NAAA suggested that NHTSA define "transferor" to include any agent who actually makes the required disclosure on behalf of the owner. NAAA also suggested that the definition of "transferee" be amended in a similar manner.

Even though NHTSA attempted to clarify the definitions in the preamble, it is apparent that some confusion still remains. The suggestions proposed by NIADA and NAAA are consistent with NHTSA's intention expressed in the preamble to the NPRM and to the final rule. It has not been NHTSA's intention to require that the transferee receive multiple odometer disclosure statements. Therefore, we are proposing to amend the portions of the definitions of transferor and transferee concerning the transferor's and transferee's agents. "Transferor" would be defined to include the transferor's agent who signs any odometer disclosure statement on behalf of the transferor. Similarly, "Transferee" would be defined to include the transferee's agent who signs any odometer disclosure statement. NHTSA requests comments on these proposed amendments to the definitions.

NAAA included with its petition, eight scenarios of vehicle transfers and asked who would be the transferor. To assist those involved in the transfer of vehicles to more fully understand the requirements of the law and our proposed definitions, we have addressed each of these scenarios and the duties of the parties as they would be interpreted under those proposals:

1. A, a retail customer with a trade-in, purchases a vehicle from B, a dealer. The secured lender holds the title to A's trade-in. A gives B a power of attorney. B pays off the loan, obtains the title, and transfers ownership pursuant to the power of attorney. A would be a transferor. B, A's agent, would also be a transferor. A would make a disclosure to B on the secure power of attorney and B would make and sign a disclosure on the title on A's behalf.

Note: The use of the power of attorney in this instance would allow B to sign as both the transferor and transferee in the same transaction. Therefore, the power of attorney form must meet the requirements of section 401 of the Pipeline Safety Reauthorization Act of 1988, Pub. L. 100-561, and the interim final rule issued by NHTSA pursuant to the Act, which has been published in today's **Federal Register**.

2. A, a wholesale dealer, sells a vehicle to B, a wholesale dealer. A gives B a power of attorney. B uses the power of attorney to transfer the ownership to C after receiving the title documents from A. A is B's transferor and B is C's transferor. However, if A sells the car to B and gives B the title, it is unclear why A gave B a power of attorney. If B used A's power of attorney to transfer the car to C and B's name did not appear on the title as a buyer, B would be in violation of State laws which prohibit "skipping title". "Skipping title" means omitting an owner from the chain of ownership.

3. A, a dealer, employs B as a salesperson. B sells A's car and signs the transfer of ownership document. If the car is owned by A as a dealer and not personally, both A and B would be transferors, and either A must issue and sign an odometer disclosure statement or B may issue and sign an odometer disclosure statement on A's behalf.

4. A is an independent contractor who buys and sells cars for B, a dealer. A sells B's cars and signs the transfer of ownership documents on behalf of B. A and B would be transferors, and A should issue and sign an odometer disclosure statement on B's behalf.

5. A and B are wholesale dealers. A sells a car to B through C, a wholesale auction. C has not purchased the car and signs no transfer of ownership documents. C obtains the title from A, pays A on B's behalf, and then delivers the title to B. A would be the transferor and must issue and sign an odometer disclosure statement to B.

6. A and B are wholesale dealers. A sells a car to B through C, a wholesale auction. C has not purchased the car, but signs transfer of ownership documents, pursuant to a power of attorney from A. C obtains the title from A, pays A on B's behalf, and then delivers title to B. A and C would be transferors and C should issue an odometer disclosure statement to B, on behalf of A.

7. A is an attorney who is the personal representative of an estate. A signs the transfer of ownership documents, transferring a vehicle that is part of the estate to B, the beneficiary. The estate and A would be the transferors, and A is required to issue and sign an odometer disclosure statement on behalf of the estate.

8. A is an attorney who is the personal representative of an estate. A signs the transfer of ownership documents, transferring a vehicle that is part of the estate to B, the beneficiary. C, A's secretary, carries the transfer of ownership documents to the state titling office to be processed. A new title will be issued in B's name. The estate and A would be transferors, and A is required to issue and sign an odometer disclosure statement on behalf of the estate.

Record Retention and Long-Distance Sales Transactions

The NPRM of July 1987 proposed a new section 580.8 concerning the retention of odometer disclosure statements by motor vehicle dealers, distributors, and lessors. This section proposed to increase, from four to five years, the length of time the dealers and distributors, required by this part to issue an odometer disclosure statement, shall retain odometer disclosure statements. Since the Truth in Mileage Act requires that the disclosure be on the title, transferors involved in long-distance transactions were concerned that their transferees would not return a signed copy of the disclosure made on the title. (Currently, the disclosure is on a separate document and these transferors refuse to release the title until they receive the signed disclosure statement.) PHH Group, Inc. (now PHH Corporation) (PHH) asserted that is not reasonable to place a legal requirement on the transferor to retain records over which he does not have control and that any transferee, with intent to commit fraud by tampering with the title, will simply alter the title after the transferor's copy has been made. PHH argued that since the States will be receiving and retaining fully executed title documents, there seems to be little benefit to require transferors to also retain these records. Therefore, PHH requested that the final rule require the transferor to retain only a copy of the disclosure statement prior to release of the document to the transferee. The American Automotive Leasing Association (AALA) suggested that the regulation allow a transferor who is also a lessor, and therefore, involved in long-distance transactions, to fulfill the retention requirements by retaining a copy of the disclosure statement, which is forwarded for the buyer's signature, and requesting the buyer to sign the statement and return a copy.

We did not grant the requests of PHH and AALA; the final rule was adopted as proposed. In the preamble to the final rule of August 1988, we explained that requiring the transferor to retain a copy of the disclosure signed by the transferee is essential to enforcement. It prevents a buyers from altering the mileage and later alleging that the altered mileage is the mileage he received from the transferor, since the transferor would have a copy of the disclosure with the higher mileage and the transferee's signature. This unaltered copy would not be on file in the State titling office. 53 FR 29474 (1988).

Because they are concerned that they will be found in violation of the retention requirements if their transferees do not return a copy of the title, including the signed disclosure, PHH and the National Association of Fleet Administrators, Inc. (NAFA) have petitioned NHTSA to reconsider the retention requirements of the final rule. They feel that they have no way to compel their transferees to return a signed copy of the disclosure and that section 580.8 of the rule, which requires a transferor to retain a copy of the disclosure that includes the transferee's signature, places an unreasonable administrative and financial burden on them.

NAFA and PHH proposed the following three alternatives: (1) An amendment to the regulation to require the transferor to retain only a copy of his disclosure, not a disclosure signed by the transferee; (2) an amendment to the regulation to specify what constitutes a good faith effort by a transferor to obtain a copy of a completed odometer disclosure statement from his transferee; and (3) an amendment to the regulation to require a transferee to return a completed odometer disclosure statement to his transferor.

In support of the first alternative, PHH and NAFA noted that since the disclosure is on the title, a completed disclosure will be on file in the State Department of Motor Vehicles. They also noted that because titles will be securely printed, transferees will be unable to alter the mileage disclosed by the transferor on the titles. Finally, they claimed that the cost of obtaining a completed odometer disclosure statement, involving mailing fees and administrative expenses, would outweigh the benefits of this requirement.

NHTSA has not adopted this first alternative. As we stated in the preamble to the final rule, requiring the transferor to retain only a copy of his disclosure presents a problem for investigative and enforcement actions. This would permit a buyer to alter the mileage disclosure on the title and later allege that the altered mileage is the mileage received from his transferor, since his transferor would not have a copy of disclosure on the title with the higher mileage and the transferee's signature. We recognize that even with securely printed titles and reassignment documents, some alterations have been, and may continue to be, undetected upon initial review by State Departments of Motor Vehicles. We have found that copies of titles, made before the titles were altered, are an effective investigative aid in determining whether the title has been altered and whether additional analysis of the title is needed.

NAFA argues that NHTSA underestimated the costs of the retention requirement and that the benefits to be derived from the requirement of obtaining a photocopy of the title do not outweigh the costs. In NHTSA's regulatory evaluation of the final rule, NHTSA estimated the cost of this requirement to be $900,000. Regulatory Evaluation—Final Rule Implementing Truth in Mileage Act of 1986. (April 1988; pages 43–44). (NAFA mistakenly claims that NHTSA estimated the costs of this provision to be $254,000, 2,540,000 fleet vehicles × .10). NAFA argues that while NHTSA has estimated the cost of photocopying the title, NHTSA did not consider the cost of this service provided by auto auctions and wholesalers. Because the service of providing a copy of the title will replace the current practice of providing a copy of the separate odometer statement, NHTSA sees no reason to consider this cost; it is not a new cost imposed by the final rule.

In addition to saving personnel time and lab/analysis costs, the record retention requirement in the final rule is a vital part of the investigative process, especially since a significant part of odometer fraud involves vehicles that have been sold through long-distance transactions, those used by lease companies or in business fleets. A study by the Illinois Office of the Attorney General found that 49.8 percent of all one-time lease vehicles surveyed in twenty-three States during a one-year period had their odometers rolled back. A Washington State study estimate that sixty percent of leased vehicles have their odometers reset. NHTSA estimates the cost of odometer fraud resulting from lease vehicles to be between $1,272,500,000 and $2,156,560,000. Regulatory Evaluation—Final Rule Implementing Truth in Mileage Act of 1986. (April 1988; page 79). If requiring long-distance transferors to keep a copy of the disclosure on the title, including the transferee's signature, would reduce

odometer fraud by less than one-tenth of one percent, it would be cost effective.

The purpose of this requirement is to aid investigative action. It is not now, nor has it ever been, NHTSA's intention to require transferors involved in long-distance transfers to compare the copy of the returned odometer disclosure statement with the mileage statement that these transferors have in their files.

We have adopted the second alternative proposed by NAFA and PHH, the suggestion to amend the regulation to specify what constitutes a good faith effort by a transferor to obtain a copy of a completed odometer disclosure statement from his transferee. As we noted in the preamble to the final rule of August 1988, 15 U.S.C. 1990b provides that NHTSA must take into account the nature, circumstances, extent, and gravity of the violation. Similarly, "a good faith effort" is dependent upon the circumstances in a particular instance, and we cannot provide a complete listing of these matters. Therefore, it would be inappropriate to include, in the regulation, a provision as to what actions constitute good faith.

We are proposing to adopt the third alternative suggested by NAFA and PHH, an amendment to the regulation to require transferees to return a completed odometer disclosure statement to their transferors. Specifically, we are proposing to amend § 580.5(f). Under that provision of the final rule, the transferee is required to sign the disclosure statement and print his name. This proposal would require that the transferee, in addition to signing the disclosure and printing his name, return a copy of the signed disclosure statement to his transferor. A transferee who fails to return this statement would be subject to civil and criminal penalties. We expect that this provision will ensure that transferees who obtain the title from their long-distance transferors will return a copy of the completed odometer disclosure statement to their transferors, and that these long-distance transferors will be able to retain a copy of the signed odometer disclosure statement, as required by § 580.8(a).

Security of Title Documents

The Truth in Mileage Act requires that each State motor vehicle title be set forth by a secure printing process or other secure process, beginning on April 29, 1989. Consistent with this statutory requirements, in a notice published in the **Federal Register** on July 17, 1987, 52 FR 27028 (1980), we proposed to add a new section concerning the security of title documents. In addition to proposing that the title be set forth by a secure process, we proposed to require that each reassignment document be set forth by the same secure process as the title. To assist the States in their efforts to issue motor vehicle titles that comply with the Truth in Mileage Act and this regulation, we prepared a list of technologies that we proposed to deem a "secure process." This list was included in Appendix A.

We received several divergent comments concerning the security of the title document and Appendix A. To allow for maximum administrative discretion on the part of the States, we did not adopt a suggestion from 3M to list and rank all secure processes. Furthermore, we did not delete Appendix A as suggested by the American Association of Motor Vehicle Administrators (AAMVA) and several of its member jurisdictions. Rather we expanded and corrected it. We noted in the preamble to the August 1988 final rule that Appendix A was included to aid the States in their selection of a secure process and in no way limits the States or adds new requirements or restrictions beyond those listed in the rule itself.

With regard to the document used to reassign the motor vehicle title, AAMVA and several of its member jurisdictions urged the agency to amend the requirement to read, rather than by the "same" secure process as the title, by "a" secure process. Arkansas asserted that it would be a financial burden for the State to use a reassignment document that incorporates the same secure process as the title. Other commenters, including Texas, Vermont, and the Arkansas Independent Automobile Dealers Associated, were opposed to the requirement in its entirety, and cited costs burdens. The Wisconsin Department of Transportation (Wisconsin), on the other hand, asked that NHTSA eliminate separate reassignments. In the alternative, Wisconsin suggested that if reassignments are allowed, NHTSA should require the reassignment documents to bear control numbers and that the number be included on the title. Wisconsin also requested that NHTSA require the States to record the control numbers of the reassignment documents they give to each dealer and that each dealer be required to keep a record of the reassignment document issued for each vehicle.

NHTSA reconsidered it proposed requirement in response to these comments. In the preamble to the August 1988 final rule, we noted that while separate reassignment documents are not mentioned in the Truth in Mileage Act, they are often an integral part of the transfer process. Since reassignment documents are logical extension of the title, requiring secure reassignment documents is a logical extension of the statutory requirements. Therefore, the final rule required secure reassignment documents. However, rather than requiring that reassignment documents be printed by the same secure process as the title, we required that the reassignment documents be set forth by "a secure process."

We are proposing to amend § 580.4 concerning the security of reassignment documents. Specifically, we are proposing to require that, in addition to being set forth by a secure printing process, reassignment documents must be issued by the States. The proposal is consistent with the new law and our interim rule, published elsewhere in today's **Federal Register**, that requires that secure powers of attorney be issued by the States. If the States were to only offer guidelines to transferors as to what would constitute a secure reassignment and transferors could have these reassignment documents printed, unscrupulous transferors could easily roll back the odometer on a vehicle, discard a reassignment document, and forge a new one with a lower mileage disclosure. Currently, only eleven States allow a vehicle to be transferred on a reassignment document that is not issued by the State. Comments are requested from the States concerning the issuance and printing of secure reassignments documents by the State and/or State contractors.

Exemptions

In the July 1987 NPRM, we proposed a new § 580.6 to exempt certain transferors from issuing odometer disclosure statements. This new section proposed to exempt the same transferors exempted by the current § 580.5. NHTSA created these exemptions for transferors of vehicles for which the odometer reading is not relied upon as an indicator of vehicle mileage or condition. 47 FR 51885. With one exception, § 580.6 was adopted as proposed. (Transferors of vehicles ten years old or older, rather than transferors of vehicles twenty-five years or older, as proposed, are exempt from the odometer disclosure requirements of § 580.5.)

Since the August 1988 final rule was issued, NHTSA has been asked whether a lessee of a vehicle having a gross vehicle weight rating (GVWR) of more than 16,000 pounds or of a vehicle that is ten years old or older must furnish to his

lessor a written statement regarding the vehicle's mileage. Because the lessor, when transferring a vehicle with a GVWR of more than 16,000 pounds or a vehicle ten years old or older, is not required to give his transferee an odometer disclosure statement, we see no reason to require a lessee of any of these types of vehicles, or of any vehicles that are not self-propelled, to give their lessor a written statement concerning to vehicle's mileage. Therefore, in this notice, we are proposing to amend § 580.6 to exempt the lessees of certain vehicles from the odometer disclosure requirements of § 580.7. Likewise, we are proposing to exempt the lessors of certain vehicles from the notification requirements of § 580.7.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. While it is estimated that this proposed rule would result in additional costs to the States for printing secure title reassignment documents, the cost to each State is minimal.

Regulatory Impacts

A. Costs and Benefits to Dealers, States, and Consumers

NHTSA has analyzed this rule and determined that it is neither "major" within the meaning of Executive Order 12291, nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures because of the substantial public interest in this matter. This NPRM does not result in any costs to the States, dealers, and distributors in addition to those imposed by the August 1988 final rule. (*See*, Regulatory Evaluation—Final Rule Implementing the Truth in Mileage Act. Docket No. 87–09, No. 4). Any interested person may obtain a copy of this regulatory evaluation by writing to NHTSA Docket Section, 400 Seventh Street, SW., Washington, DC 20590, or by calling the Docket Section at (202) 366–4949.

B. Small Business Impacts

The agency has also considered the impacts of this rule in relation to the Regulatory Flexibility Act. I certify that this rule will not have a significant economic impact on a substantial number of small entities. The final rule of August 1988 requires that reassignments be securely printed or otherwise set forth by a secure process. This proposal merely requires that the States issue these documents. At the time the final rule was issued, NHTSA estimated the cost of producing secure reassignments to be $1,730,000 to States, dealers, and distributors. NHTSA estimated the costs of controlling reassignment forms to be $1,500,000 to the States. In addition, NHTSA estimated the costs of copying and mailing titles containing the odometer disclosure to be $900,000. (*See*, Regulatory Evaluation—Final Rule Implementing the Truth in Mileage Act, Docket No. 87–09, No. 4). This proposal would not result in any requirements in addition to those imposed by the August 1988 final rule. Accordingly, no regulatory flexibility analysis has been prepared at this time. However, the agency invites comments from small businesses on this issue.

C. Environmental Impacts

NHTSA has considered the environmental implications of this rule, in accordance with the National Environmental Policy Act, and determined that it will not significantly affect the human environment.

D. Paperwork Reduction Act

The Office of Management and Budget (OMB) has already approved NHTSA's information collection requirements that require consumers, dealers, distributors, lessors, and auction companies to disclose and/or retain odometer disclosure information. (OMB 2127–0047). This NPRM does not propose any new information collection requirements as that term is defined by OMB in 5 CFR Part 1520.

Public Comments

Interested persons are invited to submit comments on the proposal. It is requested, but not required, that ten copies be submitted.

All comments must not exceed fifteen pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the fifteen page limit. This limitation is intended to encourage commenters to detail their preliminary arguments in a concise fashion.

All comments received before the close of business on the comment closing date listed above will be considered and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration will be considered as suggestions for future rulemaking action. The agency will continue to file relevant information as it becomes available. It is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments by the docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

In consideration of the foregoing, 49 CFR Part 580 would be amended as follows:

PART 580—[AMENDED]

1. The authority citation for Part 580 continues to read as follows:

Authority: 15 U.S.C. 1988; delegation of authority at 49 CFR 1.50(f) and 501.8 (e)(1).

2. In § 580.3, the definitions of transferor and transferee would be revised to read as follows:

§ 580.3 Definitions.

* * * * *

"Transferee" means any person to whom ownership of a motor vehicle is transferred, by purchase, gift, or any means other than by the creation of a security interest, and any person who, as agent, signs an odometer disclosure statement for the transferee.

"Transferor" means any person who transfers his ownership in a motor vehicle by sale, gift, or any means other than by creation of a security interest, and any person who, as agent, signs an odometer disclosure statement for the transferor.

3. Section 580.4 would be revised to read as follows:

§ 580.4 Security of title documents and power of attorney forms.

Each title shall be set forth by means of a secure printing process or other secure process. In addition, power of attorney forms issued pursuant to § 580.13 and § 580.14 and documents which are used to reassign the title shall be issued by the State and shall be set forth by a secure process.

4. Section 580.5 would be amended by revising paragraph (f) to read as follows:

§ 580.5 Disclosure of odometer information.

* * * * *

(f) The transferee shall sign the disclosure statement, print his name, and return a copy to his transferor.

5. Section 580.6 would be amended by revising the introductory text and (a) introductory text, and by adding paragraph (c) to read as follows:

§ 580.6 Exemptions.

Notwithstanding the requirements of § 580.5 and § 580.7:

(a) A transferor or a lessee of any of the following motor vehicles need not disclose the vehicle's odometer mileage:

(c) A lessor of any of the vehicles listed in paragraph (a) of this section need not notify the lessee of any of these vehicles of the disclosure requirements of § 580.7.

Issued on March 3, 1989.

Erika Z. Jones,

Chief Counsel, National Highway Traffic Safety Administration.

[FR Doc. 89-5393 Filed 3-6-89; 10:03 am]

BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1312 and 1314

[Ex Parte No. 290 (Sub-No. 6)] [1]

Amendments to Rail Carrier Cost Recovery Tariffs

AGENCY: Interstate Commerce Commission.

ACTION: Advance notice of proposed rulemaking; held in abeyance.

SUMMARY: The Commission announces its decision to hold in abeyance further action in this proceeding for 180 days from the date of publication of this notice in the **Federal Register**. The Commission indicates that it wishes to allow opportunity for the publishers of the Rail Carrier Cost Recovery (RCCR) tariff to demonstrate their willingness, as expressed in their comments in this proceeding, to give more consideration to the user public in the preparation and publication of the RCCR tariffs. The Commission offers some suggestions (drawn from the views of other commenters) to the RCCR tariff publishers for improvement of the way information is conveyed in the tariff. Voluntary adoption of these suggestions or other tariff improvements or practices by the RCCR publishers should alleviate the most pressing concerns of the tariff users. At the end of the 180-day period, the Commission will decide what further actions it will take in this proceeding, after review of tariff users' experience with the RCCR tariffs during this period.

DATE: Further formal action in this proceeding is held in abeyance until September 5, 1989.

FOR FURTHER INFORMATION CONTACT: Lawrence C. Herzig, (202) 275-7358, or Charles E. Langyher, (202) 275-7739, [TDD for hearing impaired, (202) 275-1721.]

ADDRESS: Bureau of Traffic, Room 4310, Washington, DC 20423.

SUPPLEMENTARY INFORMATION: 49 U.S.C. 10762(d)(2) indicates that we may permit the filing of the Rail Carrier Cost Recovery (RCCR) tariffs reflecting railroad cost adjustment factors in a master tariff format as an alternative to amendments to each affected rate tariff. However, the statute stipulates that such filing is to be permitted only when it is consistent with the public interest.

During the period of time tariff ICC RCCR X088A was in effect, the Commission's staff received a number of informal criticisms from users of the tariff asserting that due to the number and form of amendments to the tariff, it had become extremely cumbersome to follow and apply. In view of these complaints and our concern that the public interest might not be well served by the existing RCCR tariff format, we sought the views of the shipping public and tariff publishers regarding the RCCR tariffs.

Our advance notice of proposed rulemaking of August 19, 1988, (53 FR 31720), posed for consideration a number of specific questions which dealt with the form of publication for the RCCR tariffs and the forms of amendments to them. Additionally, we sought comments and recommendations on other matters relating to the manner in which information is conveyed in the RCCR tariffs.

In response to our notice we received comments from 16 parties. The comments offered by the users of the RCCR tariff contain many positive suggestions for improvements of the tariff. Further, and most significantly, the comments of the publishers of the RCCR tarriff indicate their intention to make the tariff more "user friendly."

In view of the comments of the RCCR tariff publishers, we will withhold further action in this proceeding for 180 days. This will allow the publishers time to demonstrate their expressed willingness to give more consideration to the user public when compiling the RCCR tariffs. In fact, the publishers have already taken some steps toward improving the presentation of amendments to the RCCR tariff.

In addition to the steps the publishers have taken, they should also consider implementing suggestions offered in the comments received in response to our ANPR. An entire set of comments will be sent to the rail publishers. Further, the Commission's staff has also formulated some suggestions for improved publication which are outlined below.

1. The partial amendments to items or other units should clearly state what matter is being changed or canceled. For example, the tariff matter that is to be affected by a partial amendment could be highlighted in the heading of the partial amendment notice; such as:

Special Notice Item 135

Amend Item 135 to include "BN" as a participant to the provisions of Item 135.

This suggestion would facilitate a tariff user's awareness of amendments to tariff matter of particular interest to the tariff user.

2. The publishers should limit the number of partial amendments to items or other units to no more than two in effect at the same time. Each third partial amendment to an item or other unit could contain all changes for that particular item or unit and cancel all prior amendments. The RCCR tariff could contain an item explaining this partial amendment procedure to the tariff users.

3. The publishers should attempt to avoid having more than five supplements in effect at any one time. Also, the total number of effective supplemental pages should not exceed 70 percent of the total pages in the original tariff. Complaints concerning the volume of supplemental matter to the RCCR tariffs have been the most common complaint our staff has received.

4. The cumulative index of new or changed items should include reference to the number of the supplement containing any effective "special notices" providing partial amendments to tariff items.

We are encouraged by the efforts that the RCCR tariff publishers have recently made to improve the presentation of information in the RCCR tariff. After the implementation of the suggestions discussed above or other improvements, we will be in a better position to determine whether or not regulatory adjustments are needed. During the 180-day observation period, the Commission's staff will monitor and analyze the content and level of complaints regarding the RCCR tariff format. Should tariff users encounter problems with the tariff during this

[1] As a result of the Commission's action in Ex Parte No. 444, *Electronic Filing of Tariffs*, 54 FR 6403, the regulations contained in 49 CFR Part 1312 will be replaced by new regulations in 49 CFR Part 1314, effective March 13, 1989. The Commission has carried forward its regulation dealing with rail carrier cost recovery tariffs to 49 CFR 1314.17. That regulation would be the subject of future Commission revision in this proceeding, should the Commission determine that revision is appropriate.

period, their complaints should be directed to the individuals named above under the heading "For Further Information Contact." At the end of the observation period, the Commission will decide what actions it will take.

List of Subjects in 49 CFR Parts 1312 and 1314

Railroads.

This action will not significantly affect the quality of the human environment or energy conservation and it will not have a significant economic impact on a substantial number of small entities.

This notice is issued under authority of 49 U.S.C. 10321 and 10762 and 5 U.S.C. 553.

It is ordered:

1. Further action in this proceeding will be held in abeyance until September 5, 1989.

2. This decision is effective March 8, 1989.

Decided: March 1, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-5287 Filed 3-7-89; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 54, No. 44
Wednesday, March 8, 1989

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

March 3, 1989.

The Department of Agriculture has submitted to OMB for review the following proposals 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, extensions, 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) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) 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 Office, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

New

- Animal and Plant Health Inspection Service

Varroa Mite Regulation
PPQ Forms 300, 527, 530, 537, 540
Recordkeeping; Weekly; Monthly; Quarterly; Annually
State or local governments; Farms; Businesses or other for-profit; Federal agencies or employees; Small businesses or organizations; 75,875 responses; 13,973 hours; not applicable under 3504(h)
Charles C. Jackson (301) 436-8247.

Donald E. Hulcher,
Acting Departmental Clearance Officer.

[FR Doc. 89-5425 Filed 3-7-89; 8:45 am]

BILLING CODE 3410-01-M

Commodity Credit Corporation

Final Determination; 1989 Extra Long Staple Cotton Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of final determination of 1989 extra long staple cotton program.

SUMMARY: The purpose of this notice is to affirm the determinations made by the Secretary of Agriculture which are required to be made in order to implement the 1989 extra long staple (ELS) cotton price support and production adjustment program. These determinations are made in accordance with the Agricultural Act of 1949, as amended, (the "1949 Act").

EFFECTIVE DATE: March 8, 1989.

ADDRESS: Bruce R. Weber, Director, Commodity Analysis Division, USDA-ASCS, Rm. 3741 South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Charles V. Cunningham, Leader, Fibers Group, Commodity Analysis Division, USDA-ASCS, Room 3758 South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 447-7954.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been designated as "non-major" since these program provisions are not likely to 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 government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. The Final Regulatory Impact Analysis describing the options considered in developing this notice of determination is available on request from the aforementioned individual.

The titles and numbers of the Federal assistance programs to which this notice applies are: Title—Cotton Production Stabilization, Number 10.052 and Title—Commodity Loans and Purchases, Number 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Commodity Credit Corporation ("CCC") is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

It has been determined by environmental evaluation that this action will have no significant impact on the quality of the human environment.

Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This 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).

On August 19, 1988 (53 FR 31732), a notice of proposed determination was published requesting public comment on the 1989 ELS Cotton Program. A total of three respondents submitted comments. Respondents included two producer associations and one ELS cotton producer. One respondent submitted comments relating to issues for which comments were not requested. One respondent recommended that the ARP be established at 5 percent and another supported an ARP of 10 percent. The third respondent favored an ARP but did not specify the level, recommending only that the program be operated to minimize costs and avoid burdensome surpluses. Under the two options analyzed, the supply-utilization outlook

was nearly identical. The 5 percent ARP option was selected instead of the 10 percent option in order that U.S. ELS cotton producers maintain ELS cotton production at a level which will support the growing demands of the export market while minimizing the possibility of overproduction.

Determinations

In accordance with section 103(h)(2) of the 1949 Act, it has been determined that the loan level for 1989-crop ELS cotton will be 81.77 cents per pound.

In accordance with section 103(h)(3)(B) of the 1949 Act, it has been determined that the "established" target price for 1989-crop ELS cotton will be 96.7 cents per pound.

In accordance with section 103(h)(8)(A) of the 1949 Act, it has been determined that the acreage reduction requirement for the 1989 crop of ELS cotton will be 5 percent. Accordingly, producers will be required to reduce their 1989 ELS cotton plantings for harvest by at least 5 percent from the ELS cotton acreage base established for a farm in order to be eligible for ELS cotton price support loans and deficiency payments.

In accordance with section 103(h)(17) of the 1949 Act, it has been determined that recourse loans will be made available for 1989 ELS seed cotton.

Authority: Sec. 103(h) of the Agriculture Act of 1949, as amended, 97 Stat. 494 (7 U.S.C. 1444(h)).

Signed at Washington, DC on March 2, 1989.

Milton J. Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 89-5305 Filed 3-7-89; 8:45 am]

BILLING CODE 3410-05-M

COMMISSION ON CIVIL RIGHTS

Arizona Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Arizona Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m. on March 24, 1989, at the Ramada Hotel Airport East, 1600 South 52nd Street, Tempe, Arizona 85201. The Committee will discuss the status and disposition of the immigration report.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, John White or Philip Montez, Director of the Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 28, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89-5322 Filed 3-7-89; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Final Regulations for Deep Seabed Mining Commercial Recovery.

Form Number: Agency—None; OMB—0648-0170.

Type of Request: Request for extension of a currently approved collection.

Burden: 0 respondents; 1 reporting hour; Average hours per response—No hours have been estimated because applications are unlikely to be received before 1994.

Needs and Uses: U.S. citizens who wish to conduct operations to commercially recover deep seabed minerals must obtain a license from NOAA. The information provided in the application, and the information from reporting requirements in effect after licensing, are used by NOAA and other Federal agencies to ensure the application meets the requirements established by legislation.

Affected Public: Businesses or other for-profit institutions.

Frequency: On occasion, annual.

Respondent's obligation: Mandatory

OMB Desk Officer: Francine Picoult, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 2, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-5279 Filed 3-7-89; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Patent and Trademark Office (PTO).

Title: Patent Term Extension.

Form Number: Agency—N/A; OMB—0651-0020.

Type of Request: Revision of a currently approved collection.

Burden: 30 respondents; 1,800 reporting hours—Average hours per response—60 hours.

Needs and Uses: The normal term of a patent is 17 years. However, certain categories of patents (drugs, medical devices, etc.) are eligible to be renewed. To be eligible for renewal, certain information is required so that PTO can determine if the extension would meet the requirements of the Drug Price Competition and Patent Term Restoration Act and the Generic Animal Drug and Patent Restoration Act.

Affected Public: Businesses or other for-profit institutions; Federal agencies or employees; Non-profit institutions; Small businesses or organizations

Frequency: On occasion.

Respondent's obligation: Required for a benefit.

OMB Desk Officer: Robert Veeder, 395-3785.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Robert Veeder, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: March 2, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-5280 Filed 3-7-89; 8:45 am]

BILLING CODE 3510-CW-M

Bureau of Export Administration

[Docket No. 90253-9053]

Domestic Crude Oil Export Study

AGENCY: Office of Industrial Resource Administration, Bureau of Export Administration, Commerce.

ACTION: Request for comments, Domestic Crude Oil Export Study.

SUMMARY: Section 2424 of the Omnibus Trade and Competitiveness Act of 1988 requires that the Secretary of Commerce, in consultation with the Secretary of Energy, undertake a comprehensive review to assess whether existing statutory restrictions on the export of crude oil produced in the lower 48 States are adequate to protect the energy and national security interests of the United States and American consumers. The Department of Commerce has been designated by the Congress to coordinate and prepare this review. This notice invites comments from interested parties and announces that public hearings are planned in California and Texas to assist the Department in preparing this study.

DATE: Comments must be submitted on or before April 7, 1989.

ADDRESS: Send written comments to Brad I. Botwin, Director, Strategic Analysis Division, Office of Industrial Resource Administration, Room 3878, Bureau of Export Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Brad I. Botwin, Director, Strategic Analysis Division, (202) 377-4060, or Bernard Kritzer, Senior Energy Adviser, (202) 377-3984.

SUPPLEMENTARY INFORMATION: On August 23, 1988, the President signed the Omnibus Trade and Competitiveness Act of 1988 (Act). Section 2424 of the Act (to be codified as a note to section 7 of the Export Administration Act, 50 U.S.C., app. 2406) requires the Secretary of Commerce, in consultation with the Secretary of Energy, to undertake a comprehensive review to determine whether the existing statutory restrictions on the export of crude oil produced in the contiguous United States (i.e., lower 48 States) are adequate to protect the energy and national security interests of the United States and American consumers.

The Act further states that such review shall assess the effect of increased exports of crude oil produced in the contiguous United States on:

(a) The adequacy of domestic supplies of crude oil and refined petroleum products in meeting United States energy and national security needs;

(b) The quantity, quality, and retail price of petroleum products available to consumers in the United States generally and on the West Coast in particular;

(c) The overall trade deficit of the United States;

(d) The acquisition costs of crude oil by domestic refiners;

(e) The financial viability of sectors of the domestic petroleum industry (including independent refiners, distributors, marketers, and pipeline carriers); and

(f) The United States tanker fleet (and the industries that support it), with particular emphasis on the availability of militarily useful tankers to meet anticipated national defense requirements.

The Act further directs the Secretary of Commerce to develop—after consulting with appropriate State, Federal, and Congressional officials and other persons—findings, options, and recommendations regarding the adequacy of existing statutory restrictions on the export of crude oil produced in the contiguous United States in protecting the energy and national security interests of the United States and American consumers.

The Department of Commerce has initiated this study. This notice is intended to provide all interested parties, especially those in the oil industry, consumer groups, environmental groups, the maritime industry, and all other industries, groups or individuals likely to be affected by any change in existing law governing the export of crude oil produced in the contiguous United States, with an opportunity to submit written comments and participate in hearings planned on these issues.

Interested parties are invited to submit written comments, opinions, data, information or advice with respect to the study to the Strategic Analysis Division, Office of Industrial Resource Administration, U.S. Department of Commerce at the address stated above.

The period for submission of comments will close on April 7, 1989. All comments received before the close of the comment period will be considered by the Department in completing the study. While comments received after the end of the comment period will be considered if possible, their consideration cannot be assured.

All public comments, whenever received, will be a matter of public record and will be available for public inspection and copying.

In the interest of accuracy and completeness, written comments are preferred. Written comments (3 copies requested) should be sent to the address indicated above. If oral comments are received during a telephone conversation or meeting, a written summary will be prepared by the person receiving the oral comments. That written summary will also be a matter of public record and will be available for public review and copying.

Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a nonconfidential submission which can be placed in the file. If this procedure is not followed, the comments and materials will be returned to the submitter and will not be considered in completing this study.

Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning this study will be maintained in the Bureau of Export Administration's Freedom of Information Records Inspection Facility, Bureau of Export Administration, U.S. Department of Commerce, Room H-4886, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Records in this facility, including written public comments, memoranda summarizing the substance of oral communications and the transcript of hearings may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information pertaining to the inspection and copying of records may be obtained from Ms. Margaret Cornejo, Bureau of Export Administration's Freedom of Information Officer, at the above address or by calling (202) 377-2593.

Notice of public hearings in California and Texas will be published in the **Federal Register** giving the time, place, and matters to be considered, so that interested parties will have an opportunity to participate. The hearings will be recorded and transcripts will be placed on the record.

March 3, 1989.

Michael E. Zacharia,

Assistant Secretary for Export Administration.

[FR Doc. 89-5420 Filed 3-7-89; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders, findings, and suspension agreements. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: March 8, 1989.

FOR FURTHER INFORMATION CONTACT: Bernard T. Carreau or Richard W. Moreland, Office of Countervailing Compliance or Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786/2104.

SUPPLEMENTARY INFORMATION:

Background

On August 13, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 32556) a notice outlining the procedures for requesting administrative reviews. The Department has received timely requests, in accordance with §§ 353.53a (a)(1), (a)(2), (a)(3), and 355.10(a)(1) of the Commerce Regulations, for administrative reviews of various antidumping and countervailing duty orders, findings, and suspension agreements.

Initiation of Reviews

In accordance with §§ 353.53a(c) and 355.10(c) of the Commerce Regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders, findings, and suspension agreements. We intend to issue the final results of these reviews no later than February 28, 1990.

Antidumping Duty Proceedings and Firms	Periods to be Reviewed
Canada:	
Brass Sheet and Strip (A-122-601)	01/01/88—12/31/88
Ratcliffs	
France:	
Anhydrous Sodium Metasilicate (A-427-098)	01/01/88—12/31/88
Rhone Poulenc	
Hungary:	
Truck Trailer Axle-and-Brake Assemblies (A-437-001)	01/01/88—12/31/88
RABA	
Japan:	
Tapered Roller Bearings and Parts Thereof, Finished and Unfinished (A-588-604)	3/27/87—9/30/88
NTN	
Koyo Seiko	
Japan:	
Titanium Sponge (A-588-020)	11/01/87—10/31/88
Toho Titanium	
Showa Denko	
Japan:	
Color Picture Tubes (A-588-609)	06/30/87—12/31/88
Toshiba Corp.	
Japan:	
Cell-Site Transceivers (A-588-021)	01/01/88—07/28/88
Kokusai Electric	
New Zealand:	
Low-Fuming Brazing Copper, Wire and Rod (A-614-502)	01/01/88—12/31/88
McKechnie Brothers	
Sweden:	
Certain Stainless Steel Hollow Products (A-401-602)	05/22/87—11/30/88
Sandvik AB	
West Germany:	
Dry Cleaning Machinery (A-428-037)	11/01/87—10/31/88
Boewe	
Seco	

Countervailing Duty Proceedings	Periods to be Reviewed
Colombia: Miniature Carnations (C-301-601)	01/01/88—12/31/88

Countervailing Duty Proceedings	Periods to be Reviewed
Colombia: Roses and Other Cut Flowers (C-301-003)	01/01/88—12/31/88
Costa Rica: Fresh Cut Flowers (C-223-601)	01/01/88—12/31/88
Ecuador: Fresh Cut Flowers (C-331-601)	01/01/88—12/31/88
Mexico: Fabricated Automotive Glass (C-201-406)	01/01/88—12/31/88
Spain: Stainless Steel Wire Rod (C-469-004)	01/01/88—12/31/88

Interested parties are encouraged to submit applications for administrative protective orders as early as possible in the review process.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.53a(c) and 355.10(c).

Dated: February 15, 1989.

Joseph A. Spetrini,

Deputy Assistant Secretary For Compliance.

[FR Doc. 89-5421 Filed 3-7-89; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review on Certain Flat-Rolled Steel; Request for Comments

AGENCY: Import Administration/International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-EC Arrangement on Certain Steel Products, with respect to certain alloy hot-rolled sheet and strip used to manufacture bi-metal band saws.

DATE: Comments must be submitted no later than March 20, 1989.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377-0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC Arrangement on Certain Steel Products provides that if the U.S. "* * * determines that because of abnormal supply or demand factors, the US steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product or products * * *"

We have received a short-supply request for certain D6A hot-rolled alloy steel sheet and strip, in thicknesses ranging from 0.080 to 0.125 inch and in widths ranging from 10 to 16 inches. This material is used to produce cold-rolled steel strip for bi-metal band saws.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than March 20, 1989. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce, at the above address.

Jan W. Mares,

Assistant Secretary, for Import Administration.

February 28, 1989.

[FR Doc. 89-5422 Filed 3-7-89; 8:45 am]

BILLING CODE 3510-DS-M

UMDNJ-RWJ Medical School et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Numbers: 88-169 and 88-170. *Applicant:* UMDNJ-RWJ Medical School, Piscataway, NJ 08854. *Instrument:* Rotating Anode X-ray Generator, Model RU-200. *Manufacturer:* Rigaku Corp., Japan.

Intended Use: See notice at 53 FR 18329, May 23, 1988.

Instruments Ordered: June 23, 1987 and October 27, 1987 respectively.

Reasons for this Decision: The foreign instrument provides a power density of at least 6.0 kilowatts per square millimeter and a focal spot of 0.3 x 3.0 millimeter or less.

Advice Submitted by: The National Institutes of Health, September 6, 1988.

Docket Number: 88-201. *Applicant:* University of Kentucky, Lexington, KY 40506-0099. *Instrument:* Scanning Electron Microscope with Accessories, Model S-800-1. *Manufacturer:* Hitachi Scientific, Japan. *Intended Use:* See notice at 53 FR 22684.

Instrument Ordered: December 23, 1987. *Reasons for this Decision:* The foreign instrument provides a field emission electron source and a guaranteed resolution (lattice) of 20 angstroms. *Advice Submitted By:* The National Institutes of Health, September 21, 1988.

Docket Number: 88-123. *Applicant:* Cold Spring Harbor Laboratory, Cold Spring Harbor, NY 11724. *Instrument:* Mass Spectrometer, Model BIOION 20. *Manufacturer:* Bio-Ion, Sweden. *Intended Use:* See notice at 53 FR 15103, April 27, 1988. *Instrument Ordered:* December 15, 1987. *Reasons for this Decision:* The foreign instrument provides measurements of mass fragments in excess of 20 000 amu and accuracy of 0.01% in the 0 to 6000 amu range. *Advice Submitted By:* The National Institutes of Health, September 6, 1988.

Docket Number: 88-231. *Applicant:* University of Kentucky, Lexington, KY 40536-0084. *Instrument:* Scanning Electron Microscope, Model S-900. *Manufacturer:* Hatachi Scientific, Japan.

Intended Use: See notice at 53 FR 31077, August 17, 1988.

Instrument Ordered: December 23, 1987. *Reasons for this Decision:* The foreign instrument provides a field emission electron source and a guaranteed resolution of 8.0 angstroms *Advice Submitted By:* The National Institutes of Health, September 27, 1988.

Comments: None received. *Decision.* Approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, was being manufactured in the United States at the time the foreign instruments were ordered.

The capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and we know of no instrument or apparatus of equivalent scientific value to either of the foreign instruments for the applicant's intended use which was being manufactured in the United States at the time the foreign instruments were ordered

Frank W. Creel,

Director, Statutory Import Programs Staff

[FR Doc. 89-5423 Filed 3-7-89; 8:45 am]

BILLING CODE 3510-05-M

National Oceanic and Atmospheric Administration

[Docket No. 90119-9019]

Financial Assistance for Research and Development Projects To Provide Information for the Full and Wise Use and Enhancement of Fishery Resources in the Gulf of Mexico

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

ACTION: Notice of availability of financial assistance.

SUMMARY: For fiscal year 1989, Marine Fisheries Initiative (MARFIN) funds are available to assist persons in carrying out research and development projects which optimize the use of a U.S. Gulf of Mexico fishery involving the U.S. fishing industry (recreational or commercial) including, but not limited to, harvesting methods, economic analyses, processing, fish stock assessment, and fish stock enhancement. NMFS issues this notice describing the conditions under which applications will be accepted and how NMFS will determine which applications will be funded.

DATE: Applications must be received by April 24, 1989. Applications received after that date will not be considered for funding.

ADDRESS: Send applications to Southeast Regional Office, 9450 Koger Boulevard, National Marine Fisheries Service, St. Petersburg, Florida 33702.

FOR FURTHER INFORMATION CONTACT: Dr. Donald R. Ekberg, 813-893-3720.

SUPPLEMENTARY INFORMATION:

Classification

NMFS reviewed this solicitation in accordance with Executive Order 12291 and the Department of Commerce guidelines implementing that Order. This solicitation is not "major" because it is not likely to 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 government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This notice does not contain policies with sufficient Federalism implications to warrant preparation of a Federalism assessment under E.O. 12612. Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act. Information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB clearance No. 0648-0175) under the provisions of the Paperwork Reduction Act. This program is subject to the provisions of Executive Order 12372.

I. Introduction

Section 3049(e) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1854(e)) authorizes the Secretary to conduct research to enhance U.S. fisheries. The Departments of Commerce, Justice, and State, the Judiciary, and related Agencies Appropriation Act of 1989 makes funds available to the Secretary of Commerce for fiscal year 1989. This solicitation makes available approximately $2.0 million (including $315 thousand for continuing projects) for financial assistance under the MARFIN program to manage and enhance the use of fishery resources in the Gulf of Mexico. There is no guarantee that sufficient funds will be available to make awards for all approved projects. U.S. fisheries [1] include any fishery that is or may be engaged in by U.S. citizens. The phrase "fishing industry" includes both the commercial and recreational sectors of U.S. fisheries.

II. Funding Priorities

Fishery research and development proposals should be related to one or more of the priority areas listed below (in no rank order):

1. *Shrimp.* (a) Development of improved gear efficiency, on-board handling, grading, sorting and preservation methods, and methods to reduce catch of non-target species, (b) determination of social and economic impacts of turtle excluder devices (TEDs), (c) evaluation of alternative harvesting (other than otter trawls), handling and processing systems, (d) identification of numbers and types of fishing vessels and gear now in use, trends in capital inputs into the fleet, and assessment of multiple uses of shrimp trawlers in other fisheries, (e) characterization (catch, effort, size, etc.) and determination of impacts of the bait shrimping industry, (f) characterization (catch, effort, size, etc.) and determination of impacts of recreational shrimping, (g) assessment of impact of imported shrimp on domestic price structure, economics of the domestic industry and relationship to fishery management actions which influence the sizes of shrimp being landed, (h) methods to reduce conflicts between shrimp trawlers and other marine resource user groups, and (i) assessment and management strategies for white shrimp.

2. *Menhaden.* (a) Economic enhancement of products (surimi, oil, and food additives) for human consumption, and (b) prey-predator relationships.

3. *Coastal Pelagics.* (a) Determination of recruitment indices for king and Spanish mackerel, cobia, and dolphin (fish), (b) identification of king and Spanish mackerel management units, (c) development of methods to solve problems of competition between recreational and commercial fishermen, and (d) stock assessment for and economic analysis of fishing strategies for harvest of blue runners, little tunny, and related species.

[1] For purposes of this notice, a fishery is defined as one or more stocks of fish, including tuna, and shellfish which are identified as a unit based on geographic, scientific, technical, recreational and economic characteristics, and any and all phases of fishing for such stocks. Examples of a fishery are Gulf of Mexico shrimp, groundfish, menhaden, etc.

4. *Reef Fish.* (a) Determination of socioeconomic impacts of recreational and commercial fishing, (b) determination of recruitment processes for shallow and deep-water reef fish, (c) identification of reef fish management units, (d) development of methods to solve problems of competition between recreational and commercial fishermen, (e) determination of trends in fishing effort for inshore and offshore fisheries, (f) determination of size composition by species for inshore and offshore fisheries, (g) determination of the role of artificial reefs and reef site location in productivity, (h) stock assessment information on secondary target species such as triggerfish, amberjack, etc., (i) analysis of biological and economic impacts of bottom longline depth-specific management strategies, (j) compilation of existing data on location and areal extent of reef fish habitats, and (k) development of rearing techniques for early life history stages of red snapper.

5. *Coastal Herrings.* (a) Handling and processing, shoreside methods, and product development, (b) resource surveys and gear development, (c) economic analysis of harvesting, handling, and processing systems, (d) assessment of predator-prey relationships, particularly with respect to recreational and commercial impacts, and (e) analysis of impacts of localized stock harvest and/or environmental perturbations on predator populations.

6. *Ocean Pelagics.* (a) Development of species-selective fishing gear, including longline methods, (b) determination of social and economic impacts of alternative fishing methods, (c) development of methods to determine recreational fishing participation, and (d) characterization of the Gulf longline fishery (including fish caught, participants, and landings).

7. *Marine Mollusks.* (a) Development of methods for onshore and offshore oyster depuration systems, (b) development of guidelines for oyster reef expansion, rehabilitation, and management, (c) development of improved oyster varieties, culture methods, and technology transfer, and (d) determination of baseline information for a quahog fishery.

8. *Crabs and Lobsters.* (a) Determination of safe harvest potential for deepwater crabs, (b) development of methods to quantify the recreational blue crab fishery, (c) determination of conflicts and methods of resolution among blue crab user groups, (d) development of information for population assessment of blue crab stocks, and (e) life history studies and habitat requirements of early juvenile blue crabs.

9. *Bottomfish.* (a) Assessment of impact of shrimp trawling on bottomfish stocks, (b) determination of life history of Gulf butterfish, (c) development of methods to reduce incidental trawl catch of bottomfish, (d) assessment of biological, social, and economic impact of incidental catch reduction, and (e) evaluation of product development options fof Gulf butterfish and harvest fish.

10. *Marine Mammals and Endangered Species.* Assessment of nonshrimping mortality of sea turtles, using available data.

11. *Estuarine Fish.* (a) Improving estimates of age structures and catches of red and black drums, (b) measurement of escapement rate of inshore red drum juveniles to offshore stock, (c) determination of potential to develop an eel fishery, and (d) enhancing knowledge of recruitment of early juvenile stages of economically important sciaenids, including habitat requirements.

12. *General.* (a) Conduct social and economic research applicable to each Gulf of Mexico fishery including costs and returns plus production function analysis, demand analyses on recreational and commercial fisheries, economics of recreational or commercial multi-species fisheries, and analysis of foreign trade barriers affecting Gulf of Mexico fisheries; (b) description of procedures to implement limited entry for existing or developing fisheries such as reef fish, shark, stone crab, or butterfish, and (c) development of alternative methods to handle or use by-products generated from seafood processing common to the Gulf of Mexico.

MARFIN financial assistance for projects started in fiscal year 1986. For fiscal years 1986, 1987, and 1988 awards totaled ($5.288 million). Funding by fisheries was as follows:

	Thousands of dollars	Percent of total
1. Shrimp (includes TED technology transfer)	1,044.1	19.7
2. Menhaden	10.0	0.2
3. Coastal pelagics	666.9	12.6
4. Reef fish	259.9	4.9
5. Coastal herrings	284.3	5.4
6. Ocean pelagics	182.1	3.4
7. Marine mollusks	230.0	4.3
8. Crabs and lobsters	479.4	9.1
9. Bottomfish	89.1	1.7
10. Marine mammals and endangered species	127.0	2.4
11. Estuarien fish	1,798.9	34.0
12. General	116.7	2.2

Priority in program emphasis will be placed upon funding projects which have the greatest probability of maintaining and improving existing fisheries, improving our understanding of factors affecting recruitment success, generating increased yields from fisheries, and generating increased recreational opportunity and harvest potential. Projects will be evaluated as to the likelihood of achieving these benefits through both short-term and long-term research projects with consideration of the magnitude of the eventual benefit that may be realized. Both short-term projects that may yield more immediate benefits and long-term projects yielding greater benefits will receive equal emphasis. Planning emphasis will be placed upon attaining each discrete target benefit either through a single project or series of projects necessary to attain that goal.

Further information on current programs that address the above listed priorities may be obtained from the NOAA National Marine Fisheries Service's Southeast Regional Office.

III. How to Apply

1. Eligibility Applicants

Applications for grants or cooperative agreements for MARFIN projects may be made, in accordance with the procedures set forth in this notice, by:

(a) Any individual who is a citizen or national of the United States;

(b) Any corporation, partnership, or other entity, non-profit or otherwise, if such entity is a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916 as amended (46 U.S.C. 802).[2]

[2] To qualify as a citizen of the United States within the meaning of this statute, citizens or nationals of the United States or citizens of the Northern Mariana Islands (NMI) must own less than 75 percent of the interest in the entity or, in the case of a non-profit entity, exercise control of the entity that is determined by the Secretary to be equivalent to such ownership; and in the case of a corporation, the president or other chief executive officer and the chairman of the board of directors must be citizens of the United States. No more of its board of directors than a minority of the number necessary to constitute a quorum may be non-citizens; and the corporation itself must be organized under the laws of the United States, or of a State, including the District of Columbia, Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, the NMI or any other Commonwealth, territory, or possession of the United States. Seventy-five percent of the interest in a corporation shall not be deemed to be owned by citizens of the

Continued

NOAA will consider not awarding a grant or cooperative agreement to any individual or organization who is delinquent on a debt to the Federal government until payment is made or satisfactory arrangements are made with the agency to whom the debt is owed. Any first time applicant for Federal grant funds is subject to a preaward accounting survey prior to execution of the award. Women and minority individuals and groups are encouraged to submit applications. NOAA employees including full, part-time, and intermittent personnel, (or their immediate families) and NOAA offices or centers are not eligible to submit an application under this solicitation, or aid in the preparation of an application, except to provide information about the MARFIN program and the priorities and procedures included in this solicitation.

2. Amount and Duration of Funds

Under this solicitation for fiscal year 1989 an estimated $2.0 million will be available to fund fishery research and development projects ($1.69 million for new projects and $315 thousand for continuing projects). Although grants or cooperative agreements will generally be awarded for a period of one year, two- or three-year projects may be approved for funding in subsequent years. Once approved, multi-year projects will not compete for funding in subsequent years. For multi-year projects, funding beyond the first year is contingent on the availability of program funds in subsequent fiscal years and the extent to which project objectives and reporting requirements are met during the prior year. Publication of this announcement does not obligate NMFS to award any specific grant or to obligate all or any part of the available funds. Selection of successful applications generally will be provided by June 6, 1989. Awards generally will be made no later than 60 days after the funding selection is determined and negotiations completed.

NMI, if: (1) The title to 75 percent of its stock is not vested in such citizens or nationals of the United States or citizens of the NMI free from any trust or fiduciary obligation in favor of any person not a citizen or national of the United States or citizens of the NMI: (2) 75 percent of the voting power in such corporation is not vested in citizens or nationals of the United States or citizens of the NMI: (3) through any contract or understanding it is arranged that more than 25 percent of the voting power in such corporation may be exercised, directly or indirectly in behalf of any person who is not a citizen or national of the United States or a citizen of the NMI: or (4) by any means whatsoever, control of any interest in the corporation is conferred upon or permitted to be exercised by any person who is not a citizen or national of the United States.

3. Cost-Sharing Requirements

Applications must reflect the total amount of money necessary to accomplish the project including contributions and/or donations. Cost sharing is not required for the MARFIN program. However, cost sharing is encouraged, and in case of a tie in considering proposals for funding, cost-sharing may affect the final decision. The appropriateness of all cost-sharing will be determined on the basis of guidance provided in Office of Management and Budget (OMB) circulars. Appropriate documentation must exist to support in-kind services or property used to fulfill cost-sharing requirements.

4. Format

Applications for project funding must be complete. They must identify the principal participants and include copies of any agreements between the applicant and the participants describing the specific tasks to be performed. Project applications should give a clear presentation of the proposed work, the methods for carrying out the project, its relevance to managing and enhancing the use of Gulf of Mexico fishery resources and cost estimates as they relate to specific aspects of the project. Budgets will include a detailed breakdown by category of expenditure with appropriate justification. Applicants may submit two or more related projects under one proposal but must identify project costs including administrative costs, separately for each individual project. Applicants should not assume prior knowledge on the part of the NMFS as to the relative merits of the project described in the application. Applications must be submitted in the following format:

(a) *Cover Sheet.* An applicant must use OMB Standard Form 424 (revised 4/88) as the cover sheet for each project or group of consolidated projects. Applicants may obtain copies of the form from the NMFS Regional Office, or Department of Commerce's Central Administrative Support Center (CASC); addresses are set forth at Section E., Application Submission.

(b) *Project Summary.* Each project must contain a summary of not more than one page which provides the following information:

(i) Project title;

(ii) Project status: (new or continuing);

(iii) Project duration: (beginning and ending dates);

(iv) Name, address, and telephone number of applicant;

(v) Principal Investigator(s);

(vi) Project objective; and

(vii) Summary of work to be performed.

For continuing projects the applicant is to briefly describe progress to date in addition to any changes to the statement of work previously submitted.

(viii) Total Federal funds requested (for multi-year projects, identify each year's requested funding).

(ix) Project costs (matching funds) to be provided from non-NOAA sources (for multi-year projects, identify each year's requested funding). Specify whether cash or in-kind contributions.

(x) Total project cost.

(c) *Project Description.* Each project must be completely and accurately described. Each project description may be up to 15 pages in length. The NMFS will make all portions of the project description available to the public and members of the fishing industry for review and comment; therefore, NMFS cannot guarantee the confidentiality of any information submitted as part of any project nor will NMFS accept for consideration any project requesting confidentiality of any part of the project. Each project must be described as follows:

(i) Identification of Problem(s). Describe how existing conditions prevent the full use of Gulf of Mexico fishery resources. In this description, identify (1) the fisheries involved, (2) the specific problem(s) that the fishing industry has encountered, (3) the sectors of the fishing industry that are affected, and (4) how the problem(s) prevent the fishing industry from using the fishery resources.

(ii) Project Goals and Objectives. State what the proposed project will accomplish and describe how this will eliminate or reduce the problem(s) described above. For multi-year projects, describe the ultimate objective of the project and how the individual tasks contribute to reaching the objective. Describe the time frame in which tasks would be conducted.

(iii) Need for Government Financial Assistance. Explain why other fund sources cannot fund all the proposed work. List all other sources of funding which are or have been sought for the project.

(iv) Participation by Persons or Groups Other Than the Applicant. Describe the level of participation required in the project(s) by NOAA or other government and non-government entities. Specific NOAA employees should not be named in the proposal, even though the applicant may wish to acknowledge government expertise in an allied area.

(v) Federal, State, and Local Government Activities. List any programs (federal, state, or local government or activities, including State Coastal Zone Management Programs, Sea Grant, Southeast Area Monitoring and Assessment Program, Pub. L. 99-659 and Cooperative Statistics), this project would affect and describe the relationship between the project and those plans or activities.

(vi) Project Outline. Describe the work to be performed during the project, starting with the first month's work and continuing to the last month. Identify specific milestones that can be used to track project progress. For multi-year projects, major project tasks and milestones for future years must also be identified. If the work described in this section does not contain sufficient detail to allow for proper technical evaluation, the NMFS will not consider the application for funding and will return it to the applicant.

(vii) Project Management. Describe how the project will be organized and managed. Include resumes of principal investigators. List all persons directly employed by the applicant who will be involved in the project, their qualifications, and their level of involvement in the project.

(viii) Monitoring of Project Performance. Identify who will participate in monitoring of the project.

(ix) Project Impacts. Describe the impact of the project in terms of anticipated increased landings, production, sales, exports, product quality, safety, or any other measurable factors. Describe the specific products or services that will be produced by this project. Describe how these products or services will be made available to the fishing industry.

(x) Evaluation of Project. The applicant is required to provide an evaluation of project accomplishments in the final report. The application must describe the methodology or procedures to be followed to determine technical or economic feasibility, to evaluate consumer acceptability, or to quantify the results of the project in promoting increased landings, production, sales, exports, product quality, safety, or other measurable factors.

(xi) Total Project Costs. Total project costs is the amount of funds required to accomplish the proposed statement of work (SOW), and includes contributions and donations. All costs must be shown in a detailed budget. No cost-sharing can come from another Federal source. Costs must be allocated to the Federal share and non-NOAA share provided by the applicant or other sources. Non-NOAA costs are to be divided into cash and in-kind contributions. A standard budget form (ED-357 NG; Rev. 3-80) is available from the offices listed in section E. A separate budget must be submitted for each project. An applicant submitting a multi-year project must submit two budgets: one covering total project costs (including individual costs per year) and one covering the initial funding request for the project. The initial funding request should cover funds required during the first 12-month period. NMFS will not consider fees or profits as allowable costs for grantees. To support its budget, the applicant must describe briefly the basis for estimating the value of the non-NOAA funds derived from in-kind contributions. Costs for the following categories must be detailed in the budget as follows:

(A) *Personnel.* (*1*) Identify salaries by position and percentage of time of each individual dedicated to the project.

(*2*) Fringe Benefits. Indicate benefits associated with personnel working on the project. This entry should be the proportionate cost of fringe benefits paid for the amount of time spent in the project. For example, if an employee spends 20 percent of his/her time on the project, 20 percent of his/her fringe benefits should be charged to the project.

(B) *Consultants and contract services.* Identify all consultant and/or contractual service costs by specific task in relation to the project. If a commitment has been made prior to application for funding to contract with a particular vendor, explain how the vendor was selected, type of contract, deliverable expected, time frame, and cost. All contracts must meet the standards established in OMB circulars.

(C) *Travel and transportation.* Identify number of trips to be taken, purpose, and number of people to travel. Itemize estimated costs to include approximate cost of transportation, per diem, and miscellaneous expenses. Registration fees should be included.

(D) *Equipment, space or rental costs.* (*1*) Identify equipment purchases or rental costs, along with the intended use. Equipment purchases greater than $500.00 will not be allowed, since experienced investigators are expected to have sufficient capital equipment on hand. Use of lease to purchase (LTOP) or similar leases are prohibited.

(*2*) Identify space rental costs with specific uses.

(E) *Other costs.* (*1*) Supplies: Identify specific supplies necessary for the accomplishment of the project. Consumable office supplies may be included under Indirect Costs unless purchased in a large quantity to be used specifically for the project.

(*2*) Postage and shipping. Include postage for correspondence and other material produced under grant, as well as air freight, truck or rail shipping of bulk materials to be used in conferences and workshops.

(*3*) Printing costs. Include costs associated with producing materials in conjunction with the project.

(*4*) Telephone and telegraph. Identify estimated calls and monthly bills.

(*5*) Utilities may be included under Indirect Costs unless purchased in a large quantity to be specifically for the project. Identify costs of utilities and percentage of use in conjunction with performance of project.

(*6*) Indirect Costs. This entry should be based on the applicant's established indirect cost agreement rate with the Federal Government. A copy of the current approved negotiated Indirect Cost Agreement should be included.

(*7*) Additional costs. Indicate any additional costs associated with the project which are allowable under OMB Circulars A-21, A-87, and A-122.

(d) *Supporting Documentation.* This section should include any required documents and any additional information necessary or useful to the description of the project. The amount of information given in this section will depend on the type of project proposed. The applicant should present any information which would emphasize the value of the project in terms of the significance of the problems addressed. Without such information, the merits of the project may not be fully understood, or the value of the project to fisheries use may be underestimated. The absence of adequate supporting documentation may cause reviewers to question assertions made in describing the project and may result in a lower ranking of the project. Reviewers will not necessarily examine all material provided as supporting documentation except where sufficient detail is lacking in the project description to properly evaluate the project. Therefore, information presented in this section should be clearly referenced in the project description.

5. Application Submission and Deadline

(a) *Deadline.* NMFS will accept applications for funding under this program between March 8, 1989 and April 24, 1989. An application will be accepted if the application is received by the office listed below on or before April 24, 1989 (6 p.m. e.s.t.).

(b) *Submission of applications to NMFS.* Applications are not to be bound

in any manner and should be one-sided. Any application not fully including all information called for herein, will be returned to the applicant. Applicants must submit one signed original and two (2) copies of the complete application to the address set forth below:

Regional Director, Attn: D. Ekberg, National Marine Fisheries Service, Duval Bldg., 9450 Koger Blvd., St. Petersburg, Florida 33702, Telephone No. (813) 893-3720.

Questions of an administrative nature should be referred to:

NOAA RAS/CC31, Attn: Jean West, Central Administrative Support Center, Federal Bldg., Room 1758, 601 East 12th Street, Kansas City, Missouri 64106, Telephone No. (816) 426-7267.

IV. Review Process and Criteria

1. Evaluation and Ranking of Proposed Projects

For applications meeting the requirements of this solicitation, NMFS will conduct a technical evaluation of each project prior to any other review. If an application contains two or more projects, NMFS will evaluate the projects separately. All comments submitted to NMFS will be taken into consideration in the technical evaluation of projects. NMFS will provide point scores on proposals based on the following evaluation criteria:

(a) Adequacy of research/development/demonstration for managing or enhancing Gulf of Mexico marine fishery resources, addressing especially the possibilities of securing productive results (30 points).

(b) Soundness of design/technical approach for enhancing or managing the use of Gulf of Mexico marine fishery resources (25 points).

(c) Organization and management of the project, including qualifications and previous related experience of the applicant's management team and other project personnel involved (20 points).

(d) Effectiveness of proposed methods for monitoring and evaluating the project (15 points).

(e) Justification and allocation of the budget in terms of the work to be performed (10 points).

The average technical scores will be ranked by NMFS into three groups: (1) highly recommended, (2) recommended, and (3) not recommended, for presentation to MARFIN Board members. The Board members will consider the significance of the problem addressed in the project, along with the technical evaluation and need for funding. This evaluation and ranking will enable NMFS to determine the appropriate level of funding for each project.

2. Consultation with Others

NMFS will make project descriptions available for review as follows:

(a) Public review and comment.

Applications may be inspected at the National Marine Fisheries Service Regional Office in St. Petersburg, Florida from April 24, 1989, to May 1, 1989.

(b) Consultation with members of the fishing industry. The NMFS shall, at its discretion, request comments from members of the fishing and associated industries who have knowledge in the subject matter of a project or who would be affected by a project.

(c) Consultation with government agencies. Applications will be reviewed in consultation with the NMFS Southeast Science and Research Director and appropriate laboratory personnel, CASC Grants Officer and, as appropriate, Department of Commerce bureaus and other federal agencies for elimination of duplicate funding. The Regional Fishery Management Councils may be asked to review projects and advise of any real or potential conflicts with council activities.

3. Funding Decision

After projects have been evaluated, MARFIN Board members will develop and submit funding recommendations to the Director of the NMFS Southeast Regional Office. The Director of the NMFS Southeast Regional Office will ascertain that the projects do not substantially duplicate other projects that are currently funded by or are approved for funding by the U.S. Government, determine the projects to be funded, and determine the amount of funds available for the program. The exact amount of funds awarded to each project will be determined in preaward negotiations between the applicant, NMFS, and the Grants Office. The Department of Commerce will review all recommended projects and funding before an award is executed by the Grants Officer. The funding instrument will be determined by the Grants Officer. Projects may not be initiated by a recipient until a notice of award is received from the Grants Officer. For multi-year projects, funds will be provided when specified tasks are satisfactorily completed and after NMFS has received MARFIN funds for subsequent fiscal years.

V. Administrative Requirements

1. Obligations of the Applicant

An Applicant must:

(a) Meet all application requirements and provide all information necessary for the evaluation of the project.

(b) Be available, upon request, in person or by designated representative, to respond to questions during the review and evaluation of the project(s).

(c) If a project is awarded, manage the day-to-day operations of the project, be responsible for the performance of all activities for which funds are awarded, and be responsible for the satisfactory completion of all administrative and managerial conditions imposed by the award. This includes adherence to procurement standards set forth in the award and referenced OMB circulars.

(d) If a project is awarded, keep records sufficient to document any costs incurred under the award, and allow access to records for audit and examination by the Secretary, the Comptroller of the United States, or their authorized representatives.

(e) Fishery data collected during the course of a project that could be pertinent to fishery management needs must be available to NMFS on request, subject to pertinent confidentiality requirements.

(f) If a project is awarded, submit quarterly project status reports on the use of funds and progress of the project to NMFS within 30 days after the end of each calendar quarter to the individual specified as the program officer in the funding agreement. The content of these reports will include, at a minimum:

(i) A summary of work conducted, which includes a description of specific accomplishments and milestones achieved;

(ii) The degree to which goals or objectives were achieved as originally projected;

(iii) Where necessary, the reasons why goals or objectives are not being met; and

(iv) Any proposed changes in plans or redirection of resources or activities and the reason therefore.

(g) If a project is funded, submit an original and two copies of a final report within 90 days after completion of each project. The report must describe the accomplishments of the project and include an evaluation of the work performed and the results and benefits of the work in sufficient detail to enable NMFS to assess the success of the completed project. Results must be described in relation to the project objectives of resolving specific impediments to managing or enhancing fisheries, and be qualified to the extent possible. Potential uses of project results by private industry or fishery managment agencies should be

specified. Any conditions or requirements necessary to make productive use of the project results should be identified.

(h) Present current project results at the annual MARFIN conference and submit an abstract 15 days prior to the conference. Travel funds for this meeting will be provided by NMFS.

(i) Each recipient of MARFIN funding must comply with applicable OMB circulars, and Department of Commerce and NOAA policies. Each award contains standard terms and conditions and any special conditions which must be met by the recipient.

(j) For each project funded three copies of all publications or reports printed with grant funds must be submitted to the Program Officer. Any publication printed with grant funds must identify the MARFIN program of NOAA as the funding source along with the grant award number.

2. Obligations of the National Marine Fisheries Service

The NMFS Southeast Region will:

(a) Provide programmatic information necessary for the proper submission of applications.

(b) Provide advice to inform applicants of NMFS fishery management and development policies and goals.

(c) Monitor all projects after award to ascertain their effectiveness in achieving project objectives and in producing measurable results. Actual accomplishments of a project will be compared with stated objectives.

(d) Refer questions of an administrative nature from applicants/recipients to the Grants Office.

3. CASC Grants Officer Responsibility

The CASC Grants Officer is responsible for the administrative processing of NOAA Federal Assistance Awards and will provide all forms needed by an applicant. Processing includes review of applications to determine that they are in conformance with Federal requirements, negotiation, determination of the funding instrument, clearance through administrative review once program funding has been determined, execution of awards, reports and administrative monitoring, and close out of awards. The official grant file will be maintained by the Grants Officer.

4. Legal Requirements

The applicant will be required to satisfy the requirements of applicable local, State, and Federal laws.

This program is not included in the Catalog of Federal Domestic Assistance.

Authority: 16 U.S.C. 1854(e).

Dated: March 3, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 89-5371 Filed 3-7-89; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Groundfish Management Team (GMT) will meet on March 21, 1989, at the National Marine Fisheries Service, Northwest and Alaska Fisheries Center, Building 4, Room 2079, 7600 Sand Point Way, NE., Seattle, WA. The GMT will meet at 12:30 p.m., to discuss 1989 commercial groundfish catch projections, research needs, technical revisions to the fishery management plan, and management of the commercial sablefish fishery. Other issues related to management of the west coast groundfish fishery may also be discussed.

FOR FURTHER INFORMATION CONTACT: Lawerence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201: telephone: (503) 221-6352.

Date: March 2, 1989.

Alan Dean Parsons,

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

[FR Doc. 89-5372 Filed 3-7-89; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in Brazil

March 3, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: March 6, 1989.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

The current limit for Categories 347/348 and sublimit for Category 410 are being increased for swing and carryforward. Category 410 is being increased further by special shift from Categories 410/624.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 46644, published on November 18, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee For The Implementation Of Textile Agreements

March 3, 1989.

Commissioner of Customs, Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on November 15, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Brazil and exported during the twelve-month period which began on April 1, 1988 and extends through March 31, 1989.

Effective on March 6, 1989, the directive of November 15, 1988 is amended to adjust the current limit and sublimit for cotton and wool textile products in the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Federative Republic of Brazil:

Category	Adjusted twelve-month limit [1]
347/348	728,000 dozen
410	3,697,355 square meters

[1] The limits have not been adjusted to account for any imports exported after March 31, 1988.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs

exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-5354 Filed 3-7-89; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of a Negotiated Settlement on Import Limits for Certain Cotton Textile Products and Guaranteed Access Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Costa Rica

March 3, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: March 10, 1989.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); President's February 20, 1986 announcement of a Special Access Program.

During negotiations held between the Governments of the United States and Costa Rica, agreement was reached, effected by a Memorandum of Understanding dated February 14, 1989, to establish a new bilateral textile agreement for cotton textile products in Categories 347/348 beginning on January 1, 1989 and extending through May 31, 1992. The United States Government will control imports in Categories 347/348 at the agreed level for the first agreement period January 1, 1989 through May 31, 1989.

The agreement also establishes Guaranteed Access Levels for Categories 340/640 and 347/348 for the three-year periods beginning June 1, 1989 and extending through May 31, 1992.

Beginning on March 10, 1989, for goods to be exportd from Costa Rica to the United States on and after June 1, 1989, U.S. Customs will start signing the first section of the form ITA-370P for shipments of U.S. formed and cut parts in Categories 340/640 and 347/348 that are destined for Costa Rica and subject to the Guaranteed Access Levels established for Categories 340/640 and 347/348. These products, which are assembled in Costa Rica from parts cut in the United States from fabric formed in the United States, are governed by Harmonized Tariff item number 9802.00.8010. Interested parties should be aware that shipments of cut parts in Categoreis 340/640 and 347/348 must be accompanied by a form ITA-370P, signed by a U.S. Customs officer, prior to export from the United States for assembly in Costa Rica in order to qualify for entry under the Guaranteed Access Levels.

A formal exchange of notes between the Governments of the United States and Costa Rica will follow.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 49343, published on December 7, 1988.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 3, 1989.

Commissioner of Customs, Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive cancels and supersedes the directive issued to you on December 2, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of cotton textile products in Categoreis 347/348, produced or manufactured in Costa Rica and exported during the period which began on July 28, 1988 and extends through July 27, 1989.

Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and pursuant to the Memorandum of Understanding dated February 14, 1989 between the Governments of the United States and Costa Rica; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on March 10, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 347/348, produced or manufactured in Costa Rica and exported during the five-month period which began on January 1, 1989 and exends through May 31, 1989, in excess of 750,000 dozen.

Textile products in Categories 347/348 which have been exported to the United States prior to January 1, 1989, shall not be subject to the directive.

Missing charges for Categories 347/348 will be provided at a later date.

Beginning on March 10, 1989, U.S. Customs is directed to start signing the first section of the form ITA-370P for shipments of U.S. formed and cut parts in Categories 347/348 and 340/640 that are destined for Costa Rica and re-exported to the United States on and after June 1, 1989.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-5356 Filed 3-7-89; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in Czechoslovakia

March 3, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: March 10, 1989.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 443 is being increased for swing and carryover. The limit for Category 435 is being reduced to account for the swing being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also

see 53 FR 19985, published on June 1, 1988.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 3, 1989.

Commissioner of Customs Department of the Treasury Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does no cancel, the directive issued to you on May 25, 1988. That directive concerns imports into the United States of certain wool textile products, produced or manufactured in Czechoslovakia and exported during the twelve-month period which began on June 1, 1988 and extends through May 31, 1989.

Effective on March 10, 1989, the directive of May 25, 1988 is amended to adjust the previously established limits for wool textile products in the following categories, as provided under the provisions of the current bilateral agreement between the Governments of the United States and the Czechoslovak Socialist Republic.

Category	Adjusted 12-month limit [1]
435	6,835 dozen
443	85,205 numbers

[1] The limits have not been adjusted to account for any imports exported after May 31, 1988.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-5357 Filed 3-7-89; 8:45 am]

BILLING CODE 3510-DR-M

Establishment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Costa Rica

March 3, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: March 10, 1989.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Article 3 of the Arrangement Regarding International Trade in Textiles.

Inasmuch as consultations held November 2-4, 1988 and December 12-13, 1988 between the Governments of the United States and Costa Rica have not resulted in a mutually satisfactory limit for Category 331, the United States Government has decided to control imports in this category for the period November 30, 1988 through November 29, 1989.

The United States remains committed to finding a solution concerning Category 331. Should such a solution be reached in further consultations with the Government of Costa Rica, further notice will be published in the **Federal Register.**

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 52765, published on December 29, 1988.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 3, 1989.

Commissioner of Customs
Department of the Treasury
Washington, DC 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further amended on July 31, 1986; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on March 10, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 331, produced or manufactured in Costa Rica and exported during the twelve-month period which began on November 30, 1988 and extends through November 29, 1989, in excess of 698,289 dozen pairs.

Textile products in Category 331 which have been exported to the United States prior to November 30, 1988 shall not be subject to this directive.

Textile products in Category 331 which have been released from the custody of the U.S. Customs Service under the provisons of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-5355 Filed 3-7-89; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Defense Acquisition Regulatory Council; Meetings

AGENCIES: Department of Defense (DoD) and National Aeronautics and Space Administration (NASA).

ACTION: Notice of meetings.

SUMMARY: The Defense Acquisition Regulatory (DAR) Council will travel to Phoenix, Arizona and San Antonio, Texas during the week of April 3, 1989. The Council will conduct joint Government/Industry meetings at both locations and will discuss significant Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement issues of mutual interest. The Council tentatively plans presentations on the following topics: Cost Principles, Bid Protests Suspension and Debarment, and Technical Data Rights. Panel discussions will also be conducted on issues involving Small and Small Disadvantages Business, Payment/Pricing/Finance, and Integrity/Ethics/Drug Free Workplace. The Council will be available for questions on these issues or other DAR cases.

DATES: April 4, 1989 and April 6, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, telephone (202) 697-7266.

SUPPLEMENTARY INFORMATION: The Defense Contract Administration Region-Dallas and Defense Contract Administration Services Management Area-Phoenix will host the Council's meetings on Tuesday, April 4, 1989, from 8:00 a.m. to 4:00 p.m. at the Safari Resort, 4611 North Scottsdale Road, Scottsdale, Arizona 85251, (602) 945-0721. Registration fee is $20 and registration deadline is March 20, 1989. Checks should be made payable to DAR Council Seminar and mailed to

DCASMA Phoenix, The Monroe School, 215 N. 7th Street, Attn: GXACB, T. HINTZ, Phoenix, Arizona 85034-1012. Point of contact is Ms. Tammy Hintz (602) 261-6192, Autovon 361-6192.

The Directorate of Contracting and Manufacturing, San Antonio Air Logistics Center, Kelly AFB, Texas, will host the Council's meeting on Thursday, April 6, 1989, from 8:00 a.m. to 4:00 p.m. at the Radisson Airport Hotel, 611 NW Loop, San Antonio, Texas 78216, (512) 340-6060. Registration fee is $20 and registration deadline is March 30, 1989. Checks should be made payable to DAR Council Seminar and mailed to SA-ALC/PWMA, Kelly AFB, Texas 78241-5000. Point of contact is Ms. Valery Johnson (512) 925-8331, Autovon 945-8331.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

[FR Doc. 89-5391 Filed 3-7-89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

March 3, 1989.

The USAF Scientific Advisory Board Ad Hoc Committee on Integrated Avionics 28-30 March 1989 from 8:00 a.m. to 5:00 p.m. at the Headquarters Aeronautical Systems Division, Wright-Patterson Air Force Base, Ohio 45431.

The purpose of this meeting will be to review the status of Air Force integrated avionics programs. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89-5361 Filed 3-7-89; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

March 3, 1989.

The USAF Scientific Advisory Board will hold its Spring General Board Meeting on 18-19 April 1989 from 8:00 a.m. to 5:00 p.m. at the Headquarters Air Force Space Command, Peterson AFB, CO.

The purpose of this meeting will be to enable participants, Board members, and key military leaders to grasp the important issues of Space. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89-5362 Filed 3-7-89; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

March 3, 1989.

The USAF Scientific Advisory Board Ad Hoc Committee on Electronic Combat will meet on 28-30 March 1989 from 8:00 a.m. to 5:00 p.m. at the Pentagon, Washington, DC 20330.

The purpose of this meeting will be to review the requirements for and the status of Air Force Electronic Combat programs. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89-5363 Filed 3-7-89; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

March 3, 1989.

The USAF Scientific Advisory Board Airlift Cross-Matrix Panel 23-24 Mar 89 from 8:00 a.m. to 5:00 p.m. at the Headquarters Military Airlift Command, Scott Air Force Base, Illinois 62225-5001.

The purpose of this meeting is to provide an orientation to the new panel members on the mission, policies, and programs of the Military Airlift Command and to review the status of previous initiatives that have been implemented based on Scientific Advisory Board recommendations. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89-5360 Filed 2-7-89; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee will meet on March 23-25, 1989. The meeting will be held at the Naval Air Station, Jacksonville, Florida. The meeting will commence at 9:00 a.m. on March 23 and terminate at 12:00 Noon on March 25, 1989. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings and demonstrations for the committee members on naval aviation. The agenda will include briefings on the naval aviation mission and operations, shipboard safety, as well as demonstrations related to aircraft, simulators and flight operations. These briefings, discussions and demonstrations will contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive Order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. 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: Commander L. W. Snyder, U. S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217-5000, Telephone Number: (202) 696-4870.

Date: February 22, 1989.

Jane M. Virga,

Lieutenant, JAGC, U. S. Navy Reserve, Federal Register Liaison Officer.

[FR Doc. 89-5259 Filed 3-7-89; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

[CFDA No. 84.142]

College Facilities Loan Program; New Awards Under the College Facilities Loan Program for Fiscal Year 1989

Purpose: The College Facilities Loan Program provides low interest loans to eligible undergraduate postsecondary educational institutions for the construction, reconstruction, or renovation of housing facilities, undergraduate academic facilities, and other educational facilities for students and faculties.

Deadline for Transmittal of Applications: April 24, 1989

Applications Available: March 15, 1989

Available Funds: $29,640,000

Estimated Range of Awards: $250,000 to $3,000,000

Estimated Average Size of Awards: $1,500,000

Estimated Number of Awards: 20

Project Period: Until completion

Priorities: In accordance with the requirements of section 763 of the Higher Education Act, 20 U.S.C. 1132g-2, and 34 CFR 614.3(c), the Secretary gives priority to loans for renovation or reconstruction of older undergraduate academic facilities, and undergraduate academic facilities that have gone without major renovation or reconstruction for an extended period of time. In order to accomplish this objective, $15,000,000 will be reserved for loans for the renovation or reconstruction of older undergraduate academic facilities, and undergraduate academic facilities that have gone without major renovation or reconstruction for an extended period of time, and $14,640,000 will be reserved for loans for housing facilities. Under 34 CFR 75.105(c)(3), the Secretary funds under this competition only applications that meet either of these two absolute priorities.

Deadline for Intergovernmental Review Comments: June 23, 1989.

Applicable Regulations: Education Department General Administrative Regulations (EDGAR) 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations), Subpart D of 34 CFR Part 75 (Direct Grant Programs) 75.105, 75.600-75.616; 34 CFR Part 77 (Definitions that Apply to Department Regulations); 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities), and 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)). Final regulations governing the College Facilities Loan Program, as codified in 34 CFR Part 614, were published in the **Federal Register**, 52 FR 30560, on August 14, 1987.

Technical Assistance Workshop: Applicants are invited to participate in a technical assistance workshop to assist applicants in application preparation. The workshop will take place in Washington, DC on March 13, 1989. For specific information on the workshop, please contact the Division of Higher Education Incentive Programs on (202) 732-4394.

For Applications or Information Contact: Sumner S. Bravman, U.S. Department of Education, 400 Maryland Ave., SW., Room 3022, ROB-3, Washington, DC 20202-5251. Telephone: (202) 732-4394.

Program Authority: 20 U.S.C. 1132g-11329-3.

Dated: March 2, 1989.

Kenneth D. Whitehead,

Assistant Secretary for Postsecondary Education.

[FR Doc. 89-5433 Filed 3-7-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM89-6-20-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

March 3, 1989.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on February 21, 1989, tendered for filing proposed changes in its FERC Gas Tariff, Second Revised Volume No. 1 as set forth in the revised tariff sheets:

Rate Schedule F-2, proposed to be effective March 1, 1989 Thirty-second Revised Sheet No. 203

Rate Schedule F-3, proposed to be effective March 1, 1989 Twenty-fourth Revised Sheet No. 204

Algonquin states that in a filing dated January 27, 1989 in Docket No. TQ89-3-22-000, Algonquin's pipeline supplier, CNG Transmission Corporation ("CNGT") made a Quarterly Purchased Gas Adjustment filing to flow though increases in its cost of purchased gas and to reflect certain tariff changes. Pursuant to Section 7 of Rate Schedule F-2, Algonquin is filing Thirty-second Revised Sheet No. 203 to concurrently track the rate changes made by CNGT in the service underlying Algonquin's Rate Schedule F-2. Thirty-second Revised Sheet 203 represent increases of $1.115 per MMBtu in the Demand component and 38.21 cents per MMBtu in the Commodity component.

Algonquin states that in a filing dated January 30, 1989 in Docket No. TF89-2-16-000 and amended on February 1, 1989, Algonquin's pipeline supplier, National Fuel Gas Supply Corporation ("National") made an Interim Purchased Gas Adjustment which decreased its commodity rate by 17.14 cents per MMBtu from the rate filed in its Interim PGA dated December 30, 1988 in Docket No. TF89-1-16-00. Pursuant to Section 7 of Rate Schedule F-3, Algonquin is filing Twenty-fourth Revised Sheet No. 204 to concurrently track the rate change filed for by National in the service underlying Algonquin's Rate Schedule F-3.

Algonquin notes that copies of this filing were served upon the affected parties and interested state commissions.

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 §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 10, 1989. 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 inervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-5343 Filed 3-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-2-20-002, TM89-5-20-001, TM89-6-20-002 and TF89-1-20-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

March 3, 1989.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on February 22, 1989, tendered for filing proposed changes in its FERC Gas Tariff, Second Revised Volume No. 1 as set forth in the revised tariff sheets:

Proposed to be effective November 1, 1988, Substitute Twenty-third Revised Sheet No. 205, Substitute Revised Thirteenth Revised Sheet No. 214

Proposed to be effective January 1, 1989, Substitute Twentieth Revised

Sheet No. 211, Substitute Fourteenth Revised Sheet No. 214

Proposed to be effective February 1, 1988, Substitute Alternate Substitute Twenty-fourth Revised Sheet No. 205, Second Substitute Alternate Fifteenth Revised Sheet No. 214

Proposed to be effective March 1, 1989, Substitute Alternate Substitute Thirtieth Revised Sheet No. 201

Algonquin states that pursuant to Section 7, Section 10 and Section 9 of Rate Schedules F-4, STB and SS-III, respectively, it is filing Substitute Twenty-third Revised Sheet No. 205, Substitute Revised Thirteenth Revised Sheet No. 211, Substitute Twentieth Revised Sheet No. 211 and Substitute Fourteenth Revised Sheet No. 214 to track the change in rates for the services underlying Algonquin's Rate Schedules F-4, STB and SS-III as made by its pipeline supplier Texas Eastern Transmission Corporation ("Texas Eastern") in its filings of January 25, 1989 in Docket Nos. TM89-1-17 *et al.* and CP87-28 *et al.*

Additionally, Algonquin states that it is filing Substitute Alternate Substitute Twenty-fourth Revised Sheet No. 205 (Rate Schedule F-4) and Second Substitute Alternate Fifteenth Revised Sheet No. 214 (Rate Schedule SS-III) to concurrently track the Interim PGA filed by Texas Eastern, dated January 31, 1989 in Docket No. TF89-1-17-000.

Furthermore, Algonquin states that it is filing Substitute Alternate Substitute Thirtieth Revised Sheet No. 201 to revise its current adjustment contained in its annual PGA of January 3, 1989, as first revised on January 30, 1989, (Docket Nos. TA89-1-20-000 & 001). This revision to the current adjustment is made to reflect the lowered purchased gas cost in Texas Eastern's Interim PGA as it affects Rate Schedules F-1, WS-1, I-1, and E-1.

Algonquin alleges that the rate effects are as follows:

Rate Schedules F-1, WS-1, I-1 and E-1; The rate changes reflected in the instant filing represent a projected decrease in Algonquin's purchased gas costs and revenues of approximately $2.9 million from the $7.3 million increase filed for March 1, 1989 rates (Docket No. TA89-1-20-001, Alternate sheet) for the three month period beginning March 1, 1989.

Rate Schedule F-4; The change on November 1, 1988 represents decreases of 41.4 cents per MMBtu in the Demand component and 0.16 cents in the commodity component below the previously filed for November 1, 1988 rates (Docket No. TM89-2-20-000). The change effective on February 1, 1989 represents a decrease in the commodity component of 9.72 cents per MMBtu below the previously filed for February 1, 1989 rate. (Docket No. TM89-6-20-001, Alternate sheet).

Rate Schedule STB; The effective January 1, 1989 is to reduce the demand by 2.0 cents per MMBtu and the Space charge by 0.06 cents per MMBtu below previously filed for January 1, 1989 rates (Docket No. TM89-5-20-000).

Rate Schedule SS-III; The effect of the change in rates effective on November 1, 1989 is to increase the Non-FDDQ Withdrawal Charge 0.09 cents per MMBtu over the previously filed for November 1, 1989 rate (Docket No. TM89-2-20-001). The effect of the January 1, 1989 rate change is to reduce the demand by 2.0 cents per MMBtu and the Space charge by 0.06 cents per MMBtu below previously filed for January 1, 1989 rates (Docket No. TM89-5-20-000). The effect of the February 1, 1989 rates is to bring forward the January 1, 1989 changes and to further decrease the FDDQ and Non-FDDQ Withdrawal charges by 0.03 cents per MMBtu, each (Docket No. TM89-6-20-001).

Algonquin notes that copies of this filing were served upon the affected parties and interested state commissions.

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 §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 10, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-5344 Filed 3-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2538 New York]

Beebee Island Corp.; Intention to File an Application For a New License

March 3, 1989.

Take notice that on December 29, 1988, Beebee Island Corporation, the existing licensee for the Beebee Island Hydroelectric Project No. 2538, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2538 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the Black River in Jefferson County, New York. The principal works of the Beebee Island Project include a 265-foot-long concrete overflow dam; a reservoir of 10 acres at elevation 431 feet m.s.l.; an open flume leading directly to the powerhouse; a powerhouse with an installed capacity of 8,000 kW; a transmission line connection; and appurtenant electrical and mechanical facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at HYDRA-CO Enterprises, Inc., 100 Clinton Square, Suite 400, Syracuse, NY 13202-1049, Attn: Mr. John M. Cordes.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89-5337 Filed 3-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-3-4-001]

Granite State Gas Transmission, Inc.; Filing

March 3, 1989.

Take notice that on February 27, 1989, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021, tendered for filing with the Commission the following tariff sheet in its FERC Gas Tariff, First Revised Volume No. 1, for effectiveness on February 1, 1989:

Substitute First Revised Sheet No. 7-C

According to Granite State, the purpose of the instant filing is to comply with the Commission's letter order issued February 10, 1989 in this docket

relating to the procedures pursuant to which Granite State will recover from its customers the fixed take-or-pay charges billed by Tennessee Gas Pipeline Company under the provisions of Order No. 500. Granite State requests an effective date of February 1, 1989.

Granite State further states that copies of its filing were served upon its customers, Bay State Gas Company and Northern Utilities, Inc., and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulation Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 10, 1989. 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. 89-5345 Filed 3-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2300, New Hampshire]

James River—New Hampshire Electric, Inc., Intention To File an Application for a New License

March 3, 1989.

Take notice that on December 28, 1988, James River—New Hampshire Electric, Inc., the existing licensee for the Shelburne Hydroelectric Project No. 2300, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2300 was issued effective July 1, 1958, and expires December 31, 1993.

The project is located on the Androscoggin River in Coos County, New Hampshire. The principal works of the Shelburne Project include a concrete and rock-filled, timber-crib dam with gated spillway; a reservoir of 192 acres at elevation 733.55 feet m.s.l.; a powerhouse with an installed capacity of 3,720 kW; a tailrace; step-up transformers and transmission lines; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 650 Main Street, Berlin, NH 03570-2489, Attn: Mr. David L. Dunham, telephone (603) 752-4600.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89-5338 Filed 3-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2311, New Hampshire]

James River—New Hampshire Electric, Inc.; Intention To File an Application for a New License

March 3, 1989.

Take notice that on December 28, 1988, James River—New Hampshire Electric, Inc., the existing licensee for the Gorham Hydroelectric Project No. 2311, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2311 was issued effective July 1, 1958, and expires December 31, 1993.

The project is located on the Androscoggin River in Coos County, New Hampshire. The principal works of the Gorham Project include a rock-filled, timber-crib dam flanked by earth dikes; a reservoir of 45 acres; a headworks to a 3,350-foot-long canal lined with riprap; a powerhouse with an installed capacity of 4,800 kW; a tailrace; step-up transformers and transmission lines; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 650 Main Street, Berlin, NH 03570-2489, Attn: Mr. David L. Dunham, telephone (603) 752-4600.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89-5339 Filed 3-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-36-001]

Midwestern Gas Transmission Co.; Filing of Refund Report

March 3, 1989.

On January 31, 1989, Midwestern Gas Transmission Company filed a refund report stating that on January 31, 1989, it refunded $997,757.72 to various customers pursuant to § 154.305 of the Commission's regulations and a stipulation filed with the Commission.

Any person wishing to do so may submit comments in writing concerning the subject refund report. All such comments should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, on or before March 17, 1989. Copies of the respective filing is on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-5341 Filed 3-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP72-154-015]

Northwest Pipeline Corp.; Filing of Refund Report

March 3, 1989.

On February 7, 1989, Northwest Pipeline Corporation filed a refund report stating that on January 27, 1989 it refunded $1,915,026.01 to various customers pursuant to § 154.305 of the Commission's regulations and § 16.8(C)(F) of the General Terms and Conditions of Northwest's FERC Gas Tariff, First Revised volume No. 1.

Any person wishing to do so may submit comments in writing concerning the subject refund report. All such comments should be filed with the Federal Energy Regulatory Commission,

825 North Capitol Street NE., Washington, DC 20426, on or before March 14, 1989. Copies of the respective filing is on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-5342 Filed 3-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-228-009]

Tennessee Gas Pipeline Co.; Filing of Changes in Rates

March 3, 1989.

Take notice that on February 23, 1989, Tennessee Gas Pipeline Company (Tennessee) tendered for filing changes to certain tariff sheets in its FERC Gas Tariff pursuant to the Commission's August 31, 1988, October 31, 1988, and January 31, 1989 orders in the referenced proceeding. Additionally, Tennessee states that the tariff sheets reflect the Commission's October 6, 1988 and December 20, 1988 orders in Docket Nos. RP82-121-000, *et al.*

Tennessee states that the revised tariff sheets reflect the following changes:

1. A reduction in Tennessee's claimed cost of service to account for the elimination of the costs of facilities not placed in service by February 1, 1989.
2. The elimination of standby sales service.
3. A 100 percent load factor rate for interruptible sales under Rate Schedule R.
4. The Opinion No. 352, single centroid Mcf-mile method of allocation of mileage-related transmission costs.
5. A one-part rate based on an imputed load factor of 60 percent for full requirements customers under Rate Schedule GS.
6. The use of peak-day deliveries to allocate downstream commodity transmission costs to storage service.

Tennessee further states that the revised tariff sheets also reflect the Annual Average Cost of Purchased Gas and the Surcharge for Amortizing the Unrecovered Gas Cost Account as well as the latest GRI and Annual Charge Adjustments, as shown in Tennessee's October 31, 1988 filing in Docket No. TA89-1-9 to be effective on January 1, 1989.

Although Tennessee does not believe any waivers are necessary for the Commission to accept the revised tariff sheets to be effective February 1, 1989, Tennessee requests that the Commission grant any waivers it deems necessary.

Tennessee states that copies of the filing have been mailed to all parties in this proceeding, affected customers, and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should mile a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such motions or protests should be filed on or before March 10, 1989. 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. 89-5349 Filed 3-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI63-195-001 *et al.*]

TOC-Rocky Mountains Inc.; Application

March 3, 1989.

Take notice that on February 17, 1989, TOC-Rocky Mountains Inc. (Applicant), c/o Amoco Production Company, P.O. Box 800, Denver, Colorado 80201, filed an application pursuant to section 7 of the Natural Gas Act and Parts 154 and 157 of the Federal Energy Regulatory Commission's (Commission) regulations thereunder for certificates of public convenience and necessity to continue sales of natural gas previously made by Tenneco Oil Company (Tenneco) under the certificates listed in the Appendix hereto. Applicant also requests that Tenneco's rate schedules listed in the Appendix hereto be redesignated as those of Applicant, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant states that by Conveyance dated November 22, 1988, and effective June 30, 1988, Tenneco assigned all of its interests in all of the properties subject to Tenneco's FERC Gas Rate Schedules listed in the Appendix hereto Applicant.

Any person desiring to be heard or to make any protest with reference to application should on or before March 22, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

Appendix

Tenneco Oil Company FERC Gas Rate Schedule No.	Certificate Docket No.	Purchaser
17	CI63-195	El Paso Natural Gas Company
21	CI63-901	El Paso Natural Gas Company
26	CI64-984	El Paso Natural Gas Company
36	CI64-994	El Paso Natural Gas Company
37	CI65-995	El Paso Natural Gas Company
38	CI64-996	El Paso Natural Gas Company
39	CI64-997	El Paso Natural Gas Company
45	CI64-1003	El Paso Natural Gas Company
47	CI64-1005	El Paso Natural Gas Company
50	CI64-1007	El Paso Natural Gas Company

Appendix—Continued

Tenneco Oil Company FERC Gas Rate Schedule No.	Certificate Docket No.	Purchaser
51	CI64-1008	El Paso Natural Gas Company
57	CI64-1014	El Paso Natural Gas Company
69	CI64-1025	El Paso Natural Gas Company
120	CI62-463	El Paso Natural Gas Company
121	CI62-557	El Paso Natural Gas Company
124	CI62-1153	El Paso Natural Gas Company
126	CI63-282	El Paso Natural Gas Company
142	G-6306	Southern Union Gathering
144	G-12834	El Paso Natural Gas Company
151	G-18623	El Paso Natural Gas Company
152	G-19973	El Paso Natural Gas Company
153	G-20564	El Paso Natural Gas Company
157	G-6669	El Paso Natural Gas Company
158	G-6669	El Paso Natural Gas Company
159	G-14800	El Paso Natural Gas Company
161	G-20154	El Paso Natural Gas Company
164	CI63-651	El Paso Natural Gas Company
172	CI65-506	Northwest Pipeline Corporation
176	CI65-1159	El Paso Natural Gas Company
180	CI66-142	Northwest Pipeline Corporation
196	CI66-429	El Paso Natural Gas Company
198	CI66-822	Northwest Pipeline Corporation
203	CI66-1261	El Paso Natural Gas Company
223	CI68-1038	El Paso Natural Gas Company
225	CI68-1192	El Paso Natural Gas Company
228	CI68-1345	El Paso Natural Gas Company
230	CI69-313	El Paso Natural Gas Company
257	CI70-48	El Paso Natural Gas Company
260	CI70-781	El Paso Natural Gas Company
281	CI73-154	El Paso Natural Gas Company
282	CI73-196	El Paso Natural Gas Company
291	CI63-195	Northwest Pipeline Corporation
292	CI65-1159	Northwest Pipeline Corporation
304	CI75-643	El Paso Natural Gas Company
305	CI75-661	El Paso Natural Gas Company
306	CI75-662	El Paso Natural Gas Company
307	CI75-704	El Paso Natural Gas Company
311	CI76-42	El Paso Natural Gas Company
313	CI76-103	El Paso Natural Gas Company
330	CI77-745	El Paso Natural Gas Company
334	CI78-391	El Paso Natural Gas Company
524	CI84-49	El Paso Natural Gas Company
526	CI84-676	El Paso Natural Gas Company
527	CI85-677	El Paso Natural Gas Company

[FR Doc. 89-5350 Filed 3-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2402 Michigan]

Upper Peninsula Power Co.; Intent to File An Application For a New License

March 3, 1989.

Take notice that on December 29, 1988, Upper Peninsula Power Company, the existing licensee for the Prickett Hydroelectric Project No. 2402, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2402 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the Sturgeon River in Baraga and Houghton Counties, Michigan. The principal works of the Prickett Project include a concrete diversion dam, with three gated 24-foot spillway bays, flanked by earth embankments; a reservoir of 807 acres at elevation 770.32 feet m.s.l.; an intake canal and two penstocks; a powerhouse with an installed capacity of 2,200 kW; an outdoor substation and transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 616 Shelden Avenue, Houghton, MI 49931, Attn: Mr. Charles W. Streicher, telephone (906) 482-0220.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89-5340 Filed 3-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-5-51-000]

Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff Purchased Gas Adjustment Clause Provisions

March 3, 1989.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes") on February 24, 1989, tendered for filing Second Substitute Eighteenth Revised Sheet Nos. 57(i) and 57(ii), Second Substitute Nineteenth Revised Sheet Nos. 57(i) and 57(ii) and Substitute Sixth Revised Sheet No. 57(v) to Great Lakes

Gas Transmission Company's FERC Gas Tariff, First Revised Volume No. 1.

Great Lakes states that Second Substitute Eighteenth Revised Sheet Nos. 57(i) and 57(ii) and Substitute Sixth Revised Sheet No. 57(v) reflect revised current PGA rates for the months of February, March and April, 1989. The tariff sheets were filed as an Out of Cycle PGA to reflect the latest estimated gas cost as provided to Great Lakes by its sole supplier of natural gas, TransCanada PipeLines Limited ("TransCanada"). These pricing arrangements were the result of contract renegotiation between each of Great Lakes' resale customers and the supplier.

Great Lakes states that Second Substitute Eighteenth Revised Sheet Nos. 57(i) and 57(ii), proposed to be effective February 1, 1989, reflect a surcharge rate which expires on February 28, 1989. Second Substitute Nineteenth Revised Sheet Nos. 57(i) and 57(ii) were filed in order to reflect the termination of the surcharge rate and were proposed to be effective on March 1, 1989.

Great Lakes requested waiver of the notice requirements of the provisions of Section 154.309 of the Commission's Regulations and any other necessary waivers so as to permit the above tariff sheets to become effective as requested in order to implement the gas pricing agreements between Great Lakes' resale customers and TransCanada on a timely basis.

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 March 10, 1989. 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-5346 Filed 3-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-3-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

March 3, 1989.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on February 24, 1989 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Fifth Revised Sheet No. 64
Fifth Revised Sheet No. 65
Fifth Revised Sheet No. 66
Fifth Revised Sheet No. 67

Texas Eastern states that this filing is being made in compliance with the Commission's order on September 16, 1988 in Docket No. RP88-80-007 requiring Texas Eastern to track any modifications of Southern Natural gas Company's (Southern) flowthrough charges in Southern's Docket No. RP88-229 of take-or-pay charges from United Gas Pipe Line Company.

Texas Eastern states that on Feb. 2, 1989, the Commission approved tariff sheets filed by Southern on January 4, 1989 in Docket No. TM89-2-7-000. Southern originally tendered the filing on December 16, 1988 in Docket No. RP88-229 reflecting the flowthrough to Southern's customers of additional take-or-pay costs allocated to Southern by United Gas Pipe Line Company (United) in United's Docket No. RP88-264. These additional costs were allocated to Southern by United in United's November 30, 1988 filing in Docket Nos. RP88-27-000 and RP88-264-000. Pursuant to the allocation methodology proposed by Southern, Southern will now bill and recover from Texas Eastern an aggregate principal amount of $2,042,789, excluding amortization interest, by means of a monthly charge, including amortization interest, of $47,466 over a period of fifty-six months beginning Janaury 1, 1989. The aggregate principal amount of $2,042,789 represents $1,994,848 flowed through to Texas Eastern by Southern from United's Docket No. RP88-27-008 as described in Texas Eastern's filing on October 24, 1988 in Docket No. RP88-80-011 and approved by the Commission on January 13, 1989, and the additional amount of $47,941 flowed through to Texas Eastern by Southern from United's Docket No. RP88-264.

Texas Eastern states that the tariff sheets proposed are filed solely to track modifications filed by Southern on January 4, 1989. Fifth Revised Sheet Nos. 64 through 67 set forth the principal amount plus the allocation factor for carrying costs that each Texas Eastern customer will be required to pay in order to recover Southern's flowthrough of United take-or-pay charges in Docket No. RP88-229 billed to Texas Eastern by Southern. Workpapers setting forth Texas Eastern's determinaiton of the allocation factor for the total principal amount (which excludes a predetermined carrying charge) and a breakdown of the monthly principal amounts (which include a predetermined carrying charge) each Texas Eastern customer will be required to pay are set forth on Appendix A, attached to the filing.

The proposed effective date of the above tariff sheets is January 1, 1989 to coincide with the date Southern will commence billing Texas Eastern.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions. In addition, Texas Eastern is mailing a copy of this filing to all parties of record in Docket No. RP88-80.

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 March 10, 1989. 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. 89-5347 Filed 3-7-89 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-4-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

March 3, 1989.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on February 24, 1989 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Sixth Revised Sheet No. 68
Sixth Revised Sheet No. 69
Sixth Revised Sheet No. 70
Sixth Revised Sheet No. 71

Texas Eastern states that this filing is made in compliance with the

Commission's order on October 7, 1988 in Docket No. RP88-251-000 requiring Texas Eastern to track any modifications to Texas Gas Transmission Corporation's (Texas Gas) take-or-pay charges in Texas Gas's Docket No. RP88-230.

Texas Eastern states that on Feb. 10, 1989 in Docket No. TM89-2-18-000, the Commission accepted tariff sheets filed by Texas Gas on January 13, 1989. The January 13 filing revised fixed take-or-pay costs pursuant to Texas Gas's Docket No. RP88-230 to recover take-or-pay costs to be billed through a demand surcharge by Tennessee Gas Pipeline Company (Tennessee). Tennessee's take-or-pay surcharge is effective for a six month period from January 1, 1989 through June 30, 1989 to recover costs incurred from June 1, 1988 through November 30, 1988. Texas Gas stated in its original filing in Docket No. RP88-230 on August 8, 1988 that it would file tariff sheets to be effective February 1 and August 1, corresponding with Tennessee's tariff sheets to be effective January 1 and July 1. Texas Eastern's portion of the total principal amount of Tennessee's take-or-pay charges billed by Texas Gas is $14,632 to be amortized over the six month period beginning February 1, 1989. This is a decrease in the total principal amount of $62,323 for the prior six month period.

Texas Eastern states that these proposed tariff sheets are being filed solely to track modifications made by Texas Gas on January 13, 1989. Sixth Revised Sheet Nos. 68 through 71 set forth the monthly principal amount plus the allocation factor for carrying costs that each Texas Eastern customer will be required to pay in order to recover Texas Gas's take-or-pay charges billed to Texas Eastern pursuant to Texas Gas's filing on January 13, 1989. Workpapers setting forth Texas Eastern's determination of the allocation factor for the principal amount (which include a predetermined carrying charge) and a breakdown of the total and monthly principal amounts (which include a predetermined carrying charge) each Texas Eastern customer will be required to pay are set forth under Appendix A. attached to the filing.

The proposed effective date of the above tariff sheets is April 1, 1989, corresponding with the six month amortization period used by Tennessee and Texas Gas.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions. In addition, Texas Eastern is mailing a copy of this filing to all parties of record in Docket No. RP88-251.

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 March 10, 1989. 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. 89-5348 Filed 3-7-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3533-9]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202 382-2740).

SUPPLEMENTARY INFORMATION:

Office of Water Regulations and Standards

Title: Pharmaceutical Industry Survey (Phase I: Screener Questionnaire (EPA ICR # 1460). This is a new collection.

Abstract: The Pharmaceutical Screener Questionnaire for 1988 will collect information on subcategory activity and wastewater discharge practices from all known pharmaceutical manufacturers in the United States and its territories. The information provided in response to this questionnaire will enable the Agency to determine which facilities could be subject to new and/or revised regulations.

Burden Statement: The estimated average public reporting and recordkeeping burden for this collection of information is 1 hour per respondent. This estimate includes the time required to fill out the questionnaire and the little, if any, time required to consult existing records.

Respondents: All manufacturers or producers of pharmaceutical products in the United States and its territories.

Estimated No. of Respondents: 1100.

Estimated Total Burden on Respondents: 1100 hours.

Frequency of Collection: 1 response.

Send comments regarding the burden estimate, or any other aspect of these information collections, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street, SW., Washington, DC 20460

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20503, (Telephone (202) 395-3084).

OMB Responses to Agency PRA Clearance Requests

EPA ICR #1485; Quality Control Recordkeeping for Hazardous Waste Testing; was approved 02/09/89; OMB # 2050-0097; expires 12/31/91.

EPA ICR #0143; Recordkeeping Requirements for Producers of Pesticides; was approved 02/29/89; OMB #2070-0028; expires 02/29/89.

EPA ICR #0783.C7; Motor Vehicle Emission Certification and Fuel Economy Labeling Program (Emission Standards for Methanol-Fueled Vehicles); was approved 02/09/89; OMB #2060-0104; expires 08/31/89.

EPA ICR #0559; Application for Reference or Equivalent Method Determination; was approved 02/09/89; OMB #2080-0005; expires 02/29/92.

EPA ICR #0226.04; Application for Permit to Discharge Wastewater and Associated Regulations; was disapproved 02/09/89.

Date: March 1, 1989.

Paul Lapsley,

Information and Regulatory Systems Division.

[FR Doc. 89-5335 Filed 3-7-89; 8:45 am]

BILLING CODE 6560-50-M

[OPP-36169; FRL-3531-6]

Addenda on Data Reporting to Pesticide Assessment Guidelines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for comments.

SUMMARY: EPA is making available, for public comment, proposed addenda to the following studies in the Pesticide Assessment Guidelines: acute oral toxicity, acute dermal toxicity, repeated dose (21-day) and subchronic (90-day) dermal toxicity, reproductive and fertility effects, and mutagenicity studies. The addenda would supersede paragraphs in the Guidelines on data reporting and would provide a format for the preparation of study reports by those submitting data to EPA. This will increase the efficiency of pesticide registration and other regulatory activities. Copies of the proposed addenda are available at the address listed below for the Public Docket and Freedom of Information Section.

DATE: Comments, identified by the docket control number OPP-36169 must be received on or before April 7, 1989.

ADDRESS: Submit three copies of written comments, identified with the docket control number "OPP-36169" by mail to: Public Docket and Freedom of Information Section, Field Operations Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. In person, deliver comments to: Rm. 236, CM#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" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Copies of the draft guidelines are also available at this above address.

FOR FURTHER INFORMATION CONTACT: Robert P. Zendzian, Health Effects Division (TS-769C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Office location and telephone number: Rm. 816D, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-5495).

SUPPLEMENTARY INFORMATION: The Pesticide Assessment Guidelines describe protocols for performing tests to support the registration of pesticides under the Federal Food, Drug, and Cosmetic Act and the Federal Insecticide, Fungicide, and Rodenticide Act. A description of the organization of these Guidelines and their relationship to data requirements, along with the necessary information for ordering them from the National Technical Information Service, appears in 40 CFR 158.115, published in the **Federal Register** of October 24, 1984 (49 FR 42856). The Data Reporting addenda will clarify sections in the Guidelines on data reporting and provide formats which guide pesticide registrants in report preparation. With consistent and complete reports, the Agency will spend less time in reorganizing data, retrieving information, and resolving misunderstandings.

This is the sixth set of Data Reporting addenda which has been made available for public comment. Public comment for the other sets were requested in the **Federal Register** of July 31, 1985 (50 FR 31010); May 21, 1986 (51 FR 18660); October 15, 1986 (51 FR 36753); March 25, 1987 (52 FR 9536); and May 25, 1988 (53 FR 18896). Most of these guidelines have been published by the National Technical Information Service as announced in the **Federal Register** of November 26, 1986 (51 FR 42931); September 23, 1987 (52 FR 35766); January 28, 1988 (53 FR 2535); April 13, 1988 (53 FR 12186); June 1, 1988 (53 FR 20011) and January 23, 1989 (54 FR 3136). The unpublished documents are being revised for publication in the near future. The specific subdivisions and series now being considered are: Subdivision F, Series 81-1, Acute Oral Toxicity Study; Subdivision F, Series 81-2, Acute Dermal Toxicity Study; Subdivision F, Series 82-2, Repeated Dose Dermal Toxicity Study (21-days); Subdivision F, Series 82-3, Subchronic Dermal Toxicity Study (90-days); Subdivision F, Series 83-4, Reproductive and Fertility Effects; and Subdivision F, Series 84-2, Mutagenicity Studies. This is expected to be the last set of Data Reporting Guidelines developed for this effort.

Drafts have been reviewed by the Agency. Comments on this set of reporting formats will be considered by the Agency in preparing a final draft for publication by the National Technical Information Service.

Dated: February 23, 1989.

William L. Burnam,

Acting Director, Health Effects Division, Office of Pesticide Programs.

[FR Doc. 89-4847 Filed 3-7-89; 8:45 am]

BILLING CODE 6560-50-M

[PF-514; FRL-3533-4]

American Cyanamid Co.; Withdrawal of Pesticide Tolerance Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the withdrawal without prejudice of pesticide petitions (PP) 1F2433 by the American Cyanamid Co. and PP 6F1851 by the E.I. Du Pont de Nemours & Co.

ADDRESS: By mail, submit written comments, identified by the document control number [PF-514], to: Public Docket and Freedom of Information Section, Field Operations Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Room. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: William Miller, Product Manager (PM) 16, Office of Pesticide Programs, Registration Division, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

In person, bring comments to: Room. 211, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2600.

SUPPLEMENTARY INFORMATION: EPA gives notice that it has received two requests to withdraw without prejudice, as specified under 40 CFR 180.8, pesticide petitions as described below.

Withdrawn Filings of Pesticide Petitions

1. *PP 1F2433.* The American Cyanamid Co., Agricultural Research Division, P.O.

Box 400, Princeton, NJ 08540, has requested the withdrawal without prejudice of PP lF2433 proposing to amend 40 CFR 180.352 by establishing tolerances for the combined residues of the insecticide terbufos (S-[(1,1-dimethyl)thio]methyl]-*O,O*-diethyl phosphorodithioate) and its cholinesterase-inhibiting metabolites in or on the harvestable portions of the following raw agricultural commodities: cabbage, broccoli, and cauliflower at 0.05 part per million. Notice of the initial filing appeared in the **Federal Register** of December 23, 1980 (45 FR 84849). PP lF2433 was amended in the **Federal Register** of January 13, 1982 (47 FR 1405), proposing to increase the tolerance levels for cabbage, broccoli, and cauliflower from 0.05 ppm to 0.20 ppm.

2. *PP 6F1851.* E.I. Du Pont de Nemours & Co., Walker's Mill, Barley Mill Plaza, Wilmington, DE 19898, has requested the withdrawal without prejudice of PP 6F1851 proposing to amend 40 CFR 180.296 by establishing tolerances for residues of the insecticide dimethyl phosphate of 3-hydroxy-N-methyl-ciscrotonamide in or on the raw agricultural commodities sweet corn kernels at 0.3 ppm, field corn grain at 0.2 ppm, and field corn fodder and field corn forage (including silage) at 2.0 ppm. Notice of the petition was published in the **Federal Register** of November 26, 1976 (41 FR 52102). The petition was originally filed by the Shell Chemical Co., but was transferred to the E.I. Du Pont de Nemours & Co.

Authority: 7 U.S.C. 136a.

Dated: February 24, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 89-5213 Filed 3-7-89; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30282A; FRL-3533-6]

ICI Americas, Inc.; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application submitted by ICI Americas, Inc., to conditionally register the pesticide product Force® 1.5G Insecticide containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(7) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: *By mail:* George LaRocca, Product Manager (PM) 15, Registration Division (TS-767C), Office of Pesticide Programs, 401 M Street, SW., Washington, DC 20460.

Office location and telephone number: Rm. 204, TS-767C, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703-557-2400).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of August 5, 1987 (52 FR 29063), which announced that ICI Americas, Inc., Agricultural Chemicals Div., Wilmington, DE 19897, had submitted an application to conditionally register the pesticide product Force® 1.5G an insecticide containing the active ingredient 2,3,5,6-tetrafluoro-4-methylbenzyl-cis-3-[(Z)2-chloro-3,3,3-trifluoroprop-1-enyl]-2,2-dimethylcyclopropanecarboxylate at 1.5 percent; an active ingredient not included in any previously registered product.

The application was approved on January 13, 1989, as Force® 1.5G Insecticide for restricted use on field corn and popcorn.

The active ingredient identified in the above application of August 5, 1987 (52 FR 29063), was amended to read "tefluthrin (2,3,5,6-tetrafluoro-4-methylphenyl)methyl-(1 *alpha*, 3 *alpha*)-(*Z*)-(+)-3-(2-chloro-3,3,3-trifluoro-1-propenyl)2,2-dimethylcyclopropanecarboxylate." The product was assigned EPA Registration No. 10182-130.

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest.

The Agency has considered the available data on the risks associated with the proposed use of tefluthrin, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of tefluthrin during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

In January 1989, the Agency issued a conditional registration for tefluthrin with a final expiration date of July 31, 1993. The registration was made conditional since certain data were lacking. In order to: (1) Evaluate the effects of tefluthrin on fish and aquatic organisms, (2) establish a permanent acceptable daily intake (ADI) and, (3) establish a crop rotation interval, several data requirements must be fulfilled during the period of conditional registration. Such requirements include an aquatic invertebrate life-cycle test (72-4) which is due by August 1989; a fish life-cycle study (72-5) which must be submitted to the Agency by August 1990; an aquatic residue monitoring study (70-1) which must be submitted by March 1991; and a field rotational crop study, (165-2) which must be submitted by March 1993. In addition, unfulfilled data requirements in the area of toxicology comprise a 21-day feeding study and a 21-day dermal study, both in the rat and both designed to investigate serum electrolytes, including magnesium. These studies must be submitted to the Agency by April 1989.

Consistent with section 3(c)(7)(C), the Agency has determined that this conditional registration is in the public interest. Use of this pesticide is of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticide will not result in unreasonable adverse effects to man and the environment.

More detailed information on this conditional registration is contained in a Chemical Fact Sheet on tefluthrin.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from Registration Division (TS-767C), Environmental Protection Agency, Registration Support and Emergency Response Branch, 401 M St., SW., Washington, DC 20460.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental

Protection Agency, Rm. 236, CM#2, Arlington, VA 22202 (703-557-4460). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, DC 20460. Such requests should: (1) identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

Dated: February 17, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 89-5214 Filed 3-7-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-400028; FRL-3534-5]

Emergency Planning and Community Right-to-Know; Availability of Guidance Materials, Brochures, and Electronic Files

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The EPA has prepared a variety of guidance documents and electronic files to assist facilities in understanding and complying with section 313 of the Emergency Planning and Community Right-to-Know Act. A number of documents produced by EPA are available in "camera ready" form or on disc. All of these documents are currently available at no charge either through the address given under ADDRESS or the address or telephone number given under **FOR FURTHER INFORMATION CONTACT.**

ADDRESS: The "Reporting Package" may now be obtained from the following address: Section 313 Document Distribution Center, P.O. Box 12505, Cincinnati, OH 45212.

FOR FURTHER INFORMATION CONTACT: Eileen Gibson, Emergency Planning and Community Right-to-Know Information Hotline, U.S. Environmental Protection Agency, 0S-120, 401 M St., SW., Washington, DC 20460, Toll Free: 1-800-535-0202, Washington, DC and Alaska (202) 479-2449.

SUPPLEMENTARY INFORMATION:

A. Reporting Package for 1988 Reporting Year

EPA has prepared a document titled the "Toxic Release Inventory Reporting Package" which carries document number EPA 560/4-89-001. EPA will be mailing this document to facilities that reported under section 313 for the 1987 reporting year.

The "Reporting Package" contains the following documents:

1. 1988 Revised Form R and Instructions—step by step instructions for completing the toxic chemical release inventory reporting Form R, sample of completed Form R, list of the State section 313 contacts, and a copy of Form R.

2. Revised Question and Answer Document—contains answers to frequently asked questions about the section 313 rule. It is organized by subject area and supplements the instructions for completing Form R.

3. Title III List of Lists—consolidated list of chemicals subject to reporting under Title III of SARA. This document contains the chemical name, CAS Registry, number, and specific information on reporting requirements(s) to which the chemical is subject.

4. Section 313 Final Rule (53 FR 4500, February 16, 1988).

5. Magnetic Media Submission Instructions—reports under section 313 may be submitted by computer tape or floppy disc. This document provides record format specifications and certification requirements for the use of magnetic media. These specifications must be followed exactly for EPA to accept the magnetic media submission.

The "Reporting Package" also contains information about other available support documents. When requesting the "Reporting Package" be sure to specify document number EPA 560/4-89-001.

B. Materials Available to Persons Developing Training or Other Compliance Aids

Persons developing training courses or software to assist in compliance with section 313 requirements may obtain "camera ready" copy of certain printed documents as follows:

1. TRI Trainer's Guide—provides the basic course content, presentation material, and reference sources that may be used to develop a complete course on section 313 reporting. This guide is supplemented by an accompanying packet of background materials that may be reproduced for course participants.

2. Section 313 Brochure—this 24 page brochure alerts businesses to their reporting obligations under section 313 and helps them determine whether their facility is required to report. The brochure contains the section 313 EPA Regional contacts, the section 313 toxic chemical list, and a description of the Standard Industrial Classification (SIC) Groups subject to section 313 reporting.

3. Section 313 Brochure (Spanish language version).

4. 1988 Revised Form R and Instructions.

5. Revised Question and Answer Document.

6. Title III List of Lists (print copy).

7. Magnetic Media Submission Instructions.

In addition there are electronic files available for the following two documents: Text of the Revised 1988 Instructions for Completion of Form R and text of the Question and Answer document. These text files were developed using Wordperfect 4.2 software. Please send a separate disc for each file. When requesting these files you must send a blank 5¼ inch diskette, double sided, double density formatted for IBM or compatible DOS 3.0 or higher. Send the diskette(s) in a stamped, self-addressed mailer to the address provided under **FOR FURTHER INFORMATION CONTACT.**

Another set of electronic files is also available. EPA has developed a PC based interpretive guidance system that allows for quick searching of a large number of questions, the rule, and other policy documents. Most of the questions and answers are the same as appear in the Question and Answer document. To use these files it is necessary to obtain data base searching software. The Agency is currently using a software package titled "Ask Sam" by Seaside Software, Inc. Other data base searching software may be used, however. The interpretive guidance system data files (without the operating software) may be obtained by submitting a 10 megabyte Bernoulli cartridge formatted for IBM or compatible DOS version 3.0 or higher with an appropriate stamped, self-addressed mailer to the address given under **FOR FURTHER INFORMATION CONTACT.**

C. List of Lists Files Available on Diskette

A diskette version of the List of Lists is available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 487-4650. This diskette is 5¼ inch IBM compatible. The request accession no. is PB88-193255. ($50.00).

Dated: February 27, 1989.

Michael H. Shapiro,

Director, Economics & Technology Division, Office of Toxic Substances.

[FR Doc. 89-5336 Filed 3-7-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 87-339, DA 89-102]

Establishment of a Program to Monitor the Impact of Joint Board Decisions

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This Order extends the filing date for reports identifying the impact of the new Part 36 Separations Manual from March 1, 1989, to May 1, 1989. See Report and Order published September 28, 1987 (52 FR 36299). These reports are part of the Docket 86-297 Joint Board's monitoring program designed to assess the jurisdictional impact of the new Part 36 Separations Manual. The extension will allow the carriers more time to compile actual 1988 data and file complete reports.

DATES: *Effective* January 30, 1989; reports may be filed until May 1, 1989.

FOR FURTHER INFORMATION CONTACT: Diane Shaw-Gill at (202) 632-7500.

SUPPLEMENTARY INFORMATION: This is a summary of the Chief, Common Carrier Bureau's Memorandum Opinion and Order, CC Docket 87-339, DA 89-102, adopted January 30, 1989 and released February 8, 1989.

The full text of this Order is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The full text of this Order may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037 (202) 857-3800.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-4503 Filed 3-7-89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: New Collection

Title: Great Lakes Planning Assistance

Abstract: This legislation allows for each Great Lake State to apply for a one-time grant of up to $250,000. They must apply for the grant within one year of enactment. Since funds have not been appropriated, we have determined that a Technical Proposal will serve as this initial application. States will then remain eligible for the grant until such time as funds are appropriated.

Type of Respondents: State or local governments

Estimate of Total Annual Reporting and Recordkeeping Burden: 240

Number of Respondents: 8

Estimated Average Burden Hours Per Response: 30

Frequency of Response: On Occasion

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to the FEMA Clearance Officer at the above address; and to Francine Picoult, (202) 395-7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Date: March 1, 1989.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 89-5309 Filed 3-7-89; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL HOME LOAN BANK BOARD

Alamo Savings Association of Texas, San Antonio, TX; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained is section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Alamo Savings Association of Texas, San Antonio, Texas, on February 28, 1989.

Dated: March 2, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-5413 Filed 3-7-89; 8:45 am]

BILLING CODE 6720-01-M

The Barber County Savings and Loan Association, Medicine Lodge, KS; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for the Barber County Savings & Loan Association, Medicine Lodge, Kansas on February 28, 1989.

Dated: March 2, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-5414 Filed 3-7-89; 8:45 am]

BILLING CODE 6720-01-M

La Hacienda Savings Association, San Diego, TX; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for La Hacienda Savings Association, San Diego, Texas on February 28, 1989.

Dated: March 2, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-5417 Filed 3-7-89; 8:45 am]

BILLING CODE 6720-01-M

Permian Savings and Loan Association, Kermit, TX; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained insection 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Permian Savings and Loan Association, Kermit, Texas, on February 28, 1989.

Dated: March 2, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-5418 Filed 3-7-89; 8:45 am]

BILLING CODE 6720-01-M

Southmost Savings & Loan Association, Brownsville, TX; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Southmost Savings & Loan Association, Brownsville, Texas on February 28, 1989.

Dated: March 2, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-5415 Filed 3-7-89; 8:45 am]

BILLING CODE 6720-01-M

Suburban Savings Association, San Antonio; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Suburban Savings Association, San Antonio, Texas on February 28, 1989.

Dated: March 2, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-5416 Filed 3-7-89; 8:45 am]

BILLING CODE 6720-01-M

Bexar Savings Association, San Antonio, TX; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Bexar Savings Association, San Antonio, Texas on February 28, 1989.

Dated: March 3, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-5396 Filed 3-7-89; 8:45 am]

BILLING CODE 6720-01-M

Colonial Savings Association of America; Liberal, KS; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Colonial Savings Association of America, Liberal Kansas on February 28, 1989.

Dated: March 3, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-5397 Filed 3-7-89; 8:45 am]

BILLING CODE 6720-01-M

First State Savings Bank, F.S.B., Mountain Home, AR; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A)(i), of the Home Owner's Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A)(i), and 12 U.S.C. 1701c(c)(2) (1982), as amended, the Federal Home Loan Bank Board has duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for First State Savings Bank, F.S.B., Mountain Home, Arkansas on February 28, 1989.

Dated: March 2, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-5398 Filed 3-7-89; 8:45 am]

BILLING CODE 6720-01-M

First State Savings Association, San Antonio, TX; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for First State Savings Association, San Antonio, Texas on February 28, 1989.

Dated: March 3, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-5411 Filed 3-7-89; 8:45 am]

BILLING CODE 6720-01-M

Home Savings Bank, Anchorage, AL; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Home Savings Bank, Anchorage, Alaska, on February 28, 1989.

Dated: March 3, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-5403 Filed 3-7-89; 8:45 am]

BILLING CODE 6720-01-M

Home Federal Savings and Loan Association, Mountain Home, AR; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Home Federal Savings and Loan Association Mountain Home, Arkansas on February 28, 1989.

Dated: March 3, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-5399 Filed 3-7-89; 8:45 am]

BILLING CODE 6720-01-M

Madison Guaranty Savings and Loan Association, McCrory, AR; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Madison Guaranty Savings and Loan Association, McCrory, Arkansas on February 28, 1989.

Dated: March 2, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-5412 Filed 3-7-89; 8:45 am]

BILLING CODE 6720-01-M

Topeka Savings, a Federal Savings and Loan Association, FS&LA Topeka, KS; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A)(i), of the Home Owner's Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A)(i), and 12 U.S.C. 1701c (c)(2)(1982), as amended, the Federal Home Loan Bank Board has duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Topeka Savings, a Federal Savings & Loan Association, Topeka, Kansas on February 28, 1989.

Dated: March 2, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-5400 Filed 3-7-89; 8:45 am]

BILLING CODE 6720-01-M

San Antonio Savings Association, San Antonio, TX; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for San Antonio Savings Association, San Antonio, Texas, on February 28, 1989.

Dated: March 3, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-5402 Filed 3-7-89; 8:45 am]

BILLING CODE 6720-01-M

Vision Banc Savings Association, Kingsville, TX; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Vision Banc Savings Association, Kingsville, Texas on February 28, 1989.

Dated: March 3, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-5404 Filed 3-7-89; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in §§ 560.7 and/or 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-200222.

Title: Part of Houston Authority Terminal Agreement.

Parties: Port of Houston Authority of Harris County, Texas (Port); Southside Services Incorporated (SSC).

Synopsis: The Agreement provides that SSC will perform or have performed freight handling services at the Port's Wharves and Transit Sheds Number 27 (facility). The services include the loading and unloading of cargo to or from rail cars and motor vehicles at the terminal facility, and allocating space within the facility to accommodate the cargo of ships berthing at the facility. The Agreement also provides that SSC will guarantee the Port an income of $0.3125 per square foot of shedded space and cargo movement for the Agreement's term of 22.5% of a ton per square foot of shedded space. The Agreement's term expires April 30, 1989.

Filing Party: Algenita Scott Davis, Counsel, Port of Houston Authority, P.O. Box 2562, Houston, TX 77252-2562.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: March 3, 1989.

[FR Doc. 89-5419 Filed 3-7-89; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in §§ 560.7 and/or 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-200151-001.

Title: Mississippi State Port Authority Terminal Agreement.

Parties: Mississippi State Port Authority (MSPA); Carter-Green-Redd, Inc. (CGR).

Synopsis: The Agreement amends the basic lease agreement (Agreement No. 224-200151) to defer commencement of the five (5) year lease period provided in Article V of the basic agreement.

Filing Party: Sandra Grimes, Administrative Assistant, Public Relations, Mississippi State Port Authority at Gulfport, P.O. Box 40, Gulfport, MS 39502.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: March 3, 1989.

[FR Doc. 89-5374 Filed 3-7-89; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each

agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200224.

Title: Georgia Ports Authority Terminal Agreement.

Parties: Georgia Ports Authority (GPA) Chiquite Brands, Inc. (CB)).

Synopsis: The Agreement provides for preferential berthing of CB's vessels at GPA's Containerport facility. It also provides that CB will guarantee GPA a minimum of 100,000 tons of cargo per year for certain wharfage incentive rates on CB's cargo moving through the facility. In addition, CB will pay GPA for dockage, container crane rental and other services at GPA's published tariff rates.

Agreement No.: 224-200223.

Title: Philadephia Port Corporation Terminal Agreement.

Parties: Philadelphia Port Corporation (PPC); American Transport Lines, Linc. (ATL).

Synopsis: The Agreement provides for ATL to operate PPC's Tioga I Container Terminal under a non-exclusive preferential license guaranteed by ATL's parent, Crowley Marine Corporation. The License is subject to the right of PPC or its designee to also use the terminal for berthing of vessels and loading/unloading cargo.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: March 3, 1989.

[FR Doc. 89-5375 Filed 3-7-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Golden Isles Financial Holdings, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 24, 1989.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Golden Isles Financial Holdings, Inc.*, Brunswick, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of The First Bank of Brunswick, Brunswick, Georgia, a de novo bank.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Hastings Financial Corporation*, Hastings, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of National Bank of Hastings, Hastings, Michigan.

2. *Lawrence L. Osborn Scholarship Trust*, Veedersburg, Indiana, to become a bank holding company by acquiring 13.5 percent of the voting shares of The Veedersburg State Bank, Veedersburg, Indiana.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First McKinley Corporation*, Denver, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank in Evanston, Evanston, Wyoming.

2. *MidAmerican Corporation*, Shawnee Mission, Kansas; to merge with Merchants Bancorporation, Inc., Topeka, Kansas, and thereby directly acquire First National Bank of Lawrence, Lawrence, Kansas, and Merchants National Bank of Topeka, Topeka, Kansas. MidAmerican seeks to retain its permanently grandfathered general insurance agency which sells insurance in a community of more than 5,000 persons.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *City Bancorp, Inc.*, Wellington, Texas; to become a bank holding company by acquiring 88.67 percent of the voting shares of Security Bancshares, Inc., Wellington, Texas, and thereby indirectly acquire Security State Bank, Hedley, Texas, and City State Bank in Wellington, Wellington, Texas.

2. *Harvey Bancorporation, Inc.*, Dallas, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Preston Forum National Bank of Dallas, Dallas, Texas.

Board of Governors of the Federal Reserve System, March 2, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-5378 Filed 3-7-89; 8:45 am]

BILLING CODE 6210-01-M

Philip J. Lunsford; Change in Bank Control; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 22, 1989.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Philip J. Lunsford*, St. Simons Island, Georgia, to acquire an additional 2.12 percent thereby increasing his share to 26.87 percent; and Tom R. Lundsford, Cleveland, Oklahoma, to acquire an additional 2.07 percent thereby increasing his share to 26.17 percent of the voting shares of Heritage Bancorp Company, Cleveland, Oklahoma, and thereby indirectly acquire First National Bank of Cleveland, Cleveland, Oklahoma.

Board of Governors of the Federal Reserve System, March 2, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-5379 Filed 3-7-89; 8:45 am]

BILLING CODE 6210-01-M

NCNB Corp., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage de novo, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 24, 1989.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *NCNB Corporation,* Charlotte, North Carolina; to engage de novo through its subsidiary, Superior Life Insurance Company, Charlotte, North Carolina, in underwriting insurance, including home mortgage redemption insurance, that is directly related to extensions of credit by subsidiaries of NCNB Corporation and its subsidiaries and which is limited to ensuring the repayment of the outstanding balances due on such extensions of credit in the event of death, disability, or involuntary unemployment of the debtor pursuant to section 225.25(b)(8) of the Board's Regulation Y.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Northern Trust Corporation,* Chicago, Illinois; to engage de novo through its subsidiary, Northern Trust Company of New York, New York, New York, in trust company activities pursuant to § 225.25(b)(3) of the Board's Regulation Y. Comments on this application must be received by March 22, 1989.

2. *Star Financial Group, Inc.,* Marion, Indiana; to engage de novo through its subsidiary, Star Trust Company, Marion, Indiana, in trust company functions pursuant to § 225.25(b)(3) of the Board's Regulation Y.

C. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Grenada Sunburst System Corporation,* Grenada, Mississippi; to engage de novo through its subsidiary, Sunburst Financial Services, Inc., Jackson, Mississippi, in insurance sales; acting as insurance agent or broker in offices in which it is already otherwise engaged in business with respect to any insurance that is directly related to an extension of credit pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y. These activities will be conducted in the State of Mississippi.

2. *Heritage Bancorp Company,* Cleveland, Oklahoma; to engage de novo in insurance sales pursuant to § 225.25(b)(8)(iii); and making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y. The insurance activities will be conducted in Cleveland, Oklahoma, and the loan activities will be conducted on a nationwide basis.

Board of Governors of the Federal Reserve System, March 2, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-5380 Filed 3-7-89; 8:45 am]

BILLING CODE 6210-01-M

Southeast Banking Corporation, et al; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than March 29, 1989.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Southeast Banking Corporation,* Miami, Florida; to acquire Cobb Partners Financial, Inc., Boca Raton, Florida, and thereby engage in general mortgage banking activities, including the origination, purchase, sale and servicing of mortgage loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230

South LaSalle Street, Chicago, Illinois 60690:

1. *Kerndt Bank Services, Inc.*, Lansing, Iowa; to acquire Kerndt Brothers Agency, Inc., Lansing, Iowa, and thereby engage in insurance sales in small towns pursuant to § 225.25(b)(8)(iii); and operation of an insurance agency office in Waukon, Iowa, pursuant to § 225.25(b)(8)(vi) of the Board's Regulation Y.

C. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Northwest Corporation*, Minneapolis, Minnesota, and two of its subsidiaries, Norwest Financial Services, Inc., Des Moines, Iowa, and Norwest Financial, Inc., Des Moines, Iowa; to acquire substantially all of the assets and liabilities of ACTION Data Services, St. Louis, Missouri, a division of Control Data Corporation, and thereby engage in providing to others data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation or operating personnel), data bases, or access to such services, facilities or data bases pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 2, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-5381 Filed 3-7-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Change in Method of Reporting Results of Sanitation Inspections of International Cruise Ships

AGENCY: Centers for Disease Control (CDC), Public Health Service, HHS.

ACTION: Change in the method of reporting the results of sanitation inspection of international cruise vessels.

SUMMARY: The method of reporting the results of sanitation inspection of international cruise vessels in the biweekly Summary of Sanitation Inspections of International Cruise Ships will be changed to include the numerical score achieved by vessels during the most recent sanitation inspection.

EFFECTIVE DATE: On or about March 17, 1989.

FOR FURTHER INFORMATION CONTACT: Linda Anderson, Chief, Special Programs Group, Center for Environmental Health and Injury Control, CDC, Atlanta, Georgia, 30333. Telephone: FTS: 236-4595, Commercial: (404) 488-4595.

SUPPLEMENTARY INFORMATION:

Purpose and Background

A request for public comment on a proposal to change the method of reporting the results of sanitation inspections of international cruise vessels in the biweekly Summary of Sanitation Inspections of International Cruise Ships was published in the **Federal Register** on Thursday, November 10, 1988 (53 FR 45584).

Discussion of Comments

The public notice of the intent to change the method of reporting the results of the sanitation inspections provided for a 60-day comment period. During the comment period, comments were received from 9 sources; one of which was the International Committee of Passenger Lines (ICPL) representing 19 separate cruise lines and their subsidiaries. Of the 9 comments received, 4 supported the Department's position and are not addressed in this notice. Discussion of the other substantive comments and the Department's response follows:

Comment: One commentor suggested that it is in the obvious self-interest of the cruise ship industry to be vitally interested in good health on cruise ships and to have a major commitment to providing a healthful cruise experience. The commentor stated that their company is totally committed to this goal of good health but believes the publication of numerical scores "is self-defeating in that it will lead to confusion as to the true state of health conditions existing onboard cruise ships."

Response: The Department agrees that it is in the best interest of the cruise ship industry to provide a healthful cruise experience. The Department does not agree that publication of the numerical scores achieved during sanitation inspections will lead to confusion. The Department believes that problems with the current reporting scheme will be resolved by the proposed change. For example, under the current reporting method, ships which just barely achieve a satisfactory rating (e.g., a score of 86) receive the same rating as ships which score 100. Conversely, ships which score 40 receive the same "unsatisfactory" rating as ships which score 85. Since the sanitation inspection is intended to reflect the level of sanitation on board the vessel at the time of inspection, reporting actual numerical scores would be more indicative of the level of sanitation on board the vessel at the time of the inspection than the current reporting of a Satisfactory/Unsatisfactory rating. This information would be most helpful to travel agents and the traveling public and would be an incentive for the vessel to achieve and maintain a high level of sanitation on board.

Comment: One commentor states there are a significant number of vessels which have maintained demonstratively high health standards with no incidents, which have historically received low scores because of the many problems which have existed in the past with the inspection and scoring system. Despite their excellent health records, these vessels will be in a position of having negative median scores reported for 5 years after the date when an equitable scoring and inspection system is implemented.

Response: The Department is not aware of any ships that meet the description outlined by the commentor. The Department believes that its scoring and inspection system is equitable.

Comment: Another commentor suggested the Department has often failed to undertake followup inspections resulting in numerous incidents of ships remaining in a "fail status for many months even years after conditions on board had been corrected." It would not be right for ships with good health records to be penalized for this past failure to inspect promptly after correction. In addition, another commentor states, to be meaningful, past median scores should reflect the fact that the Vessel Sanitation Program (VSP) provides for semiannual inspections. Recent inspection summaries ("green sheets") show that up to 20% or more of all ships have not been inspected for 10 months or more, with others not inspected since before September 1987.

Response: The Department acknowledges that during most of 1988 the Vessel Sanitation Program was not at full staff. The shortage of personnel and scheduling difficulties prevented performing the number of sanitation inspections that otherwise would have been performed. Additional staff has been recruited for the Program to enable the Department to provide at least two inspections per year for every ship that regularly sails from a U.S. port. Ships unable to achieve a score of at least 86 on a routine periodic inspection will receive a reinspection within a reasonable time frame depending upon ship schedules and receipt of the "Statement of Corrective Action" from

the ship's management. In the scheduling of inspections, priority will be given to the first reinspection of those vessels which were unable to achieve a score of at least 86 during the routine periodic inspection. Since there is a fee for inspections, vessels unable to achieve a satisfactory score of at least 86 during a periodic sanitation inspection will receive only one reinspection unless specifically requested in writing by the owner/operator.

Comment: One commentor stated the notice in the **Federal Register** states, while there is no evidence that a single inspection score accurately predicts the probability of outbreak on a particular cruise, "CDC believes there is evidence to indicate that an outbreak is less likely to occur on vessels achieving higher scores over a period of time." The commentor suggested that if statistics are calculated ignoring the result of those inspections made immediately after a disease outbreak in a ship (which public health inspectors have tended to score extremely low), then the government's own data proves that the inspection score has no predictive value in determining whether outbreak is likely to occur or not.

Response: The Department believes this comment is not germane to the issue of the publication of a numerical score. The Department has previously stated that there is no evidence that a single inspection, indicating a low level of sanitation, predicts an outbreak of diarrheal disease on a cruise ship. Data published by the Department indicate that vessels that consistently achieve and maintain high levels of sanitation have fewer outbreaks of diarrheal disease than vessels with lower scores. The data used by the Department in the analysis included only routine periodic sanitation inspections. Reinspections and inspections conducted in association with an epidemiological investigation of a disease outbreak were specifically excluded from the data analysis.

Comment: One commentor was of the opinion that "this proposed change is less fair to all concerned whether a ship has been consistently passed and then failed or conversely, consistently failed and then passed." The commentor suggested that the change be discussed in "committee forum" and receive input from the cruise lines. Another commentor suggested that the subject should be reviewed by the group of experts when they meet on January 30, 1989, to review the *Operations Manual*, adopted in March 1987, in the context of all other aspects of the VSP. The summary of inspection results as proposed reflects the outcome of individual vessel inspections in accordance with the *Operations Manual* and the scoring system contained therein which will also be reviewed by the group.

Response: The Department believes the publication of numerical scores is an issue which should be considered separately from a review of the *Vessel Sanitation Program Operations Manual*. Publication of the numerical scores is not contingent upon revision of the *Manual* and the scores would be published regardless of the system of scoring used. The Department has received and considered input from cruise lines and does not agree that additional review of the matter is required.

Comment: One commentor supported the proposed change and suggested that reinspection scores be included in the calculation of the median score.

Response: Since the sanitation inspection is intended to reflect the level of sanitation on board the vessel at the time of inspection, including the scores achieved during reinspection would be misleading. Comparison of median scores of vessels which had not received a reinspection, for whatever reason, with the median scores of vessels which had been reinspected would not be equitable. The Department believes the comparison of median scores achieved during routine periodic sanitation inspections provides the most equitable method of providing information relative to the current level of sanitation on board at the time of the inspection.

Comment: One commentor suggested that, besides being discriminatory, publication of the "green sheets" is misleading. The information on the sheets may be outdated. Since partial—or no—credit is allowed for corrections made during inspections, the information may be inaccurate because it may not reflect current conditions on board a ship. More importantly, the information on the sheet may conflict with the inspection report that is released to the public, calling into question the credibility of the sheet.

Response: The Summary of Sanitation Inspections of International Cruise Ship ("green sheet") is updated and published every other week. The Department agrees that levels of sanitation could potentially vary considerably between sanitation inspections. However, the Department believes that a vessel which demonstrates a high level of sanitation at the time of the inspection will generally maintain that level of sanitation between inspections. The results of the sanitation inspection are a reflection of the current status on board the ship and a reflection of the routine procedures on board the ship which effect ongoing levels of sanitation. The Department believes that the biweekly publication of the results of sanitation inspections and the Department's policy of providing copies of the actual sanitation inspection reports are the most timely and cost effective methods of providing information to interested parties.

Comment: One commentor suggested the text at the bottom of the "green sheet" should also be reviewed by the group of experts at the January 30 meeting. As has been pointed out on earlier occasions, the regulatory tone of the text seems out of step with the voluntary cooperative nature of the program and exaggerates the seriousness, and frequency, of diarrhea outbreaks. In comments submitted to CDC by the ICPL on February 3, 1987, the recommendation was that the whole text be revised by deleting all but the first and last sentences as follows:

> All passenger cruise ships arriving at United States ports are inspected under the voluntary cooperative inspection program. Ships are rated on the following items to determine if they meet CDC inspection standards: (1) Water, (2) food preparation and holding, (3) potential contamination of food, and (4) general cleanliness, storage and repair.

Response: The meeting referred to by this commentor is intended as an opportunity for individual experts in a variety of disciplines to provide recommendations to the Department regarding the *Vessel Sanitation Program Operations Manual*. The Department believes the issue of the publication of numerical scores or the wording on the "Summary of Sanitation Inspections of International Cruise Ships" is a separate issue. Information included in the legend of the Summary provides recipients with useful information which would not be apparent otherwise. The Department agrees with the suggestion to reword the first sentence to emphasize the voluntary nature of the program.

Comment: One commentor suggested the Department place "an observer aboard ship to see what sanitation is like during an actual cruise. A travel agent with a checklist could easily attest to the procedures being followed; this could be done without the knowledge of the ship's personnel or crew."

Response: The Department believes that it would be inappropriate to use untrained observers to measure levels of sanitation on board ships. Sanitation

inspections are carried out by highly qualified sanitarians and require knowledge and skills beyond the capability of a casual observer.

Comment: One commenter suggested that the reporting of intestinal illness be mandatory.

Response: Current regulations (42 CFR 71.21(c)) require the reporting of diarrheal illness by the master of a ship carrying 13 or more passengers prior to entering a port under the control of the United States.

Comment: One commenter stated his organization does not believe that the publication of a 5-year median score is either constructive or accurate. For example, a ship which has maintained consistently high scores for many years but which may have had one low score as a result of a health incident or on account of a virus or an unusual operating condition will find itself some 30 months later being shown with a very low median score to no purpose. The use of the median in this instance would merely confuse the public's perception as to the health standard which has been historically maintained in the vessel. This confusion will last during the period of 6 months in which the particular low score will be reported. Another commenter expressed the belief that reporting of median scores from the "old" system and current scores from the "modified" system is not productive. Another commenter stated the proposed publication of the "5-year median" score would present problems. The commenter stated, first of all, as proposed it would include the median results of inspections for the years 1984–1989 during which two entirely different scoring systems were used. Vessels scored under the two different systems would lead to different final scores which in turn would affect the percentage of ships that met standards or not. While the publication of the latest inspection score is a statement of fact, which can be documented by the individual vessel inspection report, the 5-year median raises more questions than answers and could lead to false conclusions.

Another commenter suggested that even further confusion would be caused in the minds of the traveling public by the publication of median scores in addition to the most recent score achieved by a ship and suggested that no statistics should be included other than that score received by the vessel in its most recent examination. Another commenter believed the change would be confusing to the public if a company were to acquire a ship (through purchase of the individual asset or of a whole company) which had historically had problems in achieving acceptable scores and should the buyer immediately turn the operation around, it will find itself haunted for the next 2½ years by a historical record which is both negative and irrelevant.

Another commenter suggested during such a long period of time vessels change ownership and management which can affect the operation of the vessel. Also, the past record of median scores, whether good, moderate, or low does not have any bearing on the sanitation conditions of the vessel during time of inspection or in the future, nor to the incidence of illness as documented by CDC and industry studies. And, finally, one commenter recommended, if regular summary reports are to be continued, they include only (a) the name of the vessel, (b) the most recent inspection score, and (c) the date of the inspection. Alternatively, if a median score of past inspections is to be included, these should include past scores going back to March 1987 only, at which time the new *Operations Manual* and the inspection scoring system currently in use were adopted. Vessels that change hands should have only the inspection score of the last inspection listed, with past median scores added for subsequent inspections. This approach would be similar to that proposed for new vessels.

Response: After careful consideration of the issues raised by several commenters, the Department agrees there exists the potential for confusion that would be counter productive to the Department's intentions if a 5-year median score were published as proposed. The Department agrees that a 5-year median score may not be indicative of the cruise lines current operations. Changes of ownership of vessels, changes in management of vessels, and subsequent changes in on board practices may make a 5-year median a misleading indicator of current levels of sanitation. The Department does not wish to penalize a vessel which has a history of unsatisfactory ratings but, under new management, is now making a concentrated effort to improve the level of sanitation on board. Publication of a 5-year median score which included previous unsatisfactory ratings could potentially reduce the incentive for a vessel to maintain a high level of sanitation as the results of their efforts would take them years to show. Upon further review of the scores during the past 5 years, the Department agrees that only those sanitation inspections conducted since March 1987, at which time the inspection scoring system currently in use was adopted, will be used in calculating a median of scores. The Department will not routinely publish the 5-year median but will maintain a 5-year median of scores achieved by a vessel during routine periodic sanitation inspections which will be available upon written request. Therefore, regular summary reports will continue to be published and will include only the name of the vessel, the numerical score of the most recent inspection, and the date of inspection.

Dated: March 1, 1989.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 89–5278 Filed 3–7–89; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 88N–0286]

Ray Batchelor Livestock; Withdrawal of Approval of Applications for Animal Feeds Bearing or Containing a New Animal Drug

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Center for Veterinary Medicine (CVM), Food and Drug Administration (FDA), is withdrawing approval of all applications held by Ray Batchelor Livestock for animal feeds bearing or containing new animal drugs. This action is being taken because the firm failed to respond to a notice of opportunity for hearing proposing to withdraw approval of the applications.

EFFECTIVE DATE: March 20, 1989.

FOR FURTHER INFORMATION CONTACT: Philip J. Frappaolo, Center for Veterinary Medicine (HFV–240), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4940.

SUPPLEMENTARY INFORMATION: In the Federal Register of September 29, 1988 (53 FR 38074), CVM provided a notice of opportunity for a hearing on a proposal to withdraw approval of all the applications held by Ray Batchelor Livestock, P.O. Box 306, Enfield, NC 27823, for the manufacture of animal feeds bearing or containing new animal drugs (medicated feed applications).

Ray Batchelor Livestock holds the following medicated feed applications:

1. F110–725 for medicated feeds containing lincomycin for swine use; approved July 12, 1977.

2. F110–785 for medicated feeds containing melengestrol acetate for cattle use; approved July 15, 1977.

3. F111-150 for medicated feeds containing carbadox for swine use; approved September 2, 1977.

4. F111-176 for medicated feeds containing carbadox and pyrantel tartrate for swine use; approved September 9, 1977.

5. G128-373 for medicated feeds containing lincomycin for swine use; approved June 2, 1981.

The notice of opportunity for hearing stated that CVM was proposing to issue an order under section 512(m)(4)(B)(i) and (ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(m)(4)(B)(i) and (ii) withdrawing approval of the listed applications, and all amendments and supplements thereto, on the grounds that the applicant had refused to permit access to required records, and that new information, evaluated together with the evidence available when the applications were approved, showed that the methods used in, or the facilities and controls used for, the manufacturing, processing, and packing of such animal feeds were inadequate to assure and preserve the identity, strength, quality, and purity of the new animal drug therein, and were not made adequate within a reasonable time after receipt of written notice from FDA specifying the matters complained of. The firm was provided until October 31, 1988, to file a written appearance requesting a hearing (53 FR 38074 and 38075). Ray Batchelor Livestock failed to file such an appearance.

Under 21 CFR 514.200 *Contents of notice of opportunity for hearing*, the failure of the sponsor to file a written appearance in answer to a notice of opportunity for hearing constitutes a waiver of the right to a hearing and is grounds for CVM to summarily enter a final order withdrawing approval of the applications.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval applications* (21 CFR 514.115), notice is given that approval of F110-725, F110-785, F111-150, F111-176, and G128-373 and all amendments and supplements thereto is hereby withdrawn, effective March 20, 1989.

Dated: February 28, 1989.

Gerald B. Guest,

Director Center for Veterinary Medicine.

[FR Doc. 89-5274 Filed 3-7-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89F-0050]

Stork Friesland B.V.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Stork Friesland B.V. has filed a petition proposing that the food additive requlations be amended to provide for the safe use of a polymeric reaction product of poly(*N*-vinyl-*N*-methylamine), *N,N'*-bis-(3-aminopropyl)-ethylenediamine, 1,3-benzenedicarbonyl chloride and 1,3,5-benzenetricarbonyl chloride as a reverse osmosis membrane intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Appied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9B4128) has been filed by Stork Friesland B.V., c/o Suite 200, 1029 Vermont Avenue NW., Washington, DC 20005-3517, proposing that § 177.2550 Reverse osmosis membranes (21 CFR 177.2550) be amended to provide for the safe use of a polymeric reaction product of poly(*N*-vinyl-*N*-methylamine), *N,N'*-bis-(3-aminopropyl)-ethylenediamine, 1,3-benzenedicarbonyl chloride and 1,3,5-benzenetricarbonyl chloride as a reverse osmosis membrane intended for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: February 27, 1989.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-5352 Filed 3-7-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86G-0122]

Diamond Crystal Salt Co.; Withdrawal of GRAS Affirmation Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal without prejudice of a petition requesting that the agency affirm that the use of *d*-α- and *dl*-α-tocopherols as inhibitors of nitrosamine formation in dry-cured bacon is generally recognized as safe (GRAS).

FOR FURTHER INFORMATION CONTACT: Carl L. Giannetta, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-5487.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 10, 1986 (51 FR 12395), FDA published a notice that a petition (GRASP 6G0313) had been filed by Diamond Crystal Salt Co., St. Clair, MI 48079-1999. This petition asked that the agency affirm that the use of *d*-α- and *dl*-α- tocopherols as inhibitors of nitrosamine formation in dry-cured bacon is GRAS.

On August 19, 1986, FDA asked the firm for additional data to support the petition. This data has never been submitted to the agency.

On September 9, 1988, the agency contacted the firm by telephone to determine the firm's plans for the petition. The firm advised the agency that it intended to withdraw the petition and would send a letter requesting the withdrawal. However, 30 days later the agency had not received a letter from the firm asking that its petition be withdrawn.

Consequently, on October 18, 1988, FDA wrote the firm and advised it that because of the firm's lack of action in response to the communications between the agency and the firm, FDA was going to publish a notice in the **Federal Register** advising that it considered the petition to be withdrawn. More than 60 days have passed since that letter was sent, and the company has not voiced any objection to the projected course of action. Therefore, the agency is announcing that it considers this petition to be withdrawn by the firm in accordance with 21 CFR 171.7(b).

Dated: February 23, 1989.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-5276 Filed 3-7-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89M-0002]

Sola/Barnes-Hind; Premarket Approval of Polycon® HDK (Silafocon B) Gas Permeable Contact Lens for Extended Wear (Clear and Tinted)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the supplemental application by Sola/Barnes-Hind, Sunnyvale, CA, for premarket approval, under the Medical Device Amendments of 1976, of the spherical POLYCON® HDK (silafocon B) Gas Permeable Contact Lens for Extended Wear (clear and tinted). After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of December 21, 1988, of the approval of the application.

DATE: Petitions for administrative review by April 7, 1989.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

SUPPLEMENTARY INFORMATION: On May 27, 1988, Sola/Barnes-Hind, Sunnyvale, CA 94086-5200, submitted to CDRH a supplemental application for premarket approval of the POLYCON® HDK (silafocon B) Gas Preamble Contact Lens for Extended Wear (clear and tinted). The spherical lens is indicated for extended wear from 1 to 7 days between removals for cleaning and disinfection as recommended by the eye care practitioner. The lens is indicated for the correction of visual acuity in not-aphakic persons with nondiseased eyes that are myopic or hyperopic. The lens may be worn by persons who exhibit astigmatism of 4.00 diopters (D) or less that does not interfere with visual acuity. The spherical lens ranges in powers from −10.00 D to +10.00 D and is to be disinfected using the chemical lens care system recommended in the approved labeling. The blue tinted lens contains the color additive D & C Green No. 6 in accordance with the color additive listing provisions of 21 CFR 74.3206.

On October 20, 1988, the Ophthalmic Devices Panel, and FDA advisory committee, reviewed and recommended approval of the supplemental application. On December 21, 1988, CDRH approved the supplemental application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ-460), address above. The labeling of the POLYCON® HDK (silafocon B) Gas Permeable Contact Lens for Extended Wear (clear and tinted) states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only.

Opportunity for Administrative Review

Section 515(d)(3) of the Act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the Act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before April 7, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: March 1, 1989.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 89-5275 Filed 3-7-89; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Human Immunodeficiency Virus Services Planning Program Grants

AGENCY: Health Resources and Services Administration, PHS, DHHS.

ACTION: Notice of availability of funds.

SUMMARY: The Bureau of Maternal and Child Health and Resources Development (BMCHRD), Health Resources and Services Administration (HRSA), announces that Fiscal Year (FY) 1989 funds are available for Human Immunodeficiency Virus (HIV) Services Planning Program Grants to cities and States not affected by the Acquired Immune Deficiency Syndrome (AIDS) epidemic to the same extent as high incidence cities. All public and private entities are eligible to apply, including State and local Governments and nonprofit and for profit organizations capable of developing coordinated plans for services for persons with AIDS within designated cities and States. These entities must be able to consolidate the information received from governments, service providers, community coalitions, and community-based organizations into a comprehensive plan for a system-of-care. For statewide planning, entities must be able to document how they will utilize the information received from major cities within the State to reflect a cooperative statewide plan for services.

Eligible jurisdictions are determined based on the number of AIDS cases reported by the Centers for Disease Control as of September 12, 1988. Grant

funds will be used to support planning activities for AIDS Services as outlined under *Program Objectives.* At the end of the one-year grant period, the grantee will provide the HRSA with a copy of a plan that describes the planning processes performed and identifies the actions, with time frames, to be taken in implementing the plan. Funds were appropriated by Public Law 100-436 for this purpose.

DATE: To receive consideration, grant applications must be received by the Grants Management Officer by June 5, 1989. Applications shall be considered as meeting the deadline if they are either (1) received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for submission to the review committee. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be accepted as proof of timely mailing. Applications which do not meet the deadline will be considered late applications and will be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: Requests for technical or programmatic information should be directed to Ms. June Horner, Acting Chief, HIV Services Operations Branch, Room 9A-05, 5600 Fishers Lane, Rockville, Mayland 20857, (301 443-0652). Grant applications (Form PHS 5161-1 with revised face sheet HHS Form 424 approved under OMB Number 0348-0006) and additional information regarding business administration or fiscal issues related to the awarding of grants under this notice may be requested from Ms. Glenna Wilcom, Grants Management Specialist, BMCHRD, Parklawn Building, Room 11A-18, 5600 Fishers Lane, Rockville, Maryland 20857 (301 443-1440). The original and two copies of the application must be submitted to Ms. Wilcom.

SUPPLEMENTARY INFORMATION:

Program Objectives

The HIV Services Planning Program (HSPP) is intended to help States and cities with low prevalance and incidence of HIV infection to plan for community-based systems of care that provide the spectrum of services needed for people with HIV infection and its complications, and to provide appropriate alternatives to inpatient hospital care. The purpose of the planning grant will be to enable each approved grantee to:

(1) Prepare a plan that describes the planning process and participants in the development and implementation of an HIV system of care;

(2) Conduct a needs/demand assessment for HIV prevalance and care;

(3) Identify required health and social service needs based on the needs/demand assessment;

(4) Estimate the resources required to implement the system of care and the cost of provision of identified services and systems;

(5) Develop a plan for the optimal integration and coordination of resources, emhasizing a continuum of care including use of out-of-hospital services and case management of patients; and

(6) Identify problems and proposed actions, including timeframes for the resolution of the problems and for the provision of services to HIV infected individuals in the service area.

Availability of Funds

Approximately $3.9 million is available in FY 1989 for the HSPP grants. Grants will be awarded competitively. The application must include a budget indicating how grant funds would be used over the 1-year budget and project period.

Eligible Jurisdictions

Eligible jurisdictions are: (1) Standard Metropolitan Statistical Areas (SMSAs) having between 100 and 400 cases of AIDS (See Appendix A) as reported by the centers for Disease Control (CDC) as of September 12, 1988 or (2) States which have more than 125 AIDS cases statewide (See Appendix B) as reported by the CDC as of September 12, 1988. An application submitted on behalf of a State which contains one or more SMSAs having 400 or more cases of AIDS must emphasize statewide planning for other than these high AIDS prevalence areas. When both a State and one or more SMSA's within that State are eligible jurisdictions, priority will be given to applications that demonstrate a coordinated approach among all eligible jurisdictions.

Collaboration/Coordination with other HIV Programs

Where appropriate, the HIV Services Planning Program grantees will be expected to document the participation of other HIV program managers within their regions, such as the directors of the HRSA AIDS Service Demonstration Programs; the HRSA Pediatric AIDS Health Care Demonstration Projects; the HRSA AIDS Regional Education and Training Centers Program; the National Institute on Drug Abuse AIDS Community Outreach Demonstration Projects; information, public education/prevention and testing programs supported by the Centers for Disease Control; the AIDS drug clinical trial studies and other research programs conducted by the National Institutes of Health; the Community Health Centers and Migrant Health Centers supported by HRSA; the Robert Wood Johnson Foundation AIDS Health Services Programs; the Ford Foundation National Community AIDS Partnership and other major foundation-supported programs; State Health Departments or other appropriate State-level representatives; activities of the Office of Minority Health of the Office of the Assistant Secretary for Health; community based AIDS service organizations; and State Medicaid Programs.

Review and Evaluation Criteria

Applications for HSPP grants will be reviewed and rated by an objective review committee and evaluated on the basis of the following:

—Applicant's experience and qualifications to function as the lead agency in planning for HIV services;

—Applicant's financial support from, and linkages with, units of State and/or local Government, and/or support from the private sector;

—Applicant's description of the process for inclusion of service providers and coalitions of service providers to be involved in HIV services planning;

—The appropriateness of methodologies the project will use in the following areas: (1) Conducting the needs/demand assessment, including approaches for developing inventories of existing services and case projection rates; (2) assessing knowledge and attitudes about the HIV epidemic among community members and health workers; and (3) identifying the health care services and planning resources currently in place, including resources of minority and special interest groups and of other non-Federal organizations and providers, and consideration of the process by which these may be integrated into a model for care;

—Evidence of support by, and the extent to which the planning process will incorporate the needs of, HIV-infected individuals, minorities, providers and other groups affected by the epidemic; and

—Time frames for implementation of the planning process.

Where appropriate, contiguous cities/States should undertake cooperative regional systems of care in order that duplication of services may be avoided. More detailed information on the review

and evaluation criteria may be found in the grant application kit.

Technical Assistance Workshops

The Division of AIDS Programs will conduct two Technical Assistance (T.A.) workshops to respond to questions from potential applicants. The dates and locations of the T.A. workshops are as follows:

1. Wednesday, April 12, 1989 at 5600 Fishers Lane, Rockville, Maryland.
2. Tuesday, April 25, 1989 at the PHS Regional Office in Denver, Colorado, 1961 Stout Street, Denver, Colorado.

Applicants who plan to attend one of the T.A. workshops must confirm their participation, the location of the workshop they will be attending, and the number of individuals in their party. Confirmation should be made at least 2 weeks prior to the workshop date to: Ms. Janice Edmonds, Parklawn Building, Room 9A-05, 5600 Fishers Lane, Rockville, Maryland 20857, 301 443-0652 or 443-6745. If there are changes to the above schedule, applicants will be notified at the time of confirmation.

Allowable Costs

The basis for determining the allowability and allocability of costs charged to PHS grants is set forth in 45 CFR Part 74, Subpart Q, and 45 CFR 92.22 for State and local governments. These regulations implement the five separate sets of cost principles prescribed for grant recipients, which are: OMB Circular A-87 for State and local governments; OMB Circular A-21 for institutions of higher education; 45 CFR Part 74, Appendix E for hospitals; OMB Circular A-122 for nonprofit organizations; and 48 CFR Chapter 1, Subpart 31.2 for for-profit (commercial) organizations.

Other Award Information

A successful applicant under this notice will submit reports in accordance with the provisions of the general regulations which apply under 45 CFR Part 74, Subpart J, and 45 CFR 92.40 for State and local governments.

Executive Order 12372

The HIV Services Planning Program has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intragovernmental review of Federal programs, as implemented by 45 CFR Part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application package under this notice will contain a listing of States which have chosen to set up such a review process and will provide a point of contact in the States for the review. Applicants should promptly contact their State single point of contact (SPOC) and follow their instruction prior to the submission of an application. The SPOC has 60 days after the application deadline date to submit its review comments.

(The OMB Catalog of Federal Domestic Assistance number of the HIV Services Planning Program is 13.168.)

Date: March 2, 1989.

John H. Kelso,

Acting Administrator.

Appendix A—Standard Metropolitan Statistical Areas (SMSAs) Eligible for Grants Under the HIV Services Planning Program

[100 to 400 AIDS Cases]

Standard metropolitan statistical area	Cities and counties included in the SMSA	Cumulative cases
1. Albany, NY	Albany City	136
	Schenectady City	
	Troy City	
	Albany County	
	Greene County	
	Rensselaer County	
	Saratoga County	
	Schenectady County	
2. Austin, TX	Austin City	225
	Hays County	
	Travis County	
	Williamson County	
3. Birmingham, AL	Birmingham City	104
	Blount County	
	Jeffereson County	
	St. Clair County	
	Shelby County	
	Walker County	
4. Bridgeport, CT	Bridgeport City	117
	Stanford City	
	Norwalk City	
	Danbury City	
	Fairfield County	
5. Buffalo, NY	Buffalo City	104
	Niagara Falls City	
	Erie County	
	Niagara County	
6. Charlotte, NC	NC	103
	Charlotte City	
	Gastonia City	
	Rock Hill City	
	Cabarrus County	
	Gaston County	
	Lincoln County	
	Meckleburg County	
	Rowan County	
	Union County	
	SC: York County	
7. Cincinnati, OH	OHD	139
	Cincinnati City	
	Clermont County	
	Hamilton County	
	Warren County	
	KY	
	Boone County	
	Campbell County	
	Kenton County	

Appendix A—Standard Metropolitan Statistical Areas (SMSAs) Eligible for Grants Under the HIV Services Planning Program—Continued

[100 to 400 AIDS Cases]

Standard metropolitan statistical area	Cities and counties included in the SMSA	Cumulative cases
	IN	
	Dearborn County	
8. Cleveland, OH	Cleveland City	272
	Cuyahoga County	
	Geauga County	
	Lake County	
	Medina County	
9. Columbus, OH	Columbus City	205
	Delaware County	
	Fairfield County	
	Franklin County	
	Licking County	
	Madison County	
	Pickaway County	
	Union County	
10. Ft. Myers, FL	Cape Coral City	144
	Fort Meyer City	
	Lee County	
11. Hartford, CT	Hartford City	179
	New Britain City	
	Middleton City	
	Bristol City	
	Hartford County	
	Middlesex County	
	Tolland Countyl	
12. Honolulu, HI	Honolulu City	210
	Honolulu County	
13. Indianapolis, IN	Indianapolis City	146
	Boone County	
	Hamilton County	
	Hancock County	
	Hendricks County	
	Johnson County	
	Marion County	
	Morgan County	
	Shelby County	
14. Jacksonville, FL	Jacksonville City	254
	Clay County	
	Duval County	
	Nassau County	
	St. Johns County	
15. Kansas City, MO.	MO	365
	Kansas City	
	Cass County	
	Clay County	
	Jackson County	
	Lafayette County	
	Platte County	
	Ray County	
	KS	
	Jackson County	
	Leavenworth County	
	Miami County	
	Wyandotte County	
16. Las Vegas, NV	Las Vegas City	172
	Clark County	
17. Long Branch, NJ.		167
	Monmouth County	
	Ocean County	
18. Memphis, TN	TN	137
	Memphis City	
	Shelby County	
	Tipton County	
	AR	
	Crittenden County	
	MS	

APPENDIX A—STANDARD METROPOLITAN STATISTICAL AREAS (SMSAs) ELIGIBLE FOR GRANTS UNDER THE HIV SERVICES PLANNING PROGRAM—Continued

[100 to 400 AIDS Cases]

Standard metropolitan statistical area	Cities and counties included in the SMSA	Cumulative cases
	De Soto County	
19. Milwaukee, WI	Milwaukee City	149
	Milwaukee County	
	Ozaukee County	
	Washington County	
	Waukesha County	
20. Minneapolis, MN.	MN	349
	Minneapolis City	
	St. Paul City	
	Anoka County	
	Carver County	
	Chisago County	
	Dakota County	
	Hennepin County	
	Isanti County	
	Ramsey County	
	Scott County	
	Washington County	
	Wright County	
	WI	
	St. Croix County	
21. Nashville, TN	Nashville City	139
	Cheatham County	
	Davidson County	
	Dickson County	
	Robertson County	
	Rutherford County	
	Sumner County	
	Williamson County	
	Wilson County	
22. New Brunswick, NJ.	Hunterdon County.	275
	Middlesex County	
	Somerset County	
	New Haven City	254
	Waterbury City	
	Meridan City	
	New Haven County	
24. Norfolk, VA	James City	127
	Chesapeake City	
	Hampton City	
	Newport News City	
	Norfolk City	
	Poquoson City	
	Portsmouth City	
	Suffolk City	
	Virginia Beach City	
	Willimsburg City	
	Gloucester County	
	York County	
25. Oklahoma City, OK.	OKlahoma City	119
	Canadian County	
	Cleveland County	
	Logan County	
	McClain County	
	Oklahoma County	

APPENDIX A—STANDARD METROPOLITAN STATISTICAL AREAS (SMSAs) ELIGIBLE FOR GRANTS UNDER THE HIV SERVICES PLANNING PROGRAM—Continued

[100 to 400 AIDS Cases]

Standard metropolitan statistical area	Cities and counties included in the SMSA	Cumulative cases
	Pottawatomie County	
26. Orlando, FL	Orlando City	262
	Orange County	
	Osceola County	
	Seminole County	
27. Pittsburgh, PA	Pittsburgh City	217
	Beaver Valley City	
	Beaver County	
	Allegheny County	
	Fayette County	
	Washington County	
	Westmoreland County	
28. Portland, OR	OR	344
	Portland City	
	Clackamas County	
	Multnomah County	
	Washington County	
	Yamhill County	
	WA	
	Vancouver City	
	Clark County	
29. Pughkeepsie, NY.	Poughkeepsie City	150
	Duchess County	
30. Providence, RI	Providence City	165
	Pawtucket City	
	Woonsocket City	
	Bristol County	
	Kent County	
	Providence County	
	Washington County	
31. Raleigh, NC	Raleigh City	128
	Durham City	
	Durham County	
	Franklin County	
	Orange County	
	Wake County	
32. Richmond, VA	Richmond City	125
	Petersburg City	
	Charles City	
	Colonial Heights City	
	Hopewell City	
	Petersburg City	
	Richmond City	
	Chesterfield County	
	Dinwiddie County	
	Goochland County	
	Hanover County	
	Henrico County	
	New Kent County	
	Powhatan County	
	Prince George County	
33. Rochester, NY	Rochester City	177
	Livingston County	
	Monroe County	
	Ontario County	
	Orleans County	
	Wayne County	
34. Sacramento, CA.	Sacramento City	268

APPENDIX A—STANDARD METROPOLITAN STATISTICAL AREAS (SMSAs) ELIGIBLE FOR GRANTS UNDER THE HIV SERVICES PLANNING PROGRAM—Continued

[100 to 400 AIDS Cases]

Standard metropolitan statistical area	Cities and counties included in the SMSA	Cumulative cases
	El Dorado County	
	Placer County	
	Sacramento County	
	Yolo County	
35. Salt Lake City, UT.	Salt Lake City	125
	Ogden City	
	Davis Lake County	
	Salt Lake County	
	Weber County	
36. San Antonio, TX.	San Antonio City	254
	Bexar County	
	Comal County	
	Guadalupe County	
37. San Jose, CA	San Jose City	349
	Santa Clara County	
38. Santa Rosa, CA	Santa Rosa City	202
	Petaluma City	
	Sonoma County	
39. St. Louis, MO	MO	297
	St. Louis City	
	Franklin County	
	Jefferson County	
	St. Charles County	
	St. Louis County	
	IL County	
	Clinton County	
	Jersey County	
	Madison County	
	Monroe County	
	St. Clair County	
40. Trenton, NJ	Trenton City	148
	Mercer County	
41. Tucson, AZ	Tucson City	118
	Pima County	

Appendix B—States Eligible for Grants Under the HIV Services Planning Program (States With More Than 125 AIDS Cases)

1. Alabama
2. Arizona *
3. Arkansas
4. California *
5. Colorado *
6. Connecticut
7. Delaware
8. Florida *
9. Georgia *
10. Hawaii
11. Illinois *
12. Indiana
13. Kansas
14. Kentucky
15. Louisiana *
16. Maryland *
17. Massachusetts *
18. Michigan *
19. Minnesota
20. Mississippi
21. Missouri
22. Nevada

23. New Jersey *
24. New Mexico
25. New York *
26. North Carolina
27. Ohio
28. Oklahoma
29. Oregon
30. Pennsylvania *
31. Puerto Rico *
32. Rhode Island
33. South Carolina
34. Tennessee
35. Texas *
36. Utah
37. Virginia
38. Washington *
39. Wisconsin

* These States are eligible for planning grants, but since they contain one or more SMSAs having 400 or more cases of AIDS, applications must emphasize planning for other than these high AIDS prevalence areas.

[FR Doc. 89-5272 Filed 3-7-89; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-010-09-4320-02]

Craig, Colorado, Advisory Council Meeting

Time and Date: April 12, 1989, at 10 a.m.
Place: BLM-Craig District Office, 455 Emerson Street, Craig, Colorado
Status: Open to public; interested persons may make oral statements at 10:30 a.m. Summary minutes of the meeting will be maintained in the Craig District Office.
Matters to be Considered:
1. Election of Officers
2. Recreation 2000
3. Weed Control
4. District Riparian Plan

Contact Person for More Information: Mary Pressley, Craig District Office, 455 Emerson Street, Craig, Colorado 81625-1129, Phone: (303) 824-8261.

Dated: February 28, 1989.

Jerry L. Kidd,
Associate District Manager.

[FR Doc. 89-5315 Filed 3-7-89; 8:45 am]

BILLING CODE 4310-JB-M

[UT-050-09-4320-14]

Notice of Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management.

ACTION: District Grazing Advisory Board Meeting.

SUMMARY: The Richfield District Grazing Board will hold a meeting on April 4, 1989. The meeting will start at 9:00 a.m. in the District Office, 150 East 900 North, Richfield, Utah. The agenda will be:

1. Election of officers
2. Discussion on Weed Day
3. Project funding and District fencing program
4. Henry Mountain CRM update
5. Wild Horse program
6. Riparian management
7. Wilderness program update
8. Change of livestock class and new and revised AMP's
9. Electronic Combat Test Capacity

Interested person may make oral statements to the Board between 1:15 p.m. and 2:15 p.m. or file written comments for the Board's consideration. Anyone wishing to make an oral statement must nofity the District Manager, Bureau of Land Management, 150 East 900 North, Richfield, Utah 84701 (801-896-8221). For further information contact: Bert Hart, District Public Affairs Specialist at the above address.

February 28, 1989.

Jerry Goodman,
Richfield District Manager.

[FR Doc. 89-5323 Filed 3-7-89 8:45 am]

BILLING CODE 4310-DO-M

Bureau of Land Management

[CA-14636]

Realty Action;Exchange of Public and Private Lands, Inyo and Los Angeles Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; exchange of public and private lands, CA-14636.

SUMMARY: The following public lands in Inyo County, CA, have been determined suitable for disposal by exchange to the City of Los Angeles, pursuant to the National Parks and Recreation Act of 1978 (92 Stat. 3501), as amended:

Mt. Diablo Meridian

	Acres
T. 19S., R. 37E.,	
Sec. 34, SW¼	160.0
T. 20S., R. 37E.,	
Sec. 3, Lot 5	40.83
Sec. 4, E½SE¼	80.0
Sec. 10, W½SW¼	80.0
Sec. 15, SE¼NW¼, E½SW¼, SW¼SW¼, W½SE¼, SE¼SE¼	280.0
Sec. 22, NW¼NE¼, W½W½, SE¼SW¼	240.0
Sec. 26, Lots 6, 7, 8, SW¼NW¼, S½SW¼, SW¼SE¼	279.19
Sec. 27, NE¼NW¼, W½W½	200.0
Sec. 34, SW¼NE¼, NE¼SW¼, W½SE¼	160.0
Sec. 35, W½NE¼, NW¼	240.0
T. 21S., R. 37E.,	
Sec. 1, Lot 1, SW¼NW¼, W½SW¼	160.25
Sec. 2, Lots 3, 7, 8, 9, 10, 11, 12, 15, SE¼NEI¼, N½SE¼SW¼, SE¼SE¼	419.03
Sec. 11, Lots 4, 5, 6, 7, 12, 13, NE¼NE¼, E½N¼NE¼, E½W½NW¼NE¼, SW¼SW¼NW¼NE¼, E½SE¼SW¼, S½SE¼	353.98
Sec. 14, Lot 11, E½NE¼NW¼	41.32
Containing 2,734.60 acres, more or less	

In exchange the United States will acquire all or a portion of private lands owned by the City of Los Angeles in Los Angeles County, CA, for inclusion in the Santa Monica Mountains National Recreation Area. The specific parcels to be acquired will be determined following final determination of values and will be adjusted to equalize the value of the public and private land.

SUPPLEMENTARY INFORMATION: The purpose of this exchange is to convey public land which surrounds Haiwee Reservoir in Inyo county to the City of Los Angeles. The city operates Haiwee Reservoir as a part of its Los Angeles aqueduct system, and its acquisition of the public land involved will consolidate ownership of the reservoir and will facilitate the city's management of that facility.

In exchange, the United States will acquire interest in lands owned by the city within the Santa Monica Mountains National Recreation area in the County of Los Angeles. These lands consist of parcels in the vicinity of Upper Franklin Reservoir. Acquisition of these lands by the United States will facilitate management of the recreation area by the National Park Service.

Approximately 16 acres of private land has been offered by the city. The value of the interest offered in these lands approximately equals the value of the selected lands. Determination of the exact parcels of offered lands to be conveyed to the United States will be made after acceptance of final appraisals, with the amount of offered land to be adjusted to equal the value of the selected lands.

Lands transferred out of Federal ownership will be subject to the following reservations:

1. A reservation of right of way to the United States for ditches and canals, pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

2. All valid existing rights existing at the time of publication of this notice, including but not limited to valid rights of way, entries, grants, leases and

locations, including valid mining claim locations.

Numerous mining claims of record may encumber the public lands, and are not enumerated herein for the sake of publication convenience. Further information regarding these possibly valid claims may be obtained by contacting the office noted below. The patent would be issued subject to those claims identified in the patent document, together with the right of the claimants to the following:

1. The right to continue to prospect for, mine, and remove locatable minerals subject to applicable laws.

2. The right of claimants to obtain patent, pursuant to applicable law, to both the surface and mineral estates within the mining claims if valid discovery was made prior to issuance of the subject exchange patent, or to obtain patent to the mineral estate only if valid discovery is made subsequent to the subject exchange patent.

Publication of this notice in the Federal Register segregates the public lands from the operation of the public land laws and the general mining laws, but not the mineral leasing laws. The segregative effect will end upon issuance of patent or two years from the date of publication, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Wesley T. Chambers, California Desert District, (714) 351-6402. Information relating to this action is readily available for review.

DATES: For a period on or before April 24, 1989 interested parties may submit comments to the Bureau of Land Management, District Manager, California Desert District, 1695 Spruce Street, Riverside, CA 92507. Objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of objections, this action will become the final determination of the Department of the Interior. No transfer of public lands will occur sooner than 60 days from first publication of this notice in the Federal Register.

H. W. Riecken,

Acting District Manager.

Date: February 28, 1989.

[FR Doc. 89-5263 Filed 3-7-89; 8:45 am]

BILLING CODE 4310-40-M

Bureau of Land Management

[ID-942-09-4730-12]

Idaho; Filing of Plats of Survey

The plat of survey of the following described land, was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 10:00 a.m., February 27, 1989.

The plat representing the dependent resurvey of a portion of the south and east boundaries, and subdivisional lines, and the subdivision of certain sections, T. 11 S., R. 26 E., Boise Meridian, Idaho, Group No. 668 was accepted February 21, 1989.

This survey was executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

February 27, 1989.

[FR Doc. 89-5270 Filed 3-7-89; 8:45 am]

BILLING CODE 4310-GG-M

National Park Service

Concession Contract Negotiations; Barren Island Marina, Inc.

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to extend a concession contract with Barren Island Marina, Inc., authorizing it to continue to provide marina facilities and services for the public at the Jamaica Bay/Breezy Point Unit of Gateway National Recreation Area, New York, for a period of one (1) year from 1 January, 1989, through December 31, 1989.

EFFECTIVE DATE: April 7, 1989.

ADDRESS: Interested parties should contact the Regional Director, North Atlantic Region, Boston, Massachusetts 02109 (telephone: 617-565-8864), for information as to the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: This contract extension has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act, and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expired by limitation of time on December 31, 1988, and therefore, pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the thirtieth (30th) day following the release date of this Public Notice to be considered and evaluated.

Dated: February 10, 1989.

Herbert S. Cables, Jr.,

Regional Director, North Atlantic Region.

[FR Doc. 89-5428 Filed 3-7-89; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-292]

Certain Methods of Making Carbonated Candy Products; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on January 31, 1989, under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), on behalf of General Foods Corporation, 250 North Street, White Plans, New York 10625, Carbonated Candy Ventures, 1195 Niagara Street, Buffalo, New York, 14240, and Pop Rocks, Inc., 986 Bedford Street, Stamford, Connecticut 06905. The complaint was amended and supplemented on February 21, 1989. The complaint, as amended and supplemented, alleges violation of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain carbonated candy products which infringe or are made by a process covered by: (1) Claims 1-9 of U.S. Letters Patent 3,985,910 and (2) claims 1-9 of U.S. Letters Patent 4,001,457; and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent general exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade

Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202-252-1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

FOR FURTHER INFORMATION CONTACT: David A. Guth, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-252-1574.

Authority

The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and §210.12 of the Commission's Interim Rules of Practice and Procedure, 52 FR 33034, 33057 (Aug. 29, 1988).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on March 1, 1989, ORDERED THAT—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B)(ii) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain carbonated candy products allegedly made by a process covered by claims 1-9 of U.S. Letters Patent 3,985,910 or claims 1-9 of U.S. Letters Patent 4,001,457; and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

General Foods Corporation, 250 North Street, White Plains, New York 10625

Carbonated Candy Ventures, 1195 Niagara Street, Buffalo, New York 14240

Pop Rocks, Inc., 986 Bedford Street, Stamford, Connecticut 06905

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint shall be served:

Zeta Espacial, S.A., Apartado 140, Sant Boi (Barcelona), Spain

Confex, Inc., 167 Avenue at the Common, Shrewsbury, New Jersey 07702

(c) David A. Guth, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401 Washington, DC 20436, shall be the Commission Investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with §210.21 of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33057 (Aug. 29, 1988). Pursuant to §§201 16(d) and 210.21(a) of the Commission's rules (19 CFR 201.16(d) and 53 FR 33034, 33057 (Aug. 29, 1988)), such responses shall be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: March 1, 1989.

[FR Doc. 89-5389 Filed 3-7-89 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-256]

Certain Cryogenic Ultramicrotome Apparatus and Components Thereof; Change of Commission Investigative Attorney

Notice is hereby given that, as of this date, Juan S. Cockburn, Esq., of the Office of Unfair Import Investigations will be the Commission investigative attorney in the above-cited investigation instead of Stephen H. Sulzer, Esq.

The Secretary is requested to publish this Notice in the **Federal Register.**

Respectfully submitted,

Lynn I. Levine,

Director, Office of Unfair Import Investigations.

Dated: February 27, 1989.

[FR Doc. 89-5387 filed 3-7-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-291]

Certain Insulated Security Chests; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on January 25, 1989, under section 337 of the Tariff Act of 1930, as amended, (19 U.S.C. 1337), on behalf of John D. Brush & Co., Inc., 900 Linden Avenue, Rochester, New York 14625. The complaint was supplemented on February 8, 1989, The complaint, as supplemented, alleges violations of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain insulated security chests by reason of (1) direct infringement of claims 1 through 7 of U.S. Letters Patent 4,048,926; and (2) direct infringement of U.S. Letters Patent Des. 289,582; and that there exists an industry in the United States as required by subsection (a)(2) of the section 337.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E. Street S.W., Room 112, Washington, DC 20436, telephone 202-252-1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

FOR FURTHER INFORMATION CONTACT: Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-252-1572.

Authority

The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in 210.12 of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33057 (Aug. 29, 1988).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on February 22, 1989, ORDERED THAT—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine (a) whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain insulated security chests by reason of alleged (1) infringement of claims 1, 2, 3, 4, 5, 6 or 7 of U.S. Letters Patent 4,046,926, or (2) infringement of the claim of U.S. Letters Patent Des. 289,582, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served;

(a) The complainant is—

John. D Bush & Co., Inc., 900 Linden Avenue, Rochester, New York 14625.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Scotty's, 5300 North Recker Highway, P.O. Box 939, Winter Haven, Florida 33882.

Home Quarters Warehouse, 2866 Virginia Beach Boulevard, Virginia Beach, Virginia 23450.

Center Manufacturing Co., 540 Goodrich, Bellevue, Ohio 44811.

(c) Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E. Street SW., Room 401Q, Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33057 (Aug. 29, 1988). Pursuant to §§ 201.16(d) and 210.21(a) of the Commission's Rules (19 CFR 201.16(d) and 53 FR 33034, 33057 (Aug. 29, 1988)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Issued: February 27, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-5390 Filed 3-7-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-429 (Preliminary)]

Mechanical Transfer Presses From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission unanimously determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Japan of mechanical transfer presses [2] provided for in subheadings 8462.29.00, 8462.39.00, 8462.49.00, 8462.99.00, and 8466.94.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On January 12, 1989, a petition was filed with the Commission and the Department of Commerce by Verson Division of Allied Products Corp., the United Auto Workers, and the United Steelworkers of America (AFL-CIO-CLC) alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of mechanical transfer presses from Japan. Accordingly, effective January 12, 1989, the Commission instituted preliminary antidumping investigation No. 731-TA-429 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 25, 1989 (54 FR 3693). The conference was held in Washington, DC, on February 3, 1989, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on February 27, 1989. The views of the Commission are contained in USITC Publication 2160 (February 1989), entitled "Mechanical Transfer Presses from Japan: Determination of the Commission in Investigation No. 731-TA-429 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By Order of the Commisison.

Kenneth R. Mason,

Secretary.

Issued: March 2, 1989.

[FR Doc. 89-5392 Filed 3-7-89; 8:45 am]

BILLING CODE 7020-02-M

---

[1] The record is defined in § 207.2(h) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(h)), as amended by 53 FR 33041 (August 29, 1988).

[2] For purposes of this investigation, the term "mechanical transfer presses" refers to automatic metal-forming machine tools with multiple die stations in which the workpiece is moved from station to station by a transfer mechanism synchronized with the press action, whether imported as machines or parts suitable for use soley or principally with these machines. These presses may be assembled or unassembled.

[Investigation No. 337-TA-281]

Certain Recombinant Erythropoietin; Commission Decision To Review the Administrative Law Judges' Final Initial Determination

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in its entirety the initial determination (ID) issued by the administrative law judge (ALJ) finding no violation of section 337 of the Tariff Act of 1930, as amended, in the above-captioned investigation. The Commission does not request any further briefing from the parties at this time. Written submissions on the issues of remedy, the public interest and bonding may be requested by the Commission later in the proceedings.

ADDRESS: Copies of the presiding ALJ's ID and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1104. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

SUPPLEMENTARY INFORMATION: On February 10, 1988, the Commission instituted an investigation to determine whether there is a violation of section 337 in the importation or sale of recombinant erythropoietin by reason of alleged unfair acts in the importation into and sale in the United States of certain recombinant erythropoietin manufactured abroad by a process which, if practiced in the United States, would infringe claims 2, 4-7, 23-25, and 27-29 of U.S. Letters Patent 4,703,008. The Commission named Chugai Pharmaceutical Co., Ltd. of Japan and Chugai, USA, Inc. of New York City as respondents. During the investigation, the Commission granted a motion filed by The UpJohn Company of Kalamazoo, Michigan, to intervene as a respondent.

Notice of this investigation was published in the **Federal Register** of February 10, 1988 (53 FR 3947-3948).

This action is taken under authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and sections 210.55 and 210.56 of the Commission's interim rules (53 FR 33071 (Aug. 29, 1988)).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: February 27, 1989.

[FR Doc. 89-5386 Filed 3-7-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-286]

Certain Track Lighting System Components, Including Plugboxes; Meeting

Notice is hereby given that the prehearing conference in this matter will commence at 9:00 a.m. on March 13, 1989, in Courtroom A (Room 100), U.S. International Trade Commission Building, 500 E St. SW., Washington, DC, and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register.**

Janet D. Saxon,

Chief Administrative Law Judge.

Issued: February 27, 1989.

[FR Doc. 89-5388 Filed 3-7-89; 8:45 am]

BILLING CODE 7020-02

[Investigation No. 337-TA-290]

Certain Wire Electrical Discharge Machining Apparatus and Components Thereof; Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on January 23, 1989, under section 337 of the Tariff Act of 1930, as amended, (19 U.S.C. 1337), on behalf of Elox Corporation, Griffith Street, P.O. Box 220, Davidson, North Carolina 28036 and A.G. fur Industrielle Elektronik AGIE, Losone bei Locarno, CH-6616 Losone, Switzerland. A supplement was filed on February 8, 1989. The complaint, as supplemented, alleges violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain wire electrical discharge machining apparatus and components by reason of alleged direct, induced, and contributory infringement of claims 1 and 7-24 of U.S. Letters Patent 3,928,163; and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202-252-1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

FOR FURTHER INFORMATION CONTACT: Gary M. Hnath, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-252-1571.

Authority

The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.12 of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33057 (Aug. 29, 1988).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on February 22, 1989, *Ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain wire electrical discharge machining apparatus and components by reason of alleged direct, induced, or contributory infringement of any of claims 1 or 7-24 of U.S. Letters Patent 3,928,163, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

Elox Corporation, Griffith Street, P.O. Box 220, Davidson, North Carolina 28036

A.G. fur Industrielle Elektronik AGIE, Losone bei Locarno, CH-6616 Losone, Switzerland

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Sodick Co., Ltd., 1-5-1 Shin-Yokohama, Kouhoku-Ku, Yokohama, Kanagawa 222, Japan
Sodick Inc., 2100 Golf Road, Suite 350, Rolling Meadows, Illinois 60008
KGK Corporation, 1-6, Sakuradai 1-chome, Nerima-ku, Tokyo 176, Japan
KGK International Corporation, 543 W. Algonquin Road, Arlington Heights, Illinois 60005
Maruka Machinery Co., Ltd., 2-28 Itsukaichi Midori-cho, Ibaraki-shi, Osaka 567, Japan
Maruka Machinery Corporation of America, 60 Chapin Road, Pine Brook, New Jersey 07058
Yamazen Co., Ltd., 3-16, Itachibori 2-chome, Nishi-ku, Osaka-shi, Osaka 550, Japan
Yamazen USA, Inc., 1130 E. Dominguez Street, Carson, California 90746
Bridgeport Machines, Inc., 500 Lindley Street, Bridgeport, Connecticut 06606

(c) Gary M. Hnath, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401I, Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33057 (Aug. 29, 1988). Pursuant to sections 201.16(d) and 210.21(a) of the Commission's Rules (19 CFR 201.16(d) and 53 FR 33034, 33057 (Aug. 29, 1988)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Issued: February 27, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-5385 Filed 3-7-89; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF LABOR

Bureau of International Labor Affairs

Partial Revision of the Indigenous and Tribal Populations Convention, 1957 (No. 107), International Labor Organization

AGENCY: Department of Labor.

ACTION: Request for comment from tribal governments.

SUMMARY: The Department of Labor (DOL) invites comments from tribal governments on the appended proposed revision of the International Labor Organization's (ILO) Indigenous and Tribal Populations Convention, 1957 (No. 107). In preparation for the second discussion of this revised convention at the upcoming 1989 International Labor Conference, the Bureau of International Labor Affairs of the Department of Labor, with the assistance of the relevant Federal agencies, will prepare a position paper on the proposed text.

DATE: Comments will be accepted through April 7, 1989.

ADDRESS: Written comments should be directed to Marion F. Houstoun, Office of International Organizations, Bureau of International Labor Affairs, S-5311, U.S. Department of Labor, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Marion F. Houstoun, Office of International Organizations, Bureau of International Labor Affairs, S-5311, U.S. Department of Labor, Washington, DC 20210, telephone number (202) 523-6241.

SUPPLEMENTARY INFORMATION: In June 1988, the annual Conference of the ILO held the first of two annual discussions on the Partial Revision of the Indigenous and Tribal Populations Convention (No. 107), which the Conference adopted in 1957. The existing Convention deals with a wide range of issues such as native land rights, consultation between governments and native peoples in social and economic development, and issues of employment, vocational training, health and education affecting tribal peoples. The Convention is being revised because its assimilationist or integrationist approach to fundamental issues is widely seen as inapproprate and outdated. The ILO issued the report of the June 1988 session of the Conference Committee on Convention No. 107 and a proposed Convention text based on the results of that meeting. The ILO requested that Member States submit amendments or comments on the proposed text. The U.S. Government prepared and submitted comments to the ILO after consulting with U.S. employers' and workers' organizations, as well as U.S. indigenous groups (see DOL request for comments from tribal governments in the October 28, 1988, Federal Register). The attached new ILO draft of the proposed revised convention, which will be considered at the June 1989 session of the Conference, incorporates the comments of Member States. The Bureau of International Labor Affairs of the Department of Labor, with the assistance of the Departments of Interior and State, will prepare the U.S. position paper on this draft text for the upcoming Conference. The Department of Labor invites comments from tribal governments on the proposed revised Convention. The revised Convention is intended to be a broad statement of principles that can be adopted by many countries whose indigenous and tribal peoples face a wide range of circumstances.

Signed on the 2d day of March, 1989.

Eugene K. Lawson,

Deputy Under Secretary for International Affairs, U.S. Department of Labor.

Proposed Text

The following is the English version of the proposed Convention concerning indigenous and tribal peoples in independent countries which is submitted as a basis for discussion of the fourth item on the agenda of the 76th Session of the Conference.

Proposed Convention Concerning Indigenous and Tribal Peoples in Independent Countries

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 76th Session on 7 June 1989, and

Noting the international standards contained in the Indigenous and Tribal Populations Convention and Recommendation, 1957, and

Recalling the terms of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the many international instruments on the prevention of discrimination, and

Considering that the developments which have taken place in

international law since 1957, as well as developments in the situation of indigenous and tribal peoples in all regions of the world, have made it appropriate to adopt new international standards on the subject with a view to removing the assimilationist orientation of the earlier standards, and

Recognising the aspirations of these peoples to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live, and

Noting that in many parts of the world these peoples are unable to enjoy their fundamental human rights to the same degree as the rest of the population of the State within which they live, and that their laws, values, customs and perspectives have often been eroded, and

Calling attention to the distinctive contributions of indigenous and tribal peoples to the cultural diversity and social and ecological harmony of humankind and to international co-operation and understanding, and

Noting that the following provisions have been framed with the co-operation of the United Nations, the Food and Agriculture Organisation of the United Nations, the United Nations Educational, Scientific and Cultural Organisation and the World Health Organization, as well as of the Inter-American Indian Institute, at appropriate levels and in their respective fields, and that it is proposed to continue this co-operation in promoting and securing the application of these provisions, and

Having decided upon the adoption of certain proposals with regard to the partial revision of the Indigenous and Tribal Populations Convention, 1957 (No. 107), which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention revising the Indigenous and Tribal Populations Convention, 1957;

adopts this —— day of June of the year one thousand nine hundred and eighty-nine the following Convention, which may be cited as the Indigenous and Tribal Peoples Convention, 1989:

Part I. General Policy

Article 1

1. This Convention applies to:

(a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;

(b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.

3. The use of the term "peoples" in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under other international instruments.

Article 2

1. Governments shall have the responsibility for developing, with the participation of the peoples concerned, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity.

2. Such action shall include measures for:

(a) Enabling members of these peoples to benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population;

(b) Promoting the full realisation of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions;

(c) Assisting the members of the peoples concerned to raise their standard of living to that enjoyed by other members of the national community, in a manner compatible with their aspirations and ways of life.

Article 3

1. Indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination.

2. No form of force or coercion shall be used in violation of the human rights and fundamental freedoms of the peoples concerned, including the rights contained in this Convention.

Article 4

1. Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour and environment of the peoples concerned.

2. Such special measures shall not be contrary to the wishes of the peoples concerned.

3. Enjoyment of the general rights of citizenship, without discrimination, shall not be prejudiced in any way by such special measures.

Article 5

In applying the provisions of this Convention:

(a) The social, cultural and religious values and practices of these peoples shall be recognised and protected, and due account shall be taken of the nature of the problems which face them both as groups and as individuals;

(b) The integrity of the values, practices and institutions of these peoples shall be respected;

(c) Policies aimed at mitigating the difficulties experienced by these peoples in adjusting to new conditions of life and work shall be adopted, with the participation and co-operation of the peoples affected.

Article 6

1. In applying the provisions of this Convention, governments shall:

(a) Consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;

(b) Establish means by which these peoples may freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which may affect them directly;

(c) Make available to these peoples opportunities for the full development of their own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.

2. The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.

Article 7

1. The improvement of the conditions of life and work and levels of health and education of the peoples concerned, with their participation and co-operation, shall be a matter of priority in plans for the overall economic development of areas inhabited by

them. Special projects for development of the areas in question shall also be so designed as to promote such improvement.

2. The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, territories, institutions and spiritual well-being and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall be involved in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.

3. Governments shall ensure that, whenever appropriate, studies are carried out, in co-operation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities.

4. Governments shall take measures, in co-operation with the peoples concerned, to protect and preserve the environment of the territories they inhabit.

Article 8

1. In the application of national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws.

2. These peoples shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system or with internationally recognised human rights. Procedures shall be established, whenever necessary, to resolve conflicts which may arise in the application of this principle.

3. The application of paragraphs 1 and 2 of this Article shall not prevent members of these peoples from exercising the rights granted to all citizens and from assuming the corresponding duties.

Article 9

1. To the extent compatible with the national legal system and internationally recognised human rights, the use of methods customarily practised by the peoples concerned for dealing with offences committed by their members shall be respected.

2. The customs of these peoples in regard to penal matters shall be taken into consideration by the authorities and courts dealing with such cases.

Article 10

1. In imposing penalties laid down by general law on members of these peoples account shall be taken of their economic, social and cultural characteristics.

2. Preference shall be given to methods of punishment other than confinement in prison.

Article 11

The exaction from members of the peoples concerned of compulsory personal services in any form, whether paid or unpaid, shall be prohibited and punishable by law, except in cases prescribed by law for all citizens.

Article 12

The peoples concerned shall be safeguarded against the abuse of their rights and shall be able to take legal proceedings, either individually or through their representative bodies, for the effective protection of these rights. Measures shall be taken to ensure that members of these peoples can understand and be understood in legal proceedings, where necessary through the provision of interpretation or by other effective means.

Part II. Land

Article 13

In applying the provisions of this Part of the Convention governments shall have due regard to the special importance for the cultures of the peoples concerned of their relationship with the lands and territories they occupy, and in particular the collective aspects of this relationship.

Article 14

1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised.

2. Governments shall take steps as necessary to identify the lands which the people concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.

3. Where appropriate, measures shall be taken to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.

4. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned, including claims arising under treaties.

Article 15

1. The rights of the peoples concerned to the surface resources pertaining to their lands and territories, including flora and fauna, waters and sea-ice, shall be specially safeguarded. These rights include the right of these peoples to participate in the management and conservation of these resources.

2. Governments shall establish or maintain procedures, in accordance with Article 6 of this Convention, through which they shall seek to obtain the agreement of these peoples before undertaking or permitting any programmes for the exploration or exploitation of mineral and other sub-surface resources pertaining to their lands and territories. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any such activities undertaken within their territories.

Article 16

1. Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands and territories which they occupy.

2. Where the removal of these peoples is considered necessary as an exceptional measure, such removals shall take place only with their free and informed consent. Where their consent cannot be obtained, such removal shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.

3. In such exceptional cases of removal, these peoples shall be provided with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees.

4. Whenever possible, these peoples shall have the right to return to their traditional lands and territories, as soon as the grounds for removal cease to exist.

5. Persons thus removed shall be fully compensated for any resulting loss or injury.

Article 17

1. Procedures established by the peoples concerned for the transmission of land rights among members of these peoples shall be respected.

2. The peoples concerned shall be consulted whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their rights outside their own community.

3. Persons who are not members of these peoples shall be prevented from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them.

Article 18

Adequate penalties shall be established by law for unauthorised intrusion upon, or use of, the lands of the peoples concerned, and governments shall take measures to prevent such offences.

Article 19

National agrarian programmes shall secure to the peoples concerned treatment equivalent to that accorded to other sectors of the population with regard to:

(a) The provision of more land for these peoples when they have not the area necessary for providing the essentials of a normal existence, or for any possible increase in their numbers;

(b) The provision of the means required to promote the development of the lands which these peoples already possess.

Part III. Recruitment and Conditions of Employment

Article 20

1. Governments shall, within the framework of national laws and regulations, and in co-operation with the peoples concerned, adopt special measures to ensure the effective protection with regard to recruitment and conditions of employment of workers belonging to these peoples, to the extent that they are not effectively protected by laws applicable to workers in general.

2. Governments shall do everything possible to prevent any discrimination between workers belonging to the peoples concerned and other workers, in particular as regards:

(a) Admission to employment, including skilled employment, as well as measures for promotion and advancement;

(b) Equal remuneration for work of equal value;

(c) Medical and social assistance, occupational safety and health, all social security benefits and any other occupationally related benefits, and housing;

(d) The right of association and freedom for all lawful trade union activities, and the right to conclude collective agreements with employers or employers' organisations.

3. The measures taken shall include measures to ensure:

(a) That workers belonging to the peoples concerned, including seasonal, casual and migrant workers in agricultural and other employment, as well as those employed by labour contractors, enjoy the protection afforded by national law and practice to other such workers in the same sectors, and that are fully informed of their rights under labour legislation and of the means of redress available to them;

(b) That workers belonging to these peoples are not subjected to working conditions hazardous to their health, in particular through exposure to pesticides or other toxic substances;

(c) That workers belonging to these peoples are not subjected to coercive recruitment systems, including bonded labour and other forms of debt servitude;

(d) That workers belonging to these peoples enjoy equal opportunities and equal treatment in employment for men and women, and protection from sexual harassment.

4. Particular attention shall be paid to the establishment of adquate labour inspection services in areas where workers belonging to the peoples concerned undertake wage employment, in order to ensure compliance with the provisions of this Part of this Convention.

Part IV. Vocational Training, Handicrafts and Rural Industries

Article 21

Members of the peoples concerned shall enjoy opportunities at least equal to those of other citizens in respect of vocational training measures.

Article 22

1. Measures shall be taken to promote the voluntary participation of members of the peoples concerned in vocational training programmes of general application.

2. Whenever existing programmes of vocational training of general application do not meet the special needs of the peoples concerned, governments shall, with the participation of these peoples, ensure the provision of special training programmes and facilities.

3. Any special training programmes shall be based on the economic environment, social and cultural conditions and practical needs of the peoples concerned. Any studies made in this connection shall be carried out in co-operation with these peoples, who shall be consulted on the organisation and operation of such programmes. Where feasible, these peoples shall progressively assume responsibility for the organisation and operation of such special training programmes, if they so decide.

Article 23

1. Handicrafts, rural and community-based industries, and subsistence economy and traditional activities of the peoples concerned, such as hunting, fishing, trapping and gathering, shall be recognised as important factors in the maintenance of their cultures and in their economic self-reliance and development. Governments shall, with the participation of these peoples and whenever appropriate, ensure that these activities are strengthened and promoted.

2. Upon the request of the peoples concerned, appropriate technical and financial assistance shall be provided wherever possible, taking into account the traditional technologies and cultural characteristics of these peoples, as well as the importance of sustainable and equitable development.

Part V. Social Security and Health

Article 24

Social security schemes shall be extended progressively to cover the peoples concerned, and applied without discrimination against them.

Article 25

1. Governments shall ensure that adequate health services are made available to the peoples concerned, or shall provide them with resources to allow them to design and deliver such services under their own responsibility and control, so that they may enjoy the highest attainable standard of physical and mental health.

2. Health services shall, to the extent possible, be community-based. These services shall be planned and administered in co-operation with the peoples concerned and take into account their economic, geographic, social and cultural conditions as well as their traditional preventive care, healing practices and medicines.

3. The health care system shall give preference to the training and employment of local community health workers, and focus on primary health care while maintining strong links with other levels of health care services.

4. The provision of such health services shall be co-ordinated with other social, economic and cultural measures in the country.

Part VI. Education and Means of Communication

Article 26

Measures shall be taken to ensure that members of the peoples concerned have the opportunity to acquire education at all levels on at least an equal footing with the rest of the national community.

Article 27

1. Education programmes and services for the peoples concerned shall be developed and implemented in co-operation with them to address their special needs, and shall incorporate their histories, their knowledge and technologies, their value systems and their further social, economic and cultural aspirations.

2. The competent authority shall ensure the training of members of these peoples and their involvement in the formulation and implementation of education programmes, with a view to the progressive transfer of responsibility for the conduct of these programmes to these peoples as appropriate.

3. In addition, governments shall recognise the right of these peoples to establish their own educational institutions and facilities, provided that such institutions meet minimum standards established by the competent authority in consultation with these peoples. Appropriate resources shall be provided for this purpose.

Article 28

1. Children belonging to the peoples concerned shall, wherever practicable, be taught to read and write in their own indigenous language or in the language most commonly used by the group to which they belong. When this is not practicable, the competent authorities shall undertake consultations with these peoples with a view to the adoption of measures to achieve this objective.

2. Adequate measures shall be taken to ensure that these peoples have the opportunity to attain fluency in the national language or in one of the official languages of the country.

3. Measures shall be taken to preserve and promote the development and practice of the indigenous languages of the peoples concerned.

Article 29

The imparting of general knowledge and skills that will help children belonging to the peoples concerned to participate fully and on an equal footing in their own community and in the national community shall be an aim of education for these peoples.

Article 30

1. Governments shall adopt measures appropriate to the traditions and cultures of the peoples concerned, to make known to them their rights and duties, especially in regard to labour, economic opportunities, education and health matters, social welfare and their rights deriving from this Convention.

2. If necessary, this shall be done by means of written translations and through the use of mass communications in the languages of these peoples.

Article 31

Educational measures shall be taken among all sections of the national community, and particularly among those that are in most direct contact with the peoples concerned, with the object of eliminating prejudices that they may harbour in respect to these peoples. To this end, efforts shall be made to ensure that history textbooks and other educational materials provide a fair, accurate and informative portrayal of the societies and cultures of these peoples.

Part VII. Migration Across Borders

Article 32

Governments shall take appropriate measures, including by means of international agreements, to facilitate contacts and co-operation between indigenous and tribal peoples across borders, including activities in the economic, social, cultural, spiritual and environmental fields.

Part VIII. Administration

Article 33

1. The governmental authority responsible for the matters covered in this Convention shall ensure that agencies or other appropriate mechanisms exist to administer the programmes affecting the peoples concerned, and shall ensure that they have the means necessary for the proper fulfilment of the functions assigned to them.

2. These programmes shall include:

(a) the planning, co-ordination, execution and evaluation, in co-operation with the peoples concerned, of the measures provided for in this Convention;

(b) the proposing of legislative and other measures to the competent authorities and supervision of the application of the measures taken, in co-operation with the peoples concerned.

Part IX. General Provisions

Article 34

The nature and scope of the measures to be taken to give effect to this Convention shall be determined in a flexible manner, having regard to the conditions characteristic of each country.

Article 35

The application of the provisions of this Convention shall not adversely affect rights and benefits to the peoples concerned pursuant to other Conventions and Recommendations, international instruments, treaties, or national laws, awards, custom or agreements.

Part X. Final Provisions

Article 36

This Convention revises the Indigenous and Tribal Populations Convention, 1957.

[FR Doc. 89-5313 Filed 3-7-89; 8:45 am]
BILLING CODE 4510-28-M

Employment and Training Administration

Federal-State Unemployment Compensation Program; New Extended Benefit Period in the State of Alaska

This notice announces the beginning of a new Extended Benefit Period in Alaska, effective on February 19, 1989, and remaining in effect for at least 13 weeks after that date.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. Under the Extended Benefit Program, individuals who have exhausted their rights to regular unemployment benefits (UI) under permanent State (and Federal) unemployment compensation laws may be eligible, during an extended benefit period, to receive up to 13 weeks of extended unemployment benefits, at the same weekly rate of benefits as previously received under the State law. The Federal-State Extended Unemployment Compensation Act is implemented by State unemployment compensation laws and by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

Each State unemployment compensation law provides that there is

a State "on" indicator (triggering on an Extended Benefit Period) for a week if the head of the State employment security agency determines that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment in the State equaled or exceeded the State trigger rate. The Extended Benefit Period actually begins with the third week following the week for which there is an "on" indicator in the State. A benefit period will be in effect for a minimum of 13 weeks, and will end the third week after there is an "off" indicator.

Determination of an "on" Indicator

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State, for the 13-week period ending on February 4, 1989, equals or exceeds 6 percent, so that for that week there was an "on" indicator in the State.

Therefore, a new Extended Benefit Period commenced in the State with the week beginning on February 19, 1989. This period will continue for no less than 13 weeks, and until three weeks after a week in which there is an "off" indicator in the State.

Information for Claimants

The duration of extended benefits payable in the Extended Benefit Period, and the terms and conditions on which they are payable, are governed by the Act and the State unemployment compensation law. The State employment security agency will furnish a written notice of potential entitlement to extended benefits to each individual who has established a benefit year in the State that will expire after the new Extended Benefit Period begins. 20 CFR 615.13(d)(1). The State employment security agency also will provide such notice promptly to each individual who exhausts all rights under the State unemployment compensation law to regular benefits during the Extended Benefit Period. 20 CFR 615.13(d)(2).

Persons who believe they may be entitled to extended benefits in the State named above, or who wish to inquire about their rights under the Extended Benefit Program, should contact the nearest State employment service office or unemployment compensation claims office in their locality.

Signed at Washington, DC, on February 24, 1989.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 89-5376 Filed 3-7-89; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL SCIENCE FOUNDATION

Interagency Arctic Research Policy Committee; Meeting

In accordance with the Arctic Research and Policy Act, Pub. L. 98-373, the National Science Foundation announces the following meeting:

Name: Interagency Arctic Research Policy Committee.

Date & Time: March 27, 9:00 a.m.

Place: National Science Foundation, Room 540 1800 G Street, NW., Washington, DC.

Type of Meeting: Open, but part of the meeting will be closed for a discussion of agency budget initiatives.

Contact Person: Jerry Brown, Division of Polar Programs, Room 627, National Science Foundation, Washington, DC 20550. Telephone: (202) 357-7817.

Purpose of Meeting: The Interagency Arctic Research Policy Committee was established by Pub. L. 98-373, the Arctic Research and Policy Act, to survey arctic research, help determine priorities for future arctic research, develop a natonal arctic research policy, prepare a single, integrated multi-agency budget request for arctic reasearch, develop a plan to implement national arctic research policy, and facilitate cooperation in and coordination of arctic research.

Agenda: Open Session 9:00 a.m.

1. Welcome and Introductions
2. Discussion of Biennial Revision to U.S. Arctic Research Plan
3. Comments from Arctic Research Commission
4. Status of International Arctic Scientific Activities
5. Other Business

Closed Session. Disussion of Ageny Arctic Budget Initiatives.

Public Participation: Committee meetings are not designed as public hearings and will not normally receive verbal comments from observers unless specifically invited by the Committee. Observers invited to address the Committee will be limited to five minutes each. An invitation to address the Committee is contingent upon advance submission of the proposed statement and a determination by the Committee that such statement is relevant and appropriate to the agenda at the particular meeting. The texts of such statements shall not exceed five double-spaced typed pages each.

Charles E. Myers,

Division of Polar Programs.

[FR Doc. 89-5308 Filed 3-7-89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from February 10, 1989 through February 24, 1989. The last biweekly notice was published on February 22, 1989 (54 FR 7622).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, 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-216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 7, 1989 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529 and STN 50-530, Palo Verde Nuclear Generating Station (PVNGS), Unit 1, 2 and 3, Maricopa County, Arizona

Date of amendment request: November 9, 1988

Description of amendment request: The proposed amendment would revise the PVNGS Technical Specifications (TS), Section 3.4.5.1, "RCS Leak Detection System" by revising the operability requirements of the monitoring systems which comprise the RCS Leak Detection System, and the

associated Action Statements. More specifically, the proposed amendments to TS Section 3.4.5.1 would clarify that primary system leakage is monitored by two independent techniques, not three. Airborne radioactivity is monitored using the particulate and/or gaseous monitor and the liquid volumes are monitored using the sump level and/or flow monitoring system.

Currently, the TS list three independent detection systems: containment atmosphere particulate radioactivity monitoring system, containment sump level and flow monitoring system, and the containment atmosphere gaseous radioactivity monitoring system. However, the containment atmosphere particulate system and the gaseous system are a common system utilizing the same power source, sample point and various other common components.

The proposed Action Statement for inoperable containment atmosphere gaseous radioactivity and containment atmosphere particulate radioactivity would also be revised to allow continued operation for up to 30 days provided that gaseous and/or particulate grab samples of the containment atmosphere are obtained at least once per 12 hours and analyzed within the subsequent 3 hours, and that the containment sump level and flow monitoring system is available.

In addition, the proposed Action Statement for inoperable containment sump level and flow monitoring system would allow continued operation for up to 30 days provided the containment atmosphere gaseous radioactivity monitoring and the containment atmosphere particulate radioactivity monitoring system are operable.

Basis for Proposed No Significant Hazards Consideration Determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensees have evaluated the proposed amendment against these standards and have provided the following discussion:

Standard 1 - Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed change does not alter the current design or operation of the facility. The revised operability requirements will not provide significant degradation in the Reactor Coolant System leakage detection capability. These changes do not adversely affect the consequences of the design basis accidents. Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Standard 2 - Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated. Since there are no changes in the way the plant is being operated, the potential for an unanalyzed accident is not created. No new failure modes are introduced. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Standard 3 - Involve a significant reduction in a margin of safety.

The proposed change does not involve a significant reduction in a margin of safety. The proposed changes do not have any adverse impact on the containment integrity. Since the proposed changes do not affect the consequences of any accident previously analyzed, there is no reduction in the margin of safety.

The proposed change matches two of the examples given in 51 FR 7751 of amendments that do not include a significant hazards consideration. The proposed changes are enveloped by example (ii), a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications, e.g., a more stringent action statement. The proposed changes require that grab samples of the containment atmosphere be obtained at least once per twelve hours and analyzed within the next three hours. This requirement is more restrictive than the current Technical Specification which requires that grab samples of the containment atmosphere be obtained and analyzed at least once per twenty-four hours....

The staff has reviewed the licensees' no significant hazards analysis and concurs with their conclusions. As such, the staff proposes to determine that the requested changes do not involve a significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004

Attorney for licensees: Mr. Arthur C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

NRC Project Director: George W. Knighton

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: February 29, 1988

Description of amendment request: The proposed change for the Brunswick Steam Electric Plant (BSEP) would delete Surveillance Requirement 4.8.1.1.1.b which requires that the on-site Class 1E distribution system be demonstrated operable at least once per 18 months during shutdown by manually transferring the unit power supply from the normal circuit to the alternate circuit.

Basis for proposed no significant hazard consideration determination: The Commission has provided standards for determining whether a no significant hazard consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; 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 Carolina Power & Light Company (CP&L) has reviewed the proposed deletion to TS and has determined that the requested amendment does not involve a significant hazards consideration for the following reasons:

1. The proposed change deletes a Surveillance Requirement that does not apply to the BSEP design. The intent of the surveillance requirement; to demonstrate power source operability, is met on a continuous basis by continually providing four normal offsite power sources for each unit as opposed to a single normal and a single alternate offsite power source. Deletion of this requirement has no impact on the consequences of any accident because the intent of the surveillance requirement is met and verified continuously. The current Technical Specification only requires verification on an 18 month basis. The probability of an accident is likewise unchanged, simply because current practice is more conservative than the existing surveillance requirement.

2. The present electrical distribution system does not physically change as a result of the proposed change; nor does its operation. Manual transfer from a normal to an alternate power source is not possible at BSEP, simply because there is no differentiation between "normal" and "alternate" power sources. Each of the four transmission lines on each unit are

continuously energized. Only two are required to be operable to meet the intent of Technical Specification 3.8.1.1. These four supply lines will continue to provide the offsite power necessary to provide sufficient capacity and capability to automatically start and operate all required safety loads. Based on this reasoning, CP&L has determined that the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change deletes a surveillance requirement which is not consistent with the BSEP design basis. The surveillance requirement requires that each of the two independent circuits be demonstrated operable at least once per 18 months by manually transferring unit power supply from the normal circuit to the alternate circuit. At BSEP, there are four independent circuits for each unit (transmission lines) and there is no difference between the alternate and normal power supplies. Manual transfer of the power supply is not necessary because each of the four lines for each unit is normally energized, and therefore verified operable, continuously. Thus, the intent of Technical Specification 3.8.1.1 is met, and the offsite power sources are verified operable more frequently than the current surveillance requires. Thus, there is no decrease in the margin of safety.

The staff has reviewed the CP&L determinations and agrees that CP&L has met the three standards involved for determination of no significant hazards consideration. Accordingly, the Commission proposes to determine that these changes do not involve a significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: September 19, 1988

Description of amendment request: The proposed change revises the actions associated with Technical Specification 3/4.6.4 (Drywell-Suppression Chamber - Vacuum Breakers) to clarify the alternative actions to be taken if the existing actions cannot be taken. To do this, existing Action 3.6.4.1.d will be incorporated into Actions 3.6.4.1.a, 3.6.4.1.b, and 3.6.4.1c and present action 3.6.4.1.d will be deleted. Action a addresses no more than two drywell - suppression chamber vacuum breakers inoperable for opening, but closed, whereas action b addresses one open vacuum breaker. Action c deals with vacuum breakers position indication inoperability whereas action d defines unit shutdown requirements.

Basis for proposed no significant hazard consideration determination: The Commission has provided standards for determining whether a no significant hazard consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; 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 Carolina Power & Light Company (CP&L) has reviewed the proposed changes and has determined that the requested amendment does not involve a significant hazards consideration for the following reasons:

1. The proposed change clarifies the existing requirement of Technical Specification 3.6.4.1. It does not impact plant equipment or design; it only provides a clearer statement of the actions to be taken if Technical Specification 3.6.4.1 cannot be met, thereby providing assurance that the proper actions are taken when necessary. The probability of an accident is not increased because the requirement of Technical Specification 3.6.4.1 and its actions have not changed; the actions have only been clarified. The same is true for the consequences of an accident; they have not changed because the requirements of Technical Specification 3.6.4.1 and its actions have not changed.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated because the requirements of Technical Specification 3.6.4.1 and its actions have not changed. The proposed change requires that if Actions 3.6.4.1.a, 3.6.4.1.b, or 3.6.4.1.c cannot be met, the unit must be in hot shutdown within 12 hours and in cold shutdown within the next 24 hours, just as Technical Specification 3.6.4.1. and its actions currently require.

3. The proposed amendment only clarifies the existing requirement of Technical Specification 3.6.4.1 and its actions. It does not change the design or operation of plant equipment, nor does it change the intent of any requirements provided in the Technical Specificatons. Therefore, it does not involve a significant reduction in the margin of safety.

The staff has reviewed the CP&L determination and is in agreement with them. Accordingly, the Commission proposes to determine that these changes do not involve a significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Edward A. Reeves

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: August 18, 1986, as modified January 25, 1989.

Description of amendment request: The proposed amendment would modify the licensee's August 18, 1986 application for amendment which was noticed on October 8, 1986 (51 FR 36087). The August 18, 1986 application proposed to add requirements to Technical Specification Tables 3.5-2 and 4.1-1 requiring the operability and surveillance of the reactor trip breakers shunt trip attachment in accordance with the requirements of item 4.3 of Generic Letter 83-28. The August 18, 1986 application proposed that with one reactor trip logic train inoperable, reactor operation at power be permitted to continue (allowable-out-of-service time) for up to 48 hours. The proposed amendment would reduce this allowable-out-of-service time to six hours. The six hour allowable-out-of-service time is consistent with the requirements of Generic Letter 85-09. The proposed amendment would also add a restriction of eight hours for the time during which reactor operation at power may continue with a reactor trip breaker and/or associated logic channel bypassed for maintenance or surveillance testing. The proposed amendment would also correct two minor typographical errors.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). Example (ii) of those involving no significant hazards consideration discusses a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications: for example, a more stringent surveillance requirement. The proposed changes to Technical Specification Tables 3.5-2 and 4.1-1 with respect to the reactor trip breakers provide new explicit Limiting Conditions

for Operation and testing requirements consistent with the modified shunt trip design, not previously included in Technical Specifications.

The licensee provided the following analysis of the proposed changes:

The proposed change does not involve a significant hazards consideration because operation of Indian Point Unit No. 2 in accordance with these changes would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The Technical Specification changes submitted reflect plant modifications already implemented and reviewed pursuant to 10 CFR 50.59, and as such are expected to enhance the reliability of the reactor trip breakers to trip on demand. The proposed Technical Specification changes are consistent with guidance contained in Generic Letter 85-09. In addition, the proposed changes constitute additional controls not presently included in the Technical Specifications. Therefore, this change will not increase the probability or consequences of an accident.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed Technical Specification changes resulted from extensive review and analysis of the Salem ATWS event and are a result of modifications made as recommended by those analyses. The proposed change would not alter the configuration of any of the plant's safety equipment. Therefore, it has been determined that this change will not create the possibility of a new or different kind of accident from that previously evaluated.

(3) Involve a significant reduction in a margin of safety. The modifications made to the plant increase the margin of safety and the proposed Technical Specifications changes reflect additional conservative administrative controls based on those modifications. Therefore, it has been determined that this change does not involve a significant reduction in a margin of safety.

Based on the above consideration, and inasmuch as this proposed change is similar to an example for which the Commission has determined no significant hazards considerations exist (i.e., a new limitation or surveillance requirement), the licensee concluded this proposed change does not constitute a significant hazards consideration.

The staff agrees with the licensee's analysis. Therefore, based on the above, the staff proposes that the proposed amendment will not involve a significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003

NRC Project Director: Robert A. Capra, Director

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: March 16, 1987, as supplemented April 24, 1987

Description of amendment request: The proposed amendment request would delete the requirements in the Technical Specifications (TS) for resistance testing of certain fuses whose function is to provide containment penetration conductor overcurrent protection, and would substitute a requirement that a fuse inspection and maintenance program be maintained to ensure that the proper size and type of fuse is installed, that the fuses show no signs of deterioration, and that the fuse connections are tight and clean. The list of containment penetration conductor overcurrent protective devices (circuit breakers and fuses) would be deleted from the TS and the associated testing technique for these circuit breakers would be relocated to the TS Bases.

Basis for proposed no significant hazards consideration determination: The TS currently require that among other things, all containment penetration conductor overcurrent protection fuses shall periodically be demonstrated operable by selecting and functionally testing a representative sample (10%) of each type of fuse on a rotating basis. The proposed license amendment application addresses the fact that resistance checking of fuses does not provide a meaningful assurance of the fault interrupting capability of the fuse, and that periodic removal of fuses for testing can compromise the integrity of the fuse holder and contact points. In lieu of resistance testing, the change would require a fuse inspection and maintenance program in conformance with IEEE Standard 242-1975, which calls for "inspection to ensure that the proper size fuse is installed, that it shows no signs of deterioration, and that the enclosure is clean and the connections are tight." Based on these considerations, and the fact that resistance verification is performed by the vendor during the manufacturing process, the deletion of the requirements for resistance checking of these fuses would not involve a significant increase in the probability of fuse failure. Since the proposed deletion of field testing by resistance would not impact fuse integrity, would not affect the method of plant operation, and would not affect equipment important to safe operation, the proposed amendment would not create the possibility of a new and different accident from any previously evaluated. Since the resistance checking of fuses only generates data that are not indicative of performance, and resistance checking would be replaced by an inspection and maintenance program, the deletion of the requirements for resistance checking of these fuses would not significantly reduce any margins of safety.

TS Tables 3.1-1a for Unit 1 and 3.1-1b for Unit 2 presently list the containment penetration conductor overcurrent protective devices (circuit breakers and fuses), their trip setpoints or continuous ratings, and their response times. The license amendment application addresses the fact that the deletion of this list from the TS shall in no way degrade compliance with the operability of the containment penetration conductor overcurrent protective devices since it is proposed that the list of these devices, including their trip setpoints or continuous ratings and their response times, would be maintained in an appropriately controlled (QA Condition 1) document entitled "Electrical Controls System Description - Electrical Penetration Circuits," which would be referenced in the associated TS Bases 3/4.8.4. Test procedures for fuses and breakers used at the plant would reference this system description document. The Commission has determined that removal of these circuit breakers and fuses from the TS is consistent with its TS Improvement Program. Maintaining the list in the system description document instead of in the TS will allow the licensee to have the flexibility in the future to change the list as needed without first obtaining a TS change. Examples of such changes are the addition or deletion of circuits (and breakers) or the changing of a circuit to require a larger or smaller breaker, as a result of a design change in the plant. The licensee states that its reviews regarding any modification to containment penetration circuits, including additions or deletions thereof, will be in accordance with 10 CFR 50.59, and will assure completeness and accuracy of the tables. The Commission has provided guidance (51 FR 7744) concerning examples of amendments that are not likely to involve a significant hazards consideration. This part of the amendment request matches the example of a purely administrative change to the technical specifications. The list of containment electrical penetration protective devices will be administratively maintained in the licensee-controlled document rather than in the TS, and this will in no way degrade the operability or surveillance requirements of these devices.

Accordingly, the Commission proposes to determine that the proposed changes involve no significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

Duquesne Light Company, Docket No. 50-412, Beaver Valley Power Station, Unit No. 2, Shippingport, Pennsylvania

Date of amendment request: January 30, 1989

Description of amendment request: The proposed amendment would revise three license conditions to extend the completion dates for three issues from the first to the second refueling outage. These issues concern the plant safety monitoring system (PSMS), detailed control room design review (DCRDR) and safety parameter display system (SPDS).

With regard to the change to the PSMS license condition, the licensee has not yet received any document evaluating its verification and validation plan. NRC approval may come too late for the licensee to effect changes. Therefore, the change is submitted for such an eventuality.

Concerning the change to the DCRDR license condition, the licensee stated that this program identified a large number of human engineering deficiencies (HEDs). Despite past and current efforts, a few HEDs are unlikely to be all resolved before startup from the first refueling outage. The majority, however, have been resolved.

Finally, regarding the change to the SPDS license condition, the licensee stated that the majority of issues will be resolved/completed on schedule. However, some faults identified through site acceptance and final response time testing would not be completed in time.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists in accordance with 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazard consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The proposed amendment would relax the implementation schedules for the PSMS, DCRDR and SPDS. The extensions themselves do not create additional changes in plant design or hardware, or operating procedures of the plant. These programs and their associated hardware cannot adversely affect safety equipment or cause accidents. Even though their full implementation is expected to help reduce the consequences and probabilities of accidents, their incomplete implementation does not increase consequences and probabilities of accidents. Hence the answers to questions (1) and (2) are negative. Finally, these programs and associated hardware were not factored into any analysis, and hence their delayed implementation does not reduce any margin of safety. The answer to question (3) is similarly negative.

The staff therefore proposes to determine that the requested amendment involve no significant hazards.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: January 31, 1989

Description of amendment request: Makes numerous administrative changes to the Technical Specifications and their bases to improve their clarity and consistency and to correct an error in a previous amendment (142).

Basis for proposed no significant hazards consideration determination: GPU Nuclear Corporation has determined that this Technical Specification change request poses no significant hazards as defined by the NRC in 10 CFR 50.92.

1. The proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated. The probability of occurrence or the consequences of previously evaluated accidents are not affected by these changes because the majority of the changes are administrative in nature, or serves to conform to existing regulations which do not affect the plant configuration or operation.

2. Operation of the facility in accordance with the proposed Technical Specification changes would not create the possibility of a new or different kind of accident from any previously evaluated. As stated above, these changes are administrative in nature, conform to existing regulations.

3. Operation of the facility in accordance with the proposed changes would not involve a significant reduction in the margin of safety. The administrative changes do not reduce the margin of safety because of the nature of such changes which serve to provide additional clarity or enhanced understanding of existing Technical Specifications and bases statements.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-366, Edwin I. Hatch Nuclear Plant, Unit 2, Appling County, Georgia

Date of amendment request: January 23, 1989

Description of amendment request: The amendment would change the Technical Specifications (TS) to require a local leak rate test (LLRT) on each main steam isolation valve (MSIV) to be conducted during each refueling outage, but at intervals not to exceed two years, rather than at 18-month intervals as required by the existing TS. The amendment also would revise TS 4.6.1.2.d.2 to specify the test pressure.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of

a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee's January 23, 1989 submittal provided the following evaluation of the proposed change with respect to these standards:

This change does not involve a significant increase in the probability or consequences of an accident, because the leakage rate testing on the MSIVs will still be performed within the time interval set forth [in] by the NRC in 10 CFR Part 50, Appendix J. In addition, the addition of the required test pressure under the specification addressing the Type C tests is merely a clarification of an exemption to 10 CFR Part 50, Appendix J previously granted by the NRC as evidenced in Specification 3.6.1.2.c. Thus, the addition of the test pressure value is merely an administrative change.

The possibility of a different kind of accident from any analyzed previously is not created by this change, since the proposed change of extending the potential time duration between MSIV LLRTs is consistent with the 10 CFR Part 50, Appendix J regulations. The administrative change of indicating the test pressure of the MSIV LLRTs under the specification section covering Type C tests has already been approved by the NRC as an exemption to the 10 CFR Part 50, Appendix J requirements.

Margins of safety are not significantly reduced by this change, since the valves will continue to be tested at regular intervals consistent with other primary containment isolation valves and at the required test pressure as required by the GPC Plant Hatch 10 CFR Part 50, Appendix J program.

The staff has considered the proposed changes and agrees with the licensee's evaluation with respect to the three standards.

On this basis, the Commission has determined that the requested amendment meets the three standards and, therefore, has made a proposed determination that the amendment application does not involve a significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Attorney for licensee: Bruce W. Churchill, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: David B. Matthews

Illinois Power Company, Soyland Power Cooperative, Inc., Western Illinois Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: December 21, 1988

Description of amendment request: This proposed amendment would revise Technical Specification 4.6.6.1.c.1 to provide appropriate values for the secondary containment drawdown test. The limit provided would replace the current value of 168 seconds with a graph which specifies the drawdown time as a function of the standby gas treatment system flow rate observed during the drawdown when the required differential pressure of 0.25 inches (water gauge) is attained. The acceptance criteria specified for the drawdown test is based on a computer model, verified by the actual performance of drawdown tests, in which the drawdown time determined for accident conditions is adjusted to account for performance of the test during normal plant conditions.

This amendment was provided to comply with a commitment by the licensee to analyze the drawdown time under actual or normal test conditions and to provide an appropriate value for the drawdown test criteria at least 60 days prior to the initiation of the second fuel cycle.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed change to the testing acceptance criteria is intended only to revise the criteria to more accurately demonstrate the capability of the system to perform under accident conditions. The new test criteria is revised to reflect that the system would be able to perform its intended function less time under normal conditions that under accident conditions.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change introduces no changes to plant design or operation of the facility. The requirement for testing the containment drawdown has not been changed, only the criteria for acceptability.

The proposed changes do not involve a significant reduction in a margin of safety because the criteria for acceptability has been revised in a more stringent direction from that which currently exists.

For the reasons stated above, the staff believes this proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Attorney for licensee: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

NRC Project Director: Daniel R. Muller

Illinois Power Company, Soyland Power Cooperative, Inc., Western Illinois Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: January 26, 1989

Description of amendment request: This proposed amendment would revise Technical Specification 4.4.1.1.3.d to provide consistency with ACTION "d" of the associated Limiting Condition for Operation, Technical Specification 3.4.1.1. The current surveillance requirement directs that while in single loop operation, a minimum core flow must be verified when thermal power is within the unrestricted zone of Figure 3.4.1.1-1. However, the associated LCO action statement requires that when core flow is less than the required minimum and thermal power is within the restricted zone that either the thermal power must be reduced to the unrestricted zone or core flow must be increased above the required minimum. These two statements are in clear conflict. Based on an analysis of the intent of this section of the technical specifications, the amendment proposes to revise the surveillance requirement to require verification of the minimum core flow when thermal power is within the restricted rather than the unrestricted zone.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because providing consistency between the surveillance and LCO will help to ensure that the plant is operated within the bounds and assumptions of the analyses performed and approved for single-loop operation (SLO). The SLO analysis included an evaluation of the impact of SLO on the applicable accident analyses. The proposed change does not involve any changes to the accident or single-loop analyses themselves.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated since it does not affect plant design. The scope of the proposed change is limited only to an editorial correction to ensure that the affected surveillance is consistent with the applicable SLO analyses.

The proposed change does not involve a significant reduction in a margin of safety because it will make the surveillance consistent with the purpose of monitoring core flow during core-flow/reactor power conditions corresponding to the restricted zone of Figure 3.4.1.1. Maintaining core flow above the specified value when in the restricted zone maintains sufficient margin from low-flow conditions where power/flow ratios may be high enough for destabilizing effects to occur.

For the reasons stated above, the staff believes this proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Attorney for licensee: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

NRC Project Director: Daniel R. Muller

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of amendment request: November 4, 1988

Description of amendment request: The application requests changes to the Technical Specifications (TSs) to permit operation of the reactor with one of two reactor recirculation loops in service under certain specified conditions. Section 3.4.1.1 of the TSs currently has an "ACTION" requirement which states: "With one reactor coolant system recirculation loop not in operation, immediately initiate action to reduce THERMAL POWER...within two hours and initiate measures to place the unit in at least HOT SHUTDOWN within 12 hours...." The proposed changes would allow reactor operation with only one recirculation loop, at reduced power and for significant periods of time, without the need to remove the reactor from service.

Single Loop Operation (SLO) is the operation of a reactor with only one recirculation loop in service. The use of SLO provides a great deal of operational flexibility and serves as a mechanism to avoid the unnecessary removal of a reactor from service with the attendant cycling of reactor components in the event a recirculation pump or other component malfunction renders one recirculation loop inoperable. During SLO, the core pressure drop is reduced and the total discharge flow from the active bank of jet pumps increases at rated drive flow. Flow through the inactive jet pumps reverses direction and the flow pattern in the reactor lower plenum becomes asymmetric relative to rated conditions with balanced two-loop inlet flow. SLO is a recognized practice for boiling water reactors that has been previously accepted and licensed by the Nuclear Regulatory Commission at various facilities including Peach Bottom Atomic Power Station, Hope Creek Generating Station, Susquehanna Steam Electric Station, Browns Ferry Nuclear Station, Duane Arnold, et al. The NRC has determined that SLO of BWR's is generically acceptable as set forth in Generic Letter No. 86-09, "Technical Resolution of Generic Issue No. B-59-(N-1) loop operation in BWRs and PWRs," dated March 31, 1986.

The design basis accidents and abnormal operational transients associated with power operation, as presented in the Limerick Final Safety Analysis Report (FSAR), Sections 6.2 and 6.3, and the main text of Chapter 15.0 have been reviewed for unit operation with only one recirculation loop in service. The transient safety analysis was performed on an initial cycle basis consistent with that for the FSAR. The analysis shows that the transient consequences for SLO are bounded by the full power two loop operation analysis results given in the FSAR. The conclusion drawn from the transient analysis results is applicable to reload cycle operation as well as initial cycle operation for the Limerick Generating Station (LGS).

Operating with one recirculation loop results in a maximum power output approximately 30% below that which is attainable for two-loop operation. Therefore, the consequences of abnormal operational transients from one-loop operation will be considerably less severe than those analyzed for two-loop operation. For pressurization, flow increase, flow decrease, and cold water injection transients, the results presented in Chapter 15 of the LGS FSAR for two-loop operation bound both the thermal and overpressure consequences of SLO.

The Loss of Coolant Accident (LOCA) analysis presented in LGS FSAR Section 15.6 has been evaluated for SLO. The evaluation utilized the GE methodology outlined in NEDO-20566-2, Revision 1, "General Electric Company Analytical Model for Loss-of-Coolant Analysis in Accordance with 10 CFR 50 Appendix K Amendment No. 2 - One Recirculation Loop Out-of-Service," dated July 1978.

The licensee also presented the results of certain other analyses, the consequences of which are bounded by previously submitted full power two loop operation analyses. These include MCPR operating limit, containment analysis, ATWS and fuel mechanical performance. Consequently, no changes to the Technical Specifications addressing these areas are proposed based on the results of these analyses.

As noted previously, the licensee has proposed certain operating restrictions that would go into effect if the plant were to enter SLO. The proposed changes to the TSs are listed below:

The proposed changes on Page 2-1 raise the Safety Limit Minimum Critical Power Ratio (MCPR) by 0.01 to account for increased uncertainties in the core total flow and Traversing Incore Probe (TIP) readings during SLO.

The proposed changes on Pages 2-4, 3/4 2-7, 3/4 3-60, and 3/4 3-60a provide individual Average Power Range Monitor (APRM) scram and rod block equations and Rod Block Monitor (RBM) rod block equations for two loop operation and SLO to account for the discrepancy between actual core flow and indicated flow in the active loop during SLO.

The proposed change on Page 3/4 2-1 incorporates a Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) reduction factor of 0.89 for SLO. The MAPLHGR reduction factor accounts for core flow decreasing more rapidly during a LOCA in SLO than two-loop operation which could result in more severe heatup of fuel cladding.

The proposed changes on Pages 3/4 4-1 through 3/4 4-2 incorporate action statements and associated surveillance requirements to ensure SLO is conducted within the analyzed bases. In addition to the previously mentioned MCPR, MAPLHGR, APRM and RBM changes, this specification restricts SLO to manual flow control, limits thermal power to less than or equal to 70% of rated, limits operating recirculation pump speed to less than or equal to 90% of rated, and establishes thermal hydraulic stability and differential temperature requirements.

The proposed changes to Figure 3.4.1.1-1 Thermal Power Versus Core Flow on Page 3/4 4-3 define the unrestricted and restricted operating regions of the percentage rated core thermal power versus percentage rated core flow curves.

The proposed changes on Pages 3/4 4-4 and 3/4 4-4a establish jet pump operability Surveillance Requirements for SLO.

In addition, changes are proposed on Page 3/4 2-7 to delete an ambiguous phrase in the note; on Pages 3/4 2-10 and 3/4 2-10a to provide notes to clarify the applicability of MCPR operating limits; on Page 3/4 4-5 to clarify the recirculation loop flow mismatch Action requirements; and on Pages B2-1, B3/4 1-2, B 3/4 2-1, B 3/4 2-2, B 3/4 2-4 and B 3/4 4-1 to incorporate the results of SLO analyses in the Bases.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three criteria, both generally and for each TS change, in the amendment application and made a no significant hazards consideration determination. The licensee's analysis of the proposed amendment is reproduced below:

The proposed Technical Specification changes for SLO will not increase the probability or consequences of any accident previously evaluated. The design basis accidents and abnormal operational transients associated with power operation, as presented in the LGS FSAR, Sections 6.2 and 6.3, and Chapter 15.0 have been reviewed for unit operation with only one recirculation loop in service. The appropriate setpoints and operating limits are adjusted for SLO and are bounded by the LGS FSAR analysis performed for two-loop operation.

The proposed Technical Specification changes will not create the possibility of a new or different accident from any previously evaluated. Although the proposed changes introduce a new mode of operation, the possible accidents during SLO are the same as those analyzed in the FSAR for two-loop operation and are within the bounds of the LGS FSAR analysis.

The proposed Technical Specification changes will not involve a significant reduction in a margin of safety. The proposed changes adjust the appropriate setpoints and operating limits for SLO to maintain or improve the current margin of safety.

A no significant hazards consideration determination for each proposed change follows:

A. MCPR Safety and Operating Limit for SLO

(1) The proposed increase in the MCPR fuel cladding integrity safety limit during SLO does not increase the probability or consequences of any accident previously evaluated.

The MCPR fuel cladding integrity safety limit is set such that no fuel damage is calculated to occur if the limit is not violated. It is determined using the NRC approved General Electric Thermal Analysis Basis (GETAB), which is a statistical model that combines uncertainties in the methods used to calculate critical power. For SLO, the uncertainties in total core flow and TIP readings used in the determination of the safety limit MCPR are larger than for two-loop operation. The total core flow and TIP reading uncertainties for SLO have been analyzed. The net effect of these two revised uncertainties is a 0.01 incremental increase in the required MCPR fuel cladding integrity safety limit to a higher safety limit MCPR of 1.08 for SLO.

The current MCPR operating limit and flow-dependent MCPR limit provide adequate protection for transients initiated during SLO. The results of the analyses of these events show sufficient margin to the proposed increased MCPR fuel cladding integrity safety limit. The consequences of abnormal operational transients during single loop operation will be less severe than those analyzed for two-loop operation due to reduced maximum power output. For pressurization, flow increase, flow decrease, and cold water injection transients, the results presented in Chapter 15 of the LGS FSAR bound both the thermal and overpressure consequences of SLO. The two most limiting pressurization transients analyzed for SLO are Feedwater Controller Failure - Maximum Demand (FWCF) and Generator Load Rejection with Bypass Failure (LRBPF).

The FWCF event is postulated on the basis of a single failure of a master feedwater control device, specifically one which can directly cause an increase in coolant inventory by increasing the total feedwater flow. The most severe applicable event is a feedwater controller failure during maximum flow demand. The calculated transient MCPR of 1.20 for SLO is much greater than the current safety limit of 1.07 and the proposed limit of 1.08. The resulting peak vessel pressure of 1113 psig is much less than the ASME limit of 1375 psig. The LRBPF event which is the loss of generator electrical load from high power conditions with failure of the main turbine bypass valves is discussed in FSAR Section 15.2.2. The calculated transient MCPR of 1.18 for SLO is much greater than the current safety limit 1.07 and the proposed limit of 1.08. The resulting peak vessel pressure of 1182 psig is much less than the ASME limit of 1375 psig.

The safety limit MCPR for SLO is set such that no fuel damage is calculated to occur and thereby accomplishes the same purpose as the two-loop operation limit. Because the revised higher safety limit of 1.08 maintains the current margin of safety and the current operating limit maintains sufficient margin to the revised safety limit, the change to the MCPR safety limit during SLO does not increase the probability or consequences of any accident previously evaluated.

(2) The proposed increase in the MCPR fuel cladding integrity safety limit during SLO does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The MCPR safety limit cannot initiate an accident and imposing the MCPR limit does not involve a change in the current mode of operation; therefore, this change does not create the possibility of a new or different kind of accident than previously evaluated.

(3) The proposed increase in the MCPR fuel cladding integrity safety limit during SLO does not involve a significant reduction in a margin of safety.

The MCPR safety limit is determined using NRC approved methodology. The proposed 0.01 increase accounts for the increased uncertainties in total core flow and TIP readings due to SLO. This increase in the MCPR safety limit maintains the margin of safety established for two-loop operation. Therefore, this change does not involve a significant reduction in the margin of safety.

B. Correction of RBM and APRM Flow-Biased Setpoint Equations

(1) The proposed changes to the RBM and APRM flow-biased setpoint equations do not increase the probability or consequences of any accident previously evaluated.

SLO results in backflow through 10 of the 20 jet pumps such that the direct active-loop flow measurement may not indicate actual flow above about 40% core flow without correction. The proposed changes to the RBM and APRM flow-biased setpoint equations conservatively modify the recirculation flow rate dependent rod block and scram setpoint equations to correct for one pump operation. The proposed changes adjust the setpoint equations to preserve the original relationship between the setpoints and the effective drive flow when operating in SLO such that the consequences of a rod withdrawal error during SLO are bounded by the analysis presented in FSAR Section 15.4.2. Further, lower power during SLO assures that the MCPR operating limit is not

violated. Therefore, the changes to the RBM and APRM flow-biased setpoint equations do not increase the probability or consequences of an accident previously evaluated.

(2) The proposed changes to the RBM and APRM flow-biased setpoint equations do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes correct the RBM and APRM flow-biased setpoint equations to preserve the original relationship between the setpoints and the actual effective drive flow when operating in SLO and therefore do not create the possibility of a new or different kind of accident than previously evaluated.

(3) The proposed changes to the RBM and APRM flow-biased setpoint equations do not involve a significant reduction in a margin of safety.

The proposed corrections to the RBM and APRM flow-biased setpoint equations preserve the original relationship between rod blocks and scram and actual effective drive flow during SLO; therefore, it follows that these changes do not involve a significant reduction in the margin of safety.

C. MAPLHGR Reduction Factor

(1) Application of the proposed MAPLHGR reduction factor during SLO does not increase the probability or consequences of any accident previously evaluated.

MAPLHGR Limits are established to ensure that the acceptance criteria for fuel and Emergency Core Cooling Systems (ECCS) established in 10 CFR 50.46 are met. For SLO, in the event of a LOCA, the core flow decreases more rapidly than in the two-loop operating case, resulting in more severe cladding heatup. SLO would also result in small changes in the high-power node uncovery times and times of rated spray. The effect of the reflooding times for various break sizes is also generally small. A SLO LOCA analysis was performed for LGS using the models and assumptions documented in General Electric Document NEDO-20566-2 Revision 1, previously referenced. Using this method, SAFE/REFLOOD computer code runs were made for a full spectrum of large break sizes for only the recirculation suction line breaks (most limiting for LGS). The total hot node uncovered time for two-loop operation is 133.8 seconds for the 100% DBA suction break. For SLO the uncovered time is 134.3 seconds for the 100% DBA suction break. A small break LOCA would cause a slight increase approximately 50 degrees F) in the PCT. This increase would be offset by the reduced MAPLHGR used during SLO, resulting in PCT values for small breaks less than the 1550 degree F small break PCT value previously reported for LGS, and significantly less than the 10 CFR 50.46 cladding temperature limit of 2200 degrees F. Since the reflood minus uncovery time for the SLO analysis is similar to the two-loop analysis, the MAPLGHR curves can be modified by derived reduction factors for use during SLO. The results of an analysis performed to determine the MAPLHGR reduction factor for Cycle 2 fuel is set forth in General Electric Company Document No. 23A5801, "Supplemental Reload Licensing Submittal for Limerick Generating Station Unit 1, Reload 1," dated February, 1987. The proposed MAPLHGR reduction factor is applied to ensure the consequences of a LOCA are not increased in SLO. Therefore, this change does not increase the probability or consequences of an accident previously analyzed (LOCA).

(2) Application of the proposed MAPLHGR reduction factor during SLO does not create the possibility of a new or different kind of accident from any accident previously evaluated.

MAPLHGR limits are established to ensure fuel integrity in the event of an accident. Modification of the MAPLHGR limit during SLO does not create the possibility of a new or different kind of accident than previously evaluated.

(3) Application of the proposed MAPLHGR reduction factor during SLO does not involve a significant reduction in a margin of safety.

The acceptance criteria of 10 CFR 50.46 establish the margins of safety for fuel and ECCS. The analysis calculated the total hot node uncovered time for the most limiting 100% DBA suction break to be 133.8 seconds for two loop operation and 134.3 seconds for single loop operation. The calculated small break peak cladding temperature (PCT) for SLO would be less than the 1550 degrees F small break PCT reported for the two loop analysis. Since application of the conservatively calculated MAPLHGR reduction factor acts only to preserve the original relationship between two-loop MAPLHGRs and the acceptance criteria, this change does not involve a significant reduction in the margin of safety.

D. Thermal Power Limitation

(1) Restricting operation in SLO to less than or equal to 70% rated thermal power does not increase the probability or consequences of any accident previously evaluated.

The analyses performed for SLO assume 75% rated thermal power and 60% rated core flow, which represents single recirculation loop operation at 100% pump speed on the 105% rod line. All abnormal operational transients analyzed in the FSAR have been examined for effects caused by SLO. The limiting abnormal operational transients have been reevaluated in detail: generator load rejection with bypass failure and feedwater controller failure to maximum demand.

The impact of SLO on containment response, ATWS, and fuel thermal and mechanical performance was also evaluated. Consequences of all these were found to be bounded by previously submitted full power analyses. Therefore, restricting operation in SLO to less than or equal to 70% rated thermal power does not increase the probability or consequences of an accident previously analyzed.

(2) Restricting operation in SLO to less than or equal to 70% rated thermal power does not create the possibility of a new or different kind of accident from any accident previously evaluated. The range of power/flow conditions in the SLO operating domain has been evaluated and found to be within the previously evaluated range of operating conditions. SLO only changes the assumptions utilized in the appropriate previous analyses and therefore, does not create the possibility of a new or different kind of accident than previously evaluated.

(3) Restricting operation in SLO to less than or equal to 70% rated thermal power does not involve a significant reduction in a margin of safety.

Results of the aforementioned analyses show that SLO at 75% rated thermal power is bounded by previously submitted full power analyses. Therefore, limiting SLO to less than or equal to 70% rated thermal power (which corresponds to 90% rated pump speed) does not involve a significant reduction in the margin of safety.

E. Recirculation Pump Speed Limitation

(1) Operation in SLO with recirculation pump speed limited to less than or equal to 90% of rated pump speed does not increase the probability or consequences of any accident previously evaluated.

The recirculation pump speed will be limited to 90% of rated during SLO. The safety analysis assumed 100% pump speed in SLO. Vibration tests have been conducted on BWRs in SLO which demonstrate that all instrumented vessel internal component vibrations are within the allowable criteria. Results of these analyses and tests show that under all SLO operating conditions the vibration level is acceptable and bounded by previously submitted full power analyses; therefore, operation in SLO with recirculation pump speed limited to less than or equal to 90% of rated pump speed will not increase the probability or consequences of an accident previously analyzed.

(2) Operation in SLO with recirculation pump speed limited to less than or equal to 90% of rated pump speed does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Recirculation pump speed is not the initiating event of any accident so this change does not create the possibility of a new or different kind of accident than previously evaluated.

(3) Operation in SLO with recirculation pump speed limited to less than or equal to 90% of rated pump speed does not involve a significant reduction in a margin of safety.

Results of the aforementioned analyses and tests show that SLO at 100% rated pump speed is bounded by previously submitted full power analyses. Therefore, conservatively limiting pump speed to less than or equal to 90% of rated pump speed does not involve a significant reduction in the margin of safety.

F. Stability Requirements

(1) Revision of the stability monitoring requirements for operation in SLO does not increase the probability or consequences of any accident previously evaluated.

These revisions regarding stability monitoring requirements are an addition to the current stability provisions to implement the NRC approved stability criteria (GE Co. SIL-380, Revision 1) for SLO as set forth by Generic Letter 86-02, dated January 23, 1986 and Generic Letter 88-09 dated March 31, 1988. Thermal-hydraulic stability during SLO was generically evaluated in the General Electric report NEDE-24011, Rev. 6, Amendment 8, "Thermal Hydraulic Stability Amendment to GESTAR II," dated April 24, 1985 and found to satisfy the requirements of

10CFR50, Appendix A, General Design Criterion 12. Stability monitoring provisions decrease the probability of fuel damage by avoiding limit cycle neutron flux oscillations. Consequently, these changes will not increase the probability or consequences of an accident previously analyzed.

(2) Revision of the stability monitoring requirements for operation in SLO does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Since these changes only add additional stability monitoring requirements and operating restrictions, they do not create the possibility of a new or different kind of accident than previously evaluated.

(3) Revision of the stability monitoring requirements for operation in SLO does not involve a significant reduction in a margin of safety.

Since these changes only add additional stability monitoring requirements and operating restrictions to ensure that limit cycle neutron flux oscillations are avoided, they do not involve a significant reduction in the margin of safety.

G. Differential Temperature Requirements

(1) The addition of recirculation loop differential temperature limits for operation in SLO does not increase the probability or consequences of any accident previously evaluated.

These revisions for surveillance of recirculation loop differential temperature are an addition to the current differential temperature requirements of Technical Specification 3.4.1.4 for idle recirculation loop startup. The purpose of the additional surveillance on differential temperatures below 30% thermal power or 50% rated recirculation loop flow is to mitigate undue thermal stress on vessel nozzles, recirculation pump and vessel bottom head during extended SLO. With thermal power and recirculation loop flow greater than the action levels, cold water will be adequately swept from the vessel bottom head, thus preventing stratification. Since these revisions act to decrease the possibility of undue thermal stress, the changes will not increase the probability or consequences of an accident previously analyzed.

(2) The addition of recirculation loop differential temperature limits for operation in SLO does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Since the changes only add additional differential temperature monitoring requirements and operating restrictions, they do not create the possibility of a new or different kind of accident than previously evaluated.

(3) The addition of recirculation loop differential temperature limits for operation in SLO does not involve a significant reduction in a margin of safety.

Since these changes simply apply the differential temperature requirements presently existent for idle recirculation loop startup to extended SLO, they do not involve a significant reduction in the margin of safety.

H. Manual Flow Control

(1) Restriction of the recirculation flow control system to the manual mode during SLO does not increase the probability or consequences of any accident previously evaluated.

To prevent potential control oscillation from occurring in the recirculation flow control system, the operation mode of the recirculation flow control system will be restricted to operation in the manual control mode for SLO. Recirculation drive flow can be significantly noisier during SLO than during normal operation, resulting in a noisier signal to the scoop tube positioner. In the manual mode, the positioner flow demand signal will be constant between operator induced demand changes. Restricting operation of the recirculation flow control system to the manual mode during SLO will not increase the probability or consequences of an accident previously analyzed since this is a normal mode of operation.

(2) Restriction of the recirculation flow control system to the manual mode during SLO does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Operation of the recirculation flow control system in the manual mode is not the initiating event of any accident and requires no changes in the current mode of operation; therefore, this requirement does not create the possibility of a new or different kind of accident than previously evaluated.

(3) Restriction of the recirculation flow control system to the manual mode during SLO does not involve a significant reduction in a margin of safety.

Since operation of the recirculation flow control system in the manual mode will prevent potential control oscillations from occurring in the system, this change does not involve a significant reduction in the margin of safety.

I. Jet Pump Surveillance

(1) Revision of the jet pumps surveillance requirements to account for SLO does not increase the probability or consequences of any accident previously evaluated.

The changes to the jet pump surveillance requirements merely provide clarification to specifically address SLO and two-loop operation. Therefore, the changes will not increase the probability or consequences of an accident previously analyzed.

(2) Revision of the jet pump surveillance requirements to account for SLO does not create the possibility of a new or different kind of accident from any accident previously evaluated.

These changes to the jet pump surveillance requirements are not the initiating event of any accident and require no changes in the current mode of operation; therefore, they do not create the possibility of a new or different kind of accident than previously evaluated.

(3) Revision of the jet pump surveillance requirements to account for SLO does not involve a significant reduction in a margin of safety.

Since these changes result in surveillance requirements of the operating jet pumps in SLO identical to those existent for two-loop operation, they do not involve a significant reduction in the margin of safety.

J. Administrative Changes

(1) The proposed administrative changes do not increase the probability or consequences of any accident previously evaluated.

The proposed change to the note on page 3/4 2-7 deletes the reference to "power ascension" when adjusting APRM setpoints by adjusting the APRM gain when the MFLPD is greater than the FRTP. The proposed change to pages 3/4 2-10 and 3/4 2-10a simply provides clarification that the current MCPR operating limits are applicable to both two recirculation loop and single recirculation loop operation. The proposed change to the ACTION of Technical Specification 3.4.1.3 on page 3/4 4-5 will require the shutdown of one of the two recirculation loops when recirculation flow mismatch exceeds the limit rather than declaring the loop of slower speed not in operation. These two proposed changes merely provide clarification of the existent specifications; therefore, these changes will not increase the probability or consequences of an accident previously analyzed.

(2) The proposed administrative changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

These changes are not the initiating event of any accident and require no changes in the current mode of operation; therefore, they do not create the possibility of a new or different kind of accident than previously evaluated.

(3) The proposed administrative changes do not involve a significant reduction in a margin of safety.

Since these changes only serve to better define the requirements of the appropriate LCOs, they do not involve a significant reduction in the margin of safety.

The staff has reviewed the licensee's submittal and significant hazards analysis and concurs with the licensee's determination as to whether the proposed amendment involves a significant hazards consideration. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of amendment request: January 27, 1989

Description of amendment request: The request would change the Technical Specifications (TSs) to revise the effluent dose limits to a per site rather than a per unit bases. The Limerick Generating Station is a two-unit site. At present, only Unit 1 has an operating

license. Unit 2 is expected to be ready for operation within the next four months. The station has several liquid and gaseous waste processing systems that are common to both units. The liquid waste collection tanks and processing equipment serve both units. The arrangement precludes quantification of liquid waste sources from each unit. The station has four gaseous effluent release points, two of which are common to both units. The North Stack Exhaust Duct is the release point for the offgas systems (each unit), the mechanical vacuum pump and gland seal condenser exhaust system (each unit), the containment purge system (common for both units), the standby gas treatment system (common for both units), and the Turbine Enclosure ventilation systems (each unit) and other common and separated systems.

There is one "hot" maintenance shop for both units. Ventilation exhaust is released from a separate exhaust duct. There is a Unit 1 South Stack Exhaust Duct and a Unit 2 South Stack Exhaust Duct. The Unit 1 duct is the release point for the Unit 1 refuel floor ventilation exhaust and the Unit 1 Reactor Enclosure ventilation exhaust. Likewise, the Unit 2 duct is the release point for the Unit 2 refuel floor ventilation exhaust and the Unit 2 Reactor Enclosure ventilation exhaust. As is true for most BWRs, the refuel floor is one long open area above the reactors. This arrangement precludes quantification of the gaseous waste sources to a particular unit.

The activity released through all these gaseous effluent release points is monitored in accordance with the Technical Specifications and released under controlled conditions to ensure that the airborne concentrations meet the dose limiting objectives and requirements specified in 10 CFR Part 50, Appendix I and requirements specified in 10 CFR 20.106 and 10 CFR 50.34a. The offsite dose consequences from gaseous effluent releases are calculated in accordance with the equations and methodologies described in the Limerick Generating Station Offsite Dose Calculation Manual (ODCM).

The proposed changes to the Technical Specifications would revise the effluent offsite dose limits to reflect a per site rather than a per unit limit. The current dose limits have been established as criteria for reporting the offsite dose consequences for operation at "each reactor unit" to the NRC. The current Technical Specifications are based on the assumption that a multi-unit site, like the Limerick Generating Station, (LGS) can distinguish as to which unit specific radioactive effluent releases originate. There are no provisions, however, to distinguish the offsite dose attributable from a unit specific radioactive release origin at the Limerick Generating Station because of the common systems and common release points.

In accordance with NRC guidance provided in NUREG-0133, "Preparation of Radiological Effluent Technical Specifications for Nuclear Power Plants," the LGS offsite dose assessment may be derived by estimating the contribution from each unit and allocating the doses accordingly. However, the sophistication of the Limerick offsite dose assessment system allows for a more realistic and conservative evaluation of the offsite dose consequences of the radioactive effluent releases without having to "estimate" the contribution from each unit. Doses are assigned (calculated for each hour) to receptors during a release based upon hourly meteorological data and corresponding hourly average effluent release rates. By accumulating the doses to each receptor over the entire year, and summing these for all of the release points for the entire site, the maximum potential offsite exposure is assured. Attempting to separate the releases and reporting the offsite dose consequences on a per-unit basis could potentially underestimate the dose to the maximum exposed individual. This underestimation could occur when each units' maximum exposed individuals are in different sectors than the maximum exposed individual resulting from the site's total releases.

The proposed changes to the Technical Specifications do not change the magnitude of the offsite dose limits allowed for a two-unit site.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

In the letter of January 27, 1989, PECo addressed each of these standards and concluded that the proposed amendment does not constitute a significant hazards consideration based on the following:

(1) The proposed changes to revise the effluent offsite dose limits to a per site rather than a per unit limit do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes only revise the normal operating dose limits to reflect a two unit site. These limits are established to reflect a criteria for reporting offsite dose consequences to the NRC. The offsite consequences of routine operation are based on the projected radioactive material released from an operating two unit site as described in Sections 11.2 and 11.4 of the Final Safety Analysis Report. The proposed changes will not affect any plant hardware, plant design, plant system operation or procedure, and therefore do not modify or add any initiating parameters that would significantly increase the probability or consequences of any previously analyzed accident.

(2) The proposed changes to revise the effluent offsite dose limits to a per site rather than a per unit limit do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The design bases of LGS will remain the same. Therefore, the current station Final Safety Analysis Report will remain complete and accurate in its discussion of the licensing basis events and in analyzing plant response and consequences. Further, the proposed changes would only revise the NRC reporting limits based upon a per site limit rather than a per unit limit. As discussed in Item (1) above, the proposed changes do not affect any equipment nor do they involve any potential initiating events that would create any new or different kind of accident. As such, the plant initial conditions utilized for the design basis accident analyses are still valid.

(3) The proposed changes to review the effluent offsite dose limits to be per site rather than a per unit limit do not involve a significant reduction in a margin of safety.

While these proposed changes affect the reporting of the offsite consequences of radioactive material releases, the total offsite dose limit for the site has not changed. The proposed changes continue to meet the dose-limiting objectives specified in 10 CFR 50, Appendix I. In addition, the dose limits specified in 10 CFR 20 remain unchanged. As discussed in Item (1) above, the proposed changes do not affect any equipment, involved in potential initiating events, nor increase the consequences of an event.

The staff has reviewed the licensee's submittal and significant hazards analysis and concurs with the licensee's determination as to whether the proposed amendment involves a significant hazards consideration. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of amendment request: January 27, 1989

Description of amendment request: This submittal requests changes to the Technical Specifications (TSs) to reflect the completion and tie-in of the Unit 2 Standby Gas Treatment System (SGTS) and the Unit 2 Refueling Area Heating, Ventilating and Air Conditioning (HVAC) system. The proposed changes reflect the original two-unit design as described in the Final Safety Analysis Report which was previously reviewed and approved by the Nuclear Regulatory Commission in NUREG-0991, "Safety Evaluation Report related to the operation of the Limerick Generating Station, Unit 1 and Unit 2" dated August 1983 and supplements thereto. These changes are being requested to allow the inclusion of Unit 2 equipment that will be relied upon or required to be operable to support the operation of Unit 1 when Unit 2 is issued an Operating License.

The SGTS is a redundant safety-related system that is designed to reduce the radioactive halogen and particulate concentrations in (1) gases that may be present in the secondary containment after a Loss-of-Coolant Accident (LOCA), and (2) gases present after a postulated Fuel Handling Accident in the refueling floor area before the gases are discharged to the environment. The SGTS is a common system that serves both the Unit 1 and Unit 2 Reactor Enclosure and the Common Refueling Area. The SGTS is designed to drawdown and maintain a negative pressure in these areas during a secondary containment isolation. The SGTS also functions to reduce halogen and particulate concentrations purged from the primary containment through the drywell or suppression pool purge exhaust lines. A detailed description of the SGTS is provided in Section 6.5.1.1 of the Final Safety Analysis Report.

The SGTS is presently operable for the Unit 1 Reactor Enclosure, and can be made available for the refueling area if needed while construction is being completed on Unit 2. The SGTS is designed as a shared system for filtration and treatment of both the Unit 1 and Unit 2 Reactor Enclosure atmospheres and the refueling area. When the tie-in of the Unit 2 Reactor Enclosure to the SGTS is complete, that portion of the Unit 2 ductwork will form a part of the secondary containment isolation boundary for the Unit 1 Reactor Enclosure. Included in this ductwork are the Unit 2 drywell purge exhaust valves (HV-57-214 and HV-57-215), the suppression pool purge exhaust valves (HV-57-204 and HV-57-212), and the slide gate dampers which are normally open but can be used to isolate the drywell and suppression pool purge exhaust lines in the event that the exhaust valves are inoperable.

The Unit 2 Refueling Area HVAC system, as well as the existing Unit 1 Refueling Area HVAC system, have exhaust duct radiation monitors which provide input to the Refueling Area Secondary Containment Isolation System. The Unit 1 Refueling Area HVAC system exhaust duct radiation monitors, the isolation activation instrumentation, and the isolation valves are required to be operable when irradiated fuel is being handled in the refueling area secondary containment, during core alterations, and during operations with the potential for draining the reactor vessel when the vessel head is off. An isolation signal from either unit's exhaust duct radiation monitors will cause both the Unit 1 and Unit 2 Refueling Area HVAC systems to isolate. The Unit 2 radiation monitors located in the Refuel Area HVAC exhaust duct are not presently connected to the Unit 1 isolation logic. Completion of the tie-in would require the Unit 2 HVAC isolation activation instrumentation, isolation valves, and the exhaust duct radiation monitors to be operable for the appropriate Operational conditions.

The proposed changes to the TSs add various Unit 2 SGTS and Refueling Area HVAC equipment operability requirements and reflect the completion and tie-in of Unit 2. Specifically, the proposed changes are the following.

(a) Technical Specification Table 3.3.2-1, Table 3.3.2-2, Table 3.3.2-3, and 4.3.2.1-1 would be revised to include the "Refueling Area Unit 2 Ventilation Exhaust Duct Radiation - High" radiation monitors. The Limiting Conditions for Operation, setpoints, and Surveillance Requirements for these monitors are the same as that for the existing Unit 1 radiation monitors contained in the Unit 1 Technical Specifications. Since the Refuel Area is common to both units, operation of either Unit 1 or 2 Refuel Area Ventilation System during OPCON * represents a potential exhaust pathway and the associated radiation monitors should be Operable. Therefore, Tables 3.3.2-1 and 4.3.2.1-1 will be revised to show the applicable Operational Condition as * which is defined as when: (1) in Operational Condition * and, (2) during operation of the associated ventilation exhaust system. Finally to reflect completion of Unit 2 construction, Technical Specification Table 3.6.5.2.2-1 Footnote ** is being deleted for the Refueling Area Ventilation Supply Valves (HV-76-217 and HV-76-218) and the Drywell Purge Exhaust inboard and outboard valves (HV-57-214 and HV-57-215), and the suppression Purge Exhaust inboard and outboard valves (HV-57-204 and HV-57-212) to eliminate the provision not to have these valves operable during Unit 2 construction.

(b) Technical Specification Table 3.6.5.2.1-1 (also listed in Table 3.6.5.2.2-1) would be revised to include the Unit 2 drywell purge exhaust valves (HV-57-214 and HV-57-215) and suppression purge exhaust valves (HV-57-204 and HV-57-212). These valves are required to be operable in order to maintain the Unit 1 Reactor Enclosure secondary containment isolation boundary. Any breech of this isolation boundary to an area outside of the Unit 1 Reactor Enclosure affects the ability of the SGTS to perform its design functions. Therefore, these valves are added to the list of Reactor Enclosure Secondary Containment Ventilation System Automatic Isolation Valves, Table 3.6.5.2.1-1. In addition, since these drywell and suppression pool purge exhaust valves also provide a primary containment function, their dual function, as Reactor Enclosure isolation valves for the other unit will be reflected in Table Notation 33 to Table 3.6.3-1.

(c) Technical Specification 3.6.5.2.1, Action C, is being revised to include a reference to slide gate dampers. The slide gate dampers are normally open and are located in the Unit 2 ductwork. These slide gate dampers can be used to isolate the drywell and/or suppression pool exhaust lines in the event that the exhaust valves are not operable. The inclusion of the slide gate dampers into Specification 3.6.5.2.1 provides manual isolation capability in these lines.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility

in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

In the submittal of January 27, 1989, the licensee has addressed each of these standards and has concluded that the proposed amendment does not constitute a significant hazards consideration based upon the following:

(1) The proposed changes to add various Unit 2 SGTS and Refueling Area HVAC equipment operability requirements or clarifications to reflect the completion and tie-in of Unit 2 do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes only incorporate additional limitations, restrictions or controls into the Technical Specifications as the result of the completion and tie-in of common Unit 2 systems. The changes reflect the original two unit design and will not affect nor change any plant hardware, plant design or plant system operation from that already described in the Final Safety Analysis Report. Therefore, the proposed changes do not modify or add any initiating parameters that would significantly increase the probability or consequences of any previously analyzed accident.

(2) The proposed changes, to add various Unit 2 SGTS and Refueling Area HVAC equipment operability requirements and reflect the completion and tie-in of Unit 2, do not create the possibility of a new or different kind of accident from any previously evaluated.

The design bases of the Limerick Generating Station will remain the same. Therefore, the current station Final Safety Analysis Report will remain complete and accurate in its discussion of the licensing basis events and in analyzing plant response and consequences. As discussed in (1) above, the proposed changes do not affect any equipment nor do they involve any potential initiating events that would create any new or different kind of accident. As such, the plant initial conditions utilized for the design basis accident analyses are still valid.

(3) The proposed changes to add various Unit 2 SGTS and Refueling Area HVAC equipment operability requirements or clarifications to reflect the completion and tie-in of Unit 2 does not involve a significant reduction in a margin of safety.

As discussed in (1) above, the changes only incorporate additional limitations, restrictions or controls in the Technical Specification as the result of the completion and tie-in of common Unit 2 systems.

Finally, the deletion of footnotes referencing Unit 2 construction in the Technical Specifications which reflect the completion of Unit 2 construction are considered purely administrative and as such do not require a No Significant Hazards Determination.

The staff has reviewed the licensee's submittal and significant hazards analysis and concurs with the licensee's determination as to whether the proposed amendment involves a significant hazards consideration. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: May 19, 1988.

Description of amendment request: The proposed amendment would revise Appendix B, Radiological Effluent Technical Specifications (RETS), of the Facility Operating License to clarify or correct minor problems. These changes do not change the intent of the RETS sections being addressed. The proposed amendment would also revise the Technical Specifications (TS) (Appendix A of the Facility Operating License) to clarify the reporting requirements for major modifications to radioactive waste systems. The TS change is administrative in nature and is designed to clarify the RETS provisions by reducing the need for interpretations, but not change their intent.

The proposed RETS portion of the amendment would: (1) modify Note (b) to Table 2.2-1 by changing the analysis required if the monitors do not meet operability requirements from a gross radioactivity (beta or gamma) to a principal gamma emitter analysis since gamma emitters are analyzed using gamma spectroscopy which is more reliable and accurate; (2) add Iodine-133 to Table 3.2-1 for the type of activity analysis included in the radioactive gaseous waste sampling and analysis program for consistency with the program for determining the gaseous dose rates of Section 3.2 and the Offsite Dose Calculation Manual (ODCM); (3) reformat and combine some Table 3.2-1 notes for clarity and consistency; (4) change the noble gas sample location designated in Surveillance 3.5.a. from the Steam Jet Air Ejector discharge (only) to either the Steam Jet Air Ejector discharge or the offgas recombiner discharge (prior to delay of the offgas) in order to obtain a more representative sample of gross radioactivity release rate during offgas recombiner operation; (5) add new LCOs and corresponding surveillance requirements to Specification 3.6 to address charcoal bed bypass capability (rather than bypass of the offgas treatment system) and required actions per the ODCM since it is the charcoal beds which specifically treat the offgas; (6) modify LCO specification 3.7.b.2 and 3.7.b.3 concerning isolation of the offgas system dealing with the offgas recombiner inlet and outlet temperature sensor instrumentation limits for clarity; (7) modify Surveillance Requirement 3.7.c so that it more closely reflects its corresponding LCO by specifying the recombiner effluent rather than the recombiner for the sample location; (8) modify Table 3.10-1 to show that Footnote (a) only applies to the first six trip functions listed in the table and to show that the requirement for operability in Footnote (a) is concerned with one operable or tripped instrument channel per system; (9) delete Note (i) from the calibration column of Table 3.10-2 since the test only applies to instrument channel functional testing. The proposed amendment would also change the instrument channel calibration frequency for the turbine and radwaste building radiation exhaust monitors from semiannual to quarterly for consistency with similar tests; (10) correct an error by deleting the words "ground level" and corresponding footnote from Note (d) to Figure 5.1-1 since the actual evaluation of the vents is taken into account in the offsite dose calculations method in the ODCM; (11) delete the contents found under the Food Products subheading (Items a. and b. of Table 6.1-1) since it provides an unnecessary alternative for milk sampling. Milk sampling has been, and will continue to be, performed in conjunction with similar programs at Nine Mile Point (NMP) Units 1 and 2; (12) change the reporting levels of 2 and 1 pCi/liter for Iodine-131 in water samples in Tables 6.1-2 and 6.1-3 respectively, to 20 and 15 pCi/liter respectively, for consistency with recent NRC criteria and NMP site RETS, since the direction and distance to the nearest water intake means that the plant does not have a drinking water pathway under normal operating conditions; (13) change Specification 7.3.d. to show that the reactor centerline used for determining sample locations listed in the Annual Environmental Operating Report can be either the NMP Unit 2 or the FitzPatrick reactor centerlines. This will allow continued use of the NMP

Unit 2 reactor centerline to determine sample locations, which is consistent with NRC guidance for sites with joint environmental programs.

The proposed change to the TS (Appendix A to the Operating License) Specification 6.18, would eliminate the annual FSAR update as an alternative method for reporting major modifications to the radioactive waste systems. This requirement will be furnished in either the semiannual report or the annual 10 CFR 50.59 Safety Evaluation Report, as specified in this TS section.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards provided above and has made the following determination:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated, because the changes are only designed to clarify and correct RETS. They are administrative changes such as: consolidating footnotes; clarifying wording; and correcting reporting levels to achieve consistency with Nine Mile Point. There is no impact on plant operations. There are no setpoint changes regarding isolation or alarms. There is no change to the environmental monitoring program. The changes will have no impact on previously evaluated accidents.

2. The proposed changes will not create the possibility of a new or different kind of accident previously evaluated. The proposed amendment does not involve physical changes to the facility. The changes are administrative in nature and do not involve safety limit changes. These proposed changes are intended to further clarify and improve RETS. The changes cannot create a new or different accident.

3. The proposed changes do not involve a significant reduction in the margin of safety. The proposed amendment will achieve consistency throughout the specifications and clarify or correct minor errors. There is no impact on plant operation, nor are there any setpoint or safety limit changes regarding isolation or alarms. There is no change to the environmental monitoring program. The proposed changes are designed to improve and facilitate the use of RETS. The changes will assist the operator in better understanding of these specifications. The proposed changes do not reduce safety margins of any kind.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra, Director

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: June 10, 1988

Description of amendment request: The proposed amendment would revise the Technical Specification (TS) Sections 3.11.B. and 4.11.B., "Crescent Area Ventilation," to clarify and eliminate inconsistencies in the Limiting Condition for Operation (LCO) and Surveillance Testing requirements. One change to Section 3.11.B. would replace the term "compartment" with the nomenclature "half of the crescent area" to more precisely define the applicable area of the plant using the generic terminology. Another change to this section would replace the reference to Specification 3.5.D. with 3.5.B. since Specification 3.5.D. is the Automatic Depressurization System (which is not associated with the crescent rooms) and Specification 3.5.B. is the Containment Cooling Subsystem of the RHR System (which does have equipment located in the area). The proposed change to Specification 4.11.B. would eliminate the existing conflict between Specifications 3.11.B.1. and 4.11.B.1. in determining the applicability of the 7-day and 24-hour LCOs when more than one cooler in a crescent room is inoperable. The proposed amendment deletes the 7-day LCO, retains the 24-hour LCO, and moves the specification from the surveillance section to the LCO section of the TS.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed TS change against the standards provided above and has determined that the proposed changes to the TS do not involve hardware or procedural changes to the plant. Further, operation of the plant in accordance with the proposed amendment would not involve significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because the change results in clarifying the operability of the crescent area ventilation system. Also, the proposed change will eliminate Specification 4.11.B.1 which is in conflict with and non-conservative with respect to Specification 3.11.B.1.

2. Create the possibility of a new or different kind of accident previously evaluated. As stated above, the proposed amendment does not involve physical changes to the facility. These proposed changes will facilitate the understanding of the crescent area ventilation operations and not create a new or different kind of accident. Also, the proposed change will eliminate the conflict between Specifications 3.11.B.1 and 4.11.B.1 by the selection of the more conservative LCO.

3. Involve a significant reduction in the margin of safety. The proposed amendment clarifies the area ventilation system and eliminates the conflict that existed prior to the change. This will help the operator in better understanding of these specifications.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and above discussions, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra, Director

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: January 20, 1989, supplemented February 2, 1989.

Description of amendment request: The licensee has provided, in part, the following description: The proposed amendment would provide for the use of Vantage 5 fuel and changes the Technical Specifications appropriately to reflect the use of Vantage 5 fuel. Indian Point Unit 3 is currently operating in Cycle 6 with a transition fueled core containing Westinghouse 15x15 low-parasitic (LOPAR) assemblies and 15x15 Optimized Fuel Assemblies (OFAs). For subsequent cycles, it is planned to refuel and operate Indian Point Unit 3 with the Westinghouse 15x15 Vantage 5 improved fuel design. As a result, future core loadings would range from approximately a 60%-65% OFA and 35%-40% Vantage 5 transition core (Cycle 7) to eventually an all Vantage 5 fueled core. The 15x15 Vantage 5 fuel assembly is designed as a modification to the current 15x15 LOPAR and the optimized fuel assembly (OFA) designs (Reference 1). Except for the 15x15 fuel array, no Intermediate Flow Mixer (IFM) grids and the use of a Debris Filter Bottom Nozzle (DFBN), the Indian Point Unit 3 15x15 Vantage 5 fuel assembly has the same design features as the standard 17x17 fuel assembly.

This change also reduces the shutdown margin from 10% delta k/k to 5% delta k/k.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has provided the following analysis:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response

The transition to Vantage 5 fuel does not involve a significant increase in the probability of an accident previously evaluated. The proposed changes do not effect any systems or equipment which are involved in the initiation or mitigation of any previously analyzed accident. Therefore, the proposed changes cannot increase the probability of any accident previously evaluated. The IP-3 FSAR accident analyses for non-LOCA and LOCA (large and small breaks) transients have been reanalyzed and evaluated by Westinghouse with regard to the proposed changes. These reanalyses and evaluations show that the proposed changes do not significantly increase the consequences of previously evaluated accidents.

The change of the shutdown margin from 10% delta k/k to either 5% delta k/k or 1900 ppm, whichever results in the greater boron concentration, does not involve a significant increase in the probability of an accident previously evaluated. The proposed change does not affect any system or equipment which are involved in the initiation or mitigation of any previously analyzed accident. Therefore, the proposed change cannot increase the probability of any accident previously evaluated. Westinghouse has reanalyzed the inadvertant boron dilution transient (chemical and volume control malfunction). The results show that boron concentration in the refueling water must reduce from 1900 ppm to approximately 1300 ppm before the reactor will go critical. Since this will take significantly more than 30 minutes, the operator has ample time to initiate corrective actions. Therefore, the proposed change does not significantly increase the consequences of previously evaluated accidents.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response

The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. None of the proposed changes introduce any new equipment or require any existing equipment or systems to perform a different type of function than they are currently designed to perform. The proposed changes provide operation limits and a means to monitor those limits to assure that the consequences of existing accidents are not affected.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response

Westinghouse has reanalyzed and evaluated the IP-3 FSAR accident analyses for non-LOCA and LOCA (large and small breaks) transients with regard to the Vantage 5 fuel transition. The results of the non-LOCA reanalyses and evaluations show that the transition from 15x15 OFA to 15x15 Vantage 5 fuel can be accommodated with margin to the applicable FSAR safety limits. With regard to the LOCA transients, the reanalyses for both the large and small breaks show that the acceptance criteria of 10 CFR 50.46 is met. Therefore, the proposed transition to Vantage 5 fuel does not involve a significant reduction in a margin of safety.

The purpose of the decrease in the shutdown margin from 10% delta k/k to 5% delta k/k is to incorporate the guidance of the Westinghouse Standard Technical Specifications (WSTS) and to enhance fuel management flexibility. The WSTS recommend a shutdown margin of 5% delta k/k for the refueling condition. Westinghouse has reanalyzed the inadvertant boron dilution transient (chemical and volume control malfunction) using 5% delta k/k shutdown margin. This reanalysis shows that the minimum boron concentration of the refueling water is typically 1900 ppm for a shutdown margin of 5% delta k/k. The boron concentration must be reduced from 1900 ppm to approximately 1300 ppm before the reactor will go critical. This would require significantly more than 30 minutes. Since information on the status of the reactor coolant makeup is continuously available to the operator, this is ample time for the operator to initiate corrective actions. An additional conservatism exists in that the greater of the two boron concentrations, either 1900 ppm or that required for a 5% delta k/k margin, is to be used during refueling activities. Therefore, the proposed change in the shutdown margin does not involve a significant reduction in a margin of safety.

Based on the above analysis, the staff proposes to conclude that these changes do not involve a significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra, Director

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: April 14, 1987 and October 5, 1988

Description of amendment request: The proposed amendments would modify the Salem Unit 1 and 2 Technical Specifications, Section 3/4.7.9, Snubbers, to incorporate Generic Letter 84-13, Technical Specifications for Snubbers, dated May 3, 1984. The proposed changes would eliminate the tables that list the snubbers, Tables 3.7.4a and 3.7.4b, revise Section 3/4.7.9 to eliminate references to the Tables and revise Bases 3/4.7.9 to require a detailed list of individual snubbers be maintained at the plant. The requirement that the Station Operations Review Committee approve the accessibility classification of each snubber and that additions or deletions from the list of snubbers must undergo a 10 CFR 50.59 review is being added to Bases 3/4.7.9 for both Units. Also, a footnote to Section 4.7.9c of the Unit 1 Technical Specifications is being deleted

because it is no longer applicable. In addition, Bases 3/4.7.9 for Unit 1 is being revised to bring it into agreement with the Unit 2 Bases 3/4.7.9.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee evaluated the proposed changes against the standards of 10 CFR 50.92 and has determined that the amendments would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The surveillances will still be performed in accordance with the existing requirements. Only the location of where the list of snubbers is maintained has changed. Revision of the Bases is administrative and does not change the intent.

2. Create the possibility of a new or different kind of accident from any previously analyzed. There are no equipment, instrument, or setpoint changes related to the proposed change to Technical Specifications.

3. Involve a significant reduction in a margin of safety. The scope of applicability and test requirements for snubbers remains unchanged.

The staff has reviewed the licensee's submittal and significant hazards analysis and concurs with the licensee's determination that the proposed amendment does not involve a significant hazards consideration. Therefore, the staff proposes to determine that the proposed amendments involve 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, Conner and Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: July 23, 1987

Description of amendment request: The proposed amendment revises the emergency core cooling system (ECCS) limiting conditions for operation, surveillance requirements and associated basis to clearly define the emergency core cooling subsystem alignment and component availability requirements in various modes. Changes are also proposed that eliminate the requirement to issue a report when an action statement is entered as a result of inservice testing. Changes are also proposed that will make the Salem Unit 1 emergency core cooling technical specifications consistent with the Salem Unit 2 emergency core cooling technical specifications.

Specifically, this amendment request proposes to modify the Technical Specifications as follows:

1. Technical Specification 3.5.2

This section is being modified to explicitly identify the flow paths into the Reactor Coolant System (RCS) which are required to be Operable in Modes 1, 2 and 3.

Also, an Action Statement that allows both ECCS subsystems to be inoperable for up to one hour for surveillance testing is being added. Shutdown must commence if this time limit is exceeded.

2. Technical Specification 4.5.2

The first change adds a requirement to verify the RH19 valves open once per 12 hours. The second change adds the requirement to verify that the Salem 1 ECCS piping is full of water by venting once every 31 days. This requirement already appears in the corresponding Salem Unit 2 Surveillance Requirement. The third change clarifies that with the CS14 valve inoperable the affected system is the Containment Spray System (Spray Additive Tank) and directs the operator to Technical Specification 3.6.2.2.

3. Technical Specification 3.5.3

This section is being modified to explicitly identify the required Operable flow paths into the RCS for each ECCS subsystem in Mode 4.

The second part is for clarification only. This change makes it explicitly clear that one safety injection (SI) or one centrifugal charging pump shall be Operable when the RCS temperature is less than or equal to 312° F.

Third, the following note that appears in the Salem Unit 2 Technical Specifications; "Note: This particular restriction also applies in Modes 5 and 6" is being added to the Unit 1 Technical Specifications to achieve consistency between the two documents.

4. Technical Specification Bases Section 3/4.5.2 and 3/4.5.3

The first part serves to reiterate the requirement to maintain the capability to supply all four RCS cold legs with each ECCS subsystem. The second part reflects the phrase being added to the pound symbol footnote of Technical Specification 3.5.3 addressing the operability requirements for the safety injection and charging pumps in Modes 4, 5 and 6.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

1. The licensee has analyzed the proposed changes to Technical Specification 3.5.2 to determine if a significant hazard exists:

The proposed changes to Technical Specification 3.5.2 do not involve a significant hazards consideration because operation of Salem Unit 1 and 2 in accordance with these changes would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The first change is being made for clarification only. Its purpose is to clearly reflect ECCS-LOCA design bases requirements in the Technical Specifications. No physical change to plant systems is involved, nor is there an impact on the licensing bases of the units. Therefore, this change cannot increase the probability or consequences of an accident. The second change allows IST stroke testing of valves listed in Surveillance 4.5.2 to continue without submittal of an LER. The IST stroke testing intervals remain unchanged, as do the Action Statement time limits. Therefore this second change cannot increase the probability or consequences of an accident.

(2) Create the possibility of a new or different kind of accident from any previously analyzed. The first change only serves to emphasize ECCS-LOCA requirements for injection flow paths into the RCS. These requirements are not new as they are already part of the design and licensing bases of the Salem units. The second change makes no changes to the Action Statement time limits associated with IST surveillances conducted on valves listed in Technical

Specification Surveillance 4.5.2. It only serves to address reporting requirements. Therefore, these changes do not create the possibility of a new or different kind of accident.

(3) Involve a significant reduction in a margin of safety. The first change serves to maintain the current margin of safety associated with the LOCA accident analysis and ensure that the ECCS subsystems are aligned as assumed in the design bases for the ECCS-LOCA. The second change maintains the Action Statement time limitations associated with IST stroke testing. Therefore, these changes make no reduction in a margin of safety.

The staff has reviewed the licensee's significant hazards consideration analysis for changes to Technical Specification 3.5.2 and concurs with the licensee's determination that the proposed changes do not involve a significant hazards consideration.

2. With respect to the proposed changes to Technical Specification 4.5.2 and 3.5.3, the Commission has provided guidance concerning the application of its standards set forth in 10 CFR 50.92 by providing certain examples (51 FR 7751). One of the examples, (i), of an amendment likely to involve no significant hazards consideration relates to "A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error or a change in nomenclature."

Another example, (ii), of an amendment likely to involve no significant hazards consideration relates to "A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications, e.g., a more stringent surveillance requirement."

The proposed changes to Technical Specifications 4.5.2 and 3.5.3 relate to one of these examples:

a. Technical Specification 4.5.2

The RH19 valves must be open in order for the residual heat removal (RHR) pumps to be capable of injecting into each RCS cold leg. This helps ensure that the design bases for the ECCS-LOCA (Loss of Coolant Accident) is maintained. The addition of the RH19 valves to the Surveillance Requirements is a means of additional control on the plant and represents a more stringent surveillance requirement. Therefore, this meets example ii.

The requirement to verify that the Salem 1 ECCS piping is full of water is an example of a more stringent surveillance requirement. This meets example ii. In addition, the requirement to verify that the ECCS piping is full already appears in the Salem 2 Technical Specifications. This change will achieve consistency between units. This meets example i.

The directing of operators to Technical Specification 3.6.2.2 for appropriate action if the CS14 valve is inoperable clarifies the action requirements. By addition of the reference to Technical Specification 3.6.2.2, the Action Statement for an inoperable Spray Additive Tank will be followed if valve CS14 becomes inoperable. CS14 is part of the Containment Spray System. Because it is a clarification, it is deemed an administrative change as illustrated in example i.

b. Technical Specification 3.5.3

This change will clearly reflect the design bases flow paths for the ECCS-LOCA in the Technical Specifications. This change does not modify the ECCS injection or recirculation flow paths in any way. The identification of the required flow path for the operable ECCS subsystem represents a means of control not currently in the technical specifications. This meets example ii.

The addition of the footnote to clearly specify that only one safety injection pump or one centrifugal charging pump need be operable in Mode 4, 5 and 6 is a restriction not currently in the technical specifications. This meets example ii. The addition to the note in the Salem 1 Technical Specifications of the applicability to Modes 5 and 6 is also more restrictive, an illustration of example ii, and already appears in the Salem 2 Technical Specifications, an illustration of example i.

Based on the above, the staff proposes to determine that the changes to Technical Specification 4.5.2 and 3.5.3 do not involve significant hazards considerations because they provide additional controls or are more restrictive than the current technical specifications or involve administrative changes.

3. The licensee has analyzed the proposed changes to Technical Specification Bases Section 3/4 5.2 and 3/4 5.3 to determine if a significant hazard exists:

The proposed changes to Technical Specification Bases Sections 3/4 5.2 and 3/4 5.3 do not involve a significant hazards consideration because operation of Salem Unit 1 and 2 in accordance with these changes would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The first change is for clarification only and serves to highlight the ECCS-LOCA requirements to maintain the capability to supply all four RCS cold legs. The second change again only clarifies in the Bases Section existing requirements that serve to maintain the RCS pressure below the 10 CFR 50, Appendix G limits in case of an inadvertent mass addition.

(2) Create the possibility of a new or different kind of accident from any previously analyzed. The first change does not involve any hardware or procedure modifications and only serves to identify an existing design bases for the ECCS-LOCA. Likewise, the second change clarifies in the Bases Section existing requirements. No new or different kind of accident can be postulated as a result of these changes.

(3) Involve a significant reduction in a margin of safety. These changes serve to identify existing design bases for the ECCS-LOCA and RCS pressure limits in Mode 4. They do not impact any margin of safety.

The staff has reviewed the licensee's significant hazards consideration analysis for changes to Technical Specification Bases Sections 3/4 5.2 and 3/4 5.3 and concurs with the licensee's determination that the proposed changes do not involve a significant hazards consideration.

Based on the staff's review and analysis of the licensee's submittal as detailed above, the staff proposes to determine that the proposed amendment 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, Conner and Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: April 26, 1988 (Reference PCN-247)

Description of amendment request: The proposed change would revise Technical Specification (TS) 3/4.6.4.2, "Electric Hydrogen Recombiners." TS 3/4.6.4.2 requires that two hydrogen recombiners be operable during startup or power operation (Modes 2 and 1, respectively), defines periodic surveillance tests to verify operability, and requires compensatory actions to be taken when the minimum operability requirements are not met.

The hydrogen recombiners are part of the post accident combustible gas control system. During a postulated loss of coolant accident, hydrogen gas would evolve from the reaction of water with fuel cladding, radiolytic decomposition of water, and corrosion of metals inside containment. The function of the

combustible gas control system is to maintain the post accident concentration of hydrogen gas in the containment atmosphere below the explosive gas limit and thereby prevent a hydrogen gas explosion from challenging containment integrity.

To verify operability of the hydrogen recombiners, TS 3/4.6.2.a requires that a functional test be performed at least once per six months. In addition, TS 4.6.4.2.b requires each hydrogen combiner system to be demonstrated operable at least once per 18 months by performance of the following surveillance requirements: (1) TS 4.6.4.2.b.1 requires a channel calibration of all hydrogen recombiner instrumentation and control circuits. This test verifies electrical resistance and calibrates thermocouples to plus or minus one percent. (2) Technical Specification 4.6.4.2.b.2 and 3 require that (a) there is no evidence of abnormal conditions within the recombiners by performing a visual examination, and (b) the integrity of the heater electrical circuits is satisfactory by performing a continuity and resistance to ground test.

The proposed change would increase the interval for performance of TS 4.6.4.2.b surveillance tests from at least once per 18 months to at least once per refueling.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided the following no significant hazards consideration determination:

Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The function of the hydrogen recombiners is to maintain the post accident concentration of hydrogen gas in the containment atmosphere below the explosive gas limit [and] thereby prevent a hydrogen gas explosion from challenging containment integrity. The proposed change increases the interval for surveillance tests currently performed at 18 month intervals. There has been a low incidence of problems detected by the 18 month surveillance tests. Additionally the functionality of the hydrogen recombiners is demonstrated at six month intervals by the required functional test, which is unaffected by the proposed change. Because of the low incidence of problems, and the functional testing at six month intervals, the proposed change will not significantly affect the hydrogen recombiners' availability to function post accident. Therefore, the proposed change will not significantly increase the probability [or consequences] of previously analyzed accidents.

Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change affects only the frequency of hydrogen recombiner surveillance testing. The proposed change does not alter the configuration of the facility or its operation. Therefore, the proposed change does not create the possibility of new or different kind of accident.

Will operation of the facility in accordance with the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change affects only the frequency of certain hydrogen recombiner surveillance tests which may result in a small reduction of confidence in hydrogen recombiner operability and the associated margin of safety. However, the 18 month surveillances have historically detected few problems and the six month functional tests are unaffected by the proposed change. Therefore, the proposed change will not result in a significant reduction in a margin of safety.

The NRC staff has reviewed this analysis and, based on that review, it appears that the three criteria are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Attorney for licensee: Charles R. Kocher, Assistant General Counsel, and James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

NRC Project Director: George W. Knighton

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: April 26, 1988 (Reference PCN-249)

Description of amendment request: The proposed change would revise Technical Specification 3/4.1.3.4, "CEA Drop Time." This specification provides an individual full length control element assembly (CEA) maximum drop time restriction. The individual (shutdown and control) CEA drop time is measured from the time that electrical power is interrupted to the CEA drive mechanism (from a fully withdrawn position) to the time the CEA reaches its 90% insertion position. The maximum allowable CEA drop time (less than or equal to 3.2 seconds) is consistent with the value assumed in the safety analyses. CEA drop times are required to be measured following each removal and reinstallation of the reactor vessel head (Surveillance Requirement (SR) 4.1.3.4.a); following any maintenance on, or modification to, the CEA drive system which could affect the drop time of those specific CEA's (SR 4.1.3.4.b); and at least once per 18 months (SR 4.1.3.4.c).

The proposed change would revise the frequency of the CEA drop time testing required by Surveillance Requirement 4.1.3.4.c of this Specification from the current 18 month interval to an interval of at least once per refueling.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided the following no significant hazards determination:

Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change ties the CEA drop time testing to a refueling interval frequency.... Factors that could adversely affect rod drop times during a cycle are addressed by other surveillance requirements not affected by this proposed change. Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change only redefines the periodic surveillance interval for CEA drop time testing. The requirements to conduct CEA drop time testing following maintenance which might affect the drop time or following reactor vessel head removal are not changed. No physical modification to the plant is proposed, nor is there a change in how the facility is operated. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Will operation of the facility in accordance with the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change extends the 18 month interval for performing the CEA drop time surveillance to a refueling interval.... The actual time interval between surveillances will be a function of the plant capacity factor for the particular fuel cycle.... [For a nominal 24 month cycle,] the fuel cycle length will be 513 effective full power days (EFPD). Assuming a production factor of 90% and a 75 day refueling outage, an actual cycle length and surveillance interval would be approximately 21 months. Technical Specification 4.0.2.a permits a maximum allowable extension not to exceed 25% of the current surveillance interval.... Thus, the proposed change does not represent a radical increase over what is already permitted by

technical specifications. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed this analysis and, based on that review, it appears that the three criteria are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Attorney for licensee: Charles R. Kocher, Assistant General Counsel, and James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

NRC Project Director: George W. Knighton

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: April 26, 1988 (Reference PCN-250)

Description of amendment request: The proposed change would revise Technical Specification 3/4.3.3.10, "Loose-Part Detection Instrumentation." The loose part detection instrumentation serves to provide early detection of loose metallic parts in the primary system to avoid and/or mitigate damage to the primary system components. The Vibration and Loose Parts Monitoring System (V&LPM) monitors the major reactor primary system components. The selected locations provide a qualitative indication of vibration throughout the primary system.

Surveillance Requirement 4.3.3.10.c states that each channel of the loose-part detection system shall be demonstrated operable by the performance of a channel calibration at least once per 18 months. The proposed change would revise this requirement from at least once per 18 month interval to at least once per refueling.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided the following no significant hazards consideration determination:

Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The operability of the V&LPM ensures that sufficient capability exists to detect loose metallic parts in the primary system and [to] avoid or mitigate damage to primary system components. The system serves no safety function and is not credited in the accident analyses. The proposed change will revise the frequency of the channel calibration test to an interval [of] at least once per refueling. Most failures of the system are detected during performance of the daily and monthly testing. Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The V&LPM is a monitoring system and does not initiate any automatic protective functions. The proposed change extends the surveillance interval (for a test intended to be performed during a refueling outage) to coincide with the refueling outage interval.... Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Will operation of the facility in accordance with the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change extends the 18 month interval for performing the... channel calibration surveillance to refueling intervals. The actual time interval between surveillances will be a function of the plant capacity factor for the particular fuel cycle. For the equilibrium cycle, the fuel cycle length will be 513 effective full power days (EFPD). A production factor of 90% and a 75 day refueling outage would result in an actual cycle length of 21 months. Technical Specification 4.0.2.a permits a maximum allowable extension not to exceed 25% of the current surveillance interval.... Thus, the proposed change does not represent a radical increase over what is already permitted by technical specifications.... Therefore, the proposed change will not involve a significant increase in a margin of safety.

The NRC staff has reviewed this analysis and, based on that review, it appears that the three criteria are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Attorney for licensee: Charles R. Kocher, Assistant General Counsel, and James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

NRC Project Director: George W. Knighton

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: October 11, 1988 (Reference PCN-264)

Description of amendment request: The proposed change would revise Technical Specification (TS) 3/4.4.5.2, "Operational Leakage." The purpose of this specification is to provide limits on operational leakage. The surveillance requirements for the Reactor Coolant System (RCS) Pressure Isolation Valves provide added assurance of valve integrity, thereby reducing the probability of gross valve failure and a consequent intersystem Loss Of Coolant Accident (LOCA). Leakage from the RCS Pressure Isolation Valves is identified leakage and will be considered as a portion of the allowable limit. The RCS Pressure Isolation Valves function to create a pressure boundary isolating the RCS from connecting systems. Surveillance Requirement 4.4.5.2.2.a requires verifying valve leakage to be within its limit at least once every 18 months. The proposed change would revise the surveillance interval from at least once per 18 months to at least once per refueling interval.

Basis for Proposed No Significant Hazards Consideration Determination: As required by 10 CFR 50.91 (a), the licensee has provided the following no significant hazards consideration determination:

Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The function of the RCS Pressure Isolation Valves is to create a pressure boundary between the RCS and connected systems. The proposed change increases the interval for surveillance testing currently performed at 18 month intervals to a refueling interval, nominally 24 months. There has been one failed leak test detected in the 18 month surveillance program which is not expected to be repeated due to the implementation of the recommendations provided in IE Bulletin 85-03. Therefore, the proposed change will not significantly increase the probability [or conseqences] of previously analyzed accidents.

Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change affects only the frequency of the RCS Pressure Isolation Valves surveillance. The proposed change does not alter the configuration of the facility or its operation. Therefore, the proposed

change does not create the possibility of a new or different kind of accident.

Will operation of the facility in accordance with the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change affects the frequency of the surveillance test which may result in a small reduction in confidence in system operability and the associated margin of safety. However, the 18 month surveillances have only detected one failure, which has been resolved in conjunction with IE Bulletin 85-03. In addition, other [T]echnical [S]pecification surveillances establish requirements to monitor leakage from the reactor coolant system on a more frequent basis. Therefore, the proposed change will not result in a significant reduction in a margin of safety.

The NRC staff has reviewed this analysis and, based on that review, it appears that the three criteria are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Attorney for licensees: Charles R. Kocher, Assistant General Counsel and James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

NRC Project Director: George W. Knighton

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: October 11, 1988 (Reference PCN-265)

Description of amendment request: The proposed change would revise Surveillance Requirement 4.5.1.e of Technical Specification (TS) 3/4.5.1, "Safety Injection Tanks." The purpose of this specification is to ensure that the Safety Injection Tanks are operable. Surveillance Requirement 4.5.1.e requires verifying that each Safety Injection Tank isolation valve opens automatically before Reactor Coolant System (RCS) pressure exceeds 715 psia, and upon a SIAS test signal. The proposed change would revise the surveillance interval for these tests from at least once per 18 months to at least once per refueling interval.

Basis for Proposed No Significant Hazards Consideration Determination: As required by 10CFR 50.91 (a), the licensee has provided the following no significant hazards consideration determination:

Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The [S]afety [I]njection [T]ank isolation valves are used to separate the RCS from the [S]afety [I]njection [T]anks when depressurizing the RCS. The proposed change increases the interval for surveillance testing currently performed at 18 month intervals to a refueling interval, nominally 24 months. There have been no failures in the 18 month surveillance program. Therefore, the proposed change will not significantly increase the probability [or consequences] of previously analyzed accidents.

Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change affects only the frequency of the [S]afety [I]njection [T]ank isolation valve surveillance. The proposed change does not alter the configuration of the facility or its operation. Therefore, the proposed change does not create the possibility of a new or different kind of accident.

Will operation of the facility in accordance with the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change affects only the frequency of the surveillance test which may result in a small reduction in confidence in system operability and the associated margin of safety. However, the 18 month surveillances have detected no failures. Therefore, the proposed change will not result in a significant reduction in a margin of safety.

The NRC staff has reviewed this analysis and, based on that review, it appears that the three criteria are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Attorney for licensees: Charles R. Kocher, Assistant General Counsel and James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

NRC Project Director: George W. Knighton

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: October 24, 1988 (Reference PCN-258)

Description of amendment request: The proposed change would revise Technical Specification (TS) 3/4.6.3, "Containment Isolation Valves." TS 3/4.6.3 lists the containment isolation valves and specifies their required response times for closure. Operability of the containment isolation valves ensures that the containment atmosphere will be isolated from the outside environment in the event of a release of radioactive material to the containment atmosphere. Containment isolation within the time limits specified ensures that the release of radioactive material to the environment will be consistent with the assumptions used in the accident analyses. TS 3/4.6.3 also defines periodic surveillance tests and action to be taken if the minimum operability requirements are not met. Surveillance Requirement (SR) 4.6.3.2 requires that each isolation valve (except check valves) specified in Section A and B of Table 3.6-1, "Containment Isolation Valves," of this specification, be demonstrated operable at least once per 18 months during cold shutdown or refueling by verifying that on an Engineered Safety Features Actuation System (ESFAS) test signal, each isolation valve actuates to its isolation position. The proposed change would revise this surveillance interval from at least once per 18 months to at least once per refueling interval.

Basis for Proposed No Significant Hazards Consideration Determination: As required by 10 CFR 50.91(a), the licensee has provided the following no significant hazards consideration determination:

Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The required semi-annual testing of the components included within the scope of these [T]echnical [S]pecifications provides a high level of assurance that the equipment is capable of proper operation. The frequency of the semi-annual testing is not affected by this change.... Based on [a] review of the... surveillance testing to date, the results have demonstrated reliable equipment performance. Additional assurance of proper operation of ASME pumps and valves is provided by inservice testing. Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change only affects the frequency of refueling interval testing and does not alter the configuration of the facility or its operation. Therefore, this proposed change will not create the possibility of a

new or different kind of accident from any accident previously evaluated.

Will operation of the facility in accordance with the proposed change involve a significant reduction in a margin of safety?

Response: No

The proposed change only affects the frequency of testing on a sub-system basis (18 months) without affecting the testing frequency that is done on a sub-group basis (semi-annual). The semi-annual test is capable of detecting problems which are most likely to occur. Inservice testing of ASME pumps and valves provides additional assurance of proper operation. This, coupled with reliable equipment performance, makes any potential reduction in safety margin negligible. Therefore, the proposed change will not involve a significant increase in a margin of safety.

The NRC staff has reviewed this analysis and, based on that review, it appears that the three criteria are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Attorney for licensees: Charles R. Kocher, Assistant General Counsel and James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

NRC Project Director: George W. Knighton

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: October 24, 1988 (Reference PCN-261)

Description of amendment request: The proposed change would revise Technical Specification (TS) 3/4.1.2.2, "Reactivity Control Systems, Boration Flow Paths-Operating," and TS 3/4.5.2, "Emergency Core Cooling Subsystems-Tavg Greater Than or Equal to 350° F." TS 3/4.1.2.2 defines the required number of operable boron injection flow paths to the Reactor Coolant System. TS 3/4.5.2 defines the required number of operable Emergency Core Cooling System (ECCS) subsystems. The boron injection system ensures that negative reactivity control is available during each mode of reactor operation. TS 3/4.5.2 requires two independent operable Emergency Core Cooling Systems (ECCS) in modes 1, 2, and 3. The operability of two separate and independent ECCS subsystems ensures that sufficient emergency core cooling capability will be available in the event of a LOCA assuming the loss of one subsystem through any single failure consideration. In addition, each Technical Specification defines periodic surveillance tests and action to be taken if the minimum operability requirements are not met. These tests require verification that components will operate upon energization/deenergization of the respective initiation relays, that the shutdown cooling isolation valve interlocks will operate properly, and that the Containment Sump is not blocked or damaged.

Surveillance Requirement (SR) 4.1.2.2.c requires that, at least once per 18 months during shutdown, each valve in the boron injection flow path be demonstrated operable by verifying that it actuates to its correct position upon a Safety Injection Actuation Signal (SIAS) test signal. SR 4.5.2.e requires that, at least once per 18 months during shutdown, the components in the ECCS flow paths be demonstrated operable by verifying that they actuate to their correct position upon a Safety Injection Actuation Signal (SIAS) or Recirculation Actuation Signal (RAS) test signal. SR 4.5.2.d.1 requires verifying, at least once every 18 months, automatic closure of the Shutdown Cooling Isolation valves when the simulated RCS pressure equals or exceeds 715 psia, and that interlocks prevent opening the valves when the RCS pressure equals or exceeds 376 psia. SR 4.5.2.d.2 requires a visual inspection of the Containment Sump to verify that all sump inlets are not restricted by debris and that no evidence of structural distress or abnormal conditions exists. The proposed change would revise the interval of these surveillance tests from at least once per 18 months during shutdown to at least once per refueling interval during shutdown.

Basis for Proposed No Significant Hazards Consideration Determination: As required by 10 CFR 50.91(a), the licensee has provided the following no significant hazards consideration determination:

Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The required semi-annual testing of the components included within the scope of Surveillance Requirements 4.1.2.2 and 4.5.2.e provides a high level of assurance that the equipment is capable of proper operation. The frequency of the semi-annual testing is not affected by this change. Inservice testing of ASME pumps and valves provides additional assurance of proper operation. Results of surveillance testing to date have demonstrated reliable equipment performance. The proposed change also increases the interval for surveillance testing associated with Shutdown Cooling Isolation Valve interlocks, currently performed at 18 month intervals. No problems have been detected in the 18 month surveillance program. Access to the Containment Sump area is severely restricted, especially during non-refueling outage periods. This essentially precludes events which could cause the condition of the Containment Sump to deteriorate. Inspections since the beginning of commercial operation of both units have all been satisfactory. Therefore, the proposed change will not significantly increase the probability or consequences of an accident previously analyzed.

Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change only affects the frequency of refueling interval testing and does not alter the configuration of the facility or its operation. Based on the review of plant history, it has been demonstrated that most deficiencies have been detected by means other than surveillances. Therefore, this proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Will operation of the facility in accordance with the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change only affects the frequency of testing on a subsystem basis (18 months) without affecting the testing frequency that is done on a sub-group basis (semi-annual). The semi-annual test is capable of detecting problems which are most likely to occur. Inservice testing of ASME pumps and valves provides additional assurance of proper operation. This, coupled with reliable equipment performance, makes any potential reduction in safety margin negligible. The proposed change also affects the frequency of certain shutdown cooling isolation valve surveillance tests which may result in a small reduction in confidence in valve operability and the associated margin of safety. However, the 18 month surveillances have historically detected no problems. Therefore, the proposed changes will not result in a significant reduction in a margin of safety.

The NRC staff has reviewed this analysis and, based on that review, it appears that the three criteria are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Attorney for licensees: Charles R. Kocher, Assistant General Counsel and James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

NRC Project Director: George W. Knighton

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: December 16, 1988 (Refernce PCN-254)

Description of amendment request: The proposed change would revise Technical Specification (TS) 3/4.8.4.1, "Containment Penetration Conductor Overcurrent Protective Devices," and TS 3/4.8.4.2 "Motor Operated Valves Thermal Overload Protection Bypass." TS 3.8.4.1 requires circuits entering containment to be provided with an overcurrent protective device. The containment penetration conductor overcurrent protective devices listed in Table 3.8-1 of this Specification are required to be operable in Mode 1 through Mode 4. Containment electrical penetrations and penetration conductors are protected by either deenergizing circuits not required during reactor operation or by demonstrating the operability of primary and backup overcurrent protection circuit breakers during periodic surveillance. The overcurrent protective devices provide protection of the containment penetration to maintain containment integrity. TS 3.8.4.2 requires the thermal overload protection to be bypassed by a bypass device integral with the motor starter of each valve listed in Table 3.8-2 of this Specification. The thermal overload bypass device ensures that the motor will not trip off due to a thermal overload. The bypass devices are required to be operable whenever the motor-operated valve is required to be operable.

Surveillance Requirement 4.8.4.1.a requires all containment penetration conductor overcurrent devices listed in Table 3.8-1 of the Technical Specification be demonstrated operable at least once per 18 months by verifying that the medium voltage (4-15KV) circuit breakers are operable. This is accomplished by selecting on a rotating basis at least 10 percent of the circuit breakers of each voltage level, and performing a Channel Calibration of the associated protective relays and an integrated system functional test. For any circuit breaker found inoperable, an additional representative sample of at least 10 percent of the circuit breakers of the inoperable type shall also be functionally tested. In addition, 10 percent of the lower voltage circuit breakers are functionally tested on a rotating basis. Again, if any circuit breaker is found inoperable, an additional representative sample of 10 percent will be tested. Surveillance Requirement 4.8.4.1.a states that the thermal overload protection on motor operated valves (MOVs) shall be verified bypassed by integral bypass devices at least once per 18 months. The proposed change would revise these surveillance intervals from at least once per 18 months to at least to once per refueling interval.

Basis for Proposed No Significant Hazards Consideration Determination: As required by 10 CFR 50.91(a), the licensee has provided the following no significant hazards consideration determination:

Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

Containment penetration overcurrent devices are installed to protect equipment from being damaged due to an overcurrent condition. The thermal overload bypass device ensures that the motor will not trip off due to a thermal overload. The proposed change revises the frequency of surveillance tests to demonstrate the operability of the electrical equipment protective devices. While the proposed change increases the interval between surveillance tests, past surveillances have demonstrated high system reliability. Therefore, the proposed change will not significantly increase the probability.... or consequences of previously evaluated accidents.

Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

The proposed change only redefines the surveillance interval for containment penetration overcurrent protection and the surveillance interval for MOV thermal overload bypass verification. No physical modification to the plant is proposed, nor is there a change in how the facility is operated. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated[.]

Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No

The proposed change reduces the frequency of the surveillance tests which may reduce the confidence in the electrical equipment protective devices['] operability at the end of the surveillance interval and may reduce the associated margin of safety. A review of plant history documentation reveals that the surveillance test provides excellent results in equipment operability. Therefore, the proposed change will not result in a significant reduction in a margin of safety.

The NRC staff has reviewed this analysis and, based on that review, it appears that the three criteria are satisfied. Therefore, the NRC staff proposed to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Attorney for licensees: Charles R. Kocher, Assistant General Counsel and James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

NRC Project Director: George W. Knighton

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: December 19, 1988 (Reference PCN-279)

Description of amendment request: The proposed change would revise Technical Specification (TS) 3/4.4.5.1, "Reactor Coolant System Leakage." The system functions to detect liquid level in the containment sump using two redundant transmitters which provide information to the control room. The level signal from train 'B' also inputs to the Critical Function Monitoring System (CFMS), which converts changes in level signal to flowrate. Surveillance Requirement (SR) 4.4.5.1.b requires performing a channel calibration at least once every 18 months. The proposed change would revise the surveillance interval from at least once per 18 months to at least once per refueling interval.

Basis for Proposed No Significant Hazards Consideration Determination: As required by 10 CFR 50.91(a), the licensee has provided the following no significant hazards consideration determination:

Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No. This [T]echnical [S]pecification addresses equipment used for measuring level in the Containment sump. Leak detection is accomplished by monitoring the changes in level indication as opposed to using the absolute value that is indicated. The containment sump inlet flow surveillance calibrates the monitoring instrumentation. The proposed change increases the interval for surveillance testing currently performed at 18 month intervals. There has been only one out of calibration condition determined through the 18 month surveillance test. Since these instruments are used by monitoring the changes, the instrument may be capable of performing its leak detection function even

though the instrument is out of calibration on an absolute basis. Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change affects only the frequency of the containment sump inlet flow surveillance. The proposed change does not alter the configuration of the facility or its operation. Therefore the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Will operation of the facility in accordance with the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change affects only the frequency of the surveillance. The 18 month surveillances have detected no out of calibration conditions since 1985. All other problems have been identified by Operations channel comparisons (performed each shift). Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed this analysis and, based on that review, it appears that the three criteria are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Attorney for licensees: Charles R. Kocher, Assistant General Counsel and James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

NRC Project Director: George W. Knighton

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: December 28, 1988 (Reference PCN-271)

Description of amendment request: The proposed change would revise Technical Specification 3/4.3.4, "Turbine Overspeed Protection." This specification is provided to ensure that the turbine speed control valves are operable and will protect the turbine form excessive overspeed. The main generator overspeed tripping circuits are designed to trip the turbine if the factory recommended maximum speed is approached. This circuit consists of dual train protection with two independent tripping mechanisms and electrical circuits which initiate a trip on the turbine if the turbine speed reaches the trip setpoint. Turbine overspeed protection is considered necessary to prevent postulated turbine missiles from being generated and potentially damaging safety related structures.

Surveillance Requirement 4.3.4.c specifies that the turbine overspeed protection system shall be demonstrated operable at least once per 18 months by performance of a channel calibration on the turbine overspeed protection systems. The proposed change would revise the surveillance interval from at least once per 18 months to at least once per refueling interval.

Basis for Proposed No Significant Hazards Consideration Determination: As required by 10CFR 50.91 (a), the licensee has provided the following no significant hazards consideration determination:

Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The main turbine overspeed trip test has consistently proven system integrity and component reliability. No detrimental trends or degradation of components have been found. Recalibration of protective and control relays ha[s] been minimal. Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change only revises the period the 18 month channel calibration is performed. The facility will not be operated any different[ly] than it is currently. Therefore, the proposed change will not create the possibility of a new or different kind of accident form any accident previously evaluated.

Will operation of the facility in accordance with the proposed change involve a significant reduction in a margin of safety?

Response: No.

Based on the results of the turbine overspeed protection surveillance, currently performed every 18 months,.... extending it to a refueling interval, nominally 24 months, will [not] involve a significant reduction in a margin of safety.

The NRC staff has reviewed this analysis and, based on that review, it appears that the three criteria are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Attorney for licensees: Charles R. Kocher, Assistant General Counsel and James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

NRC Project Director: George W. Knighton

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment requests: January 27, 1981 (TS 88-31)

Description of amendment requests: The Tennessee Valley Authority (TVA) proposes to modify the Sequoyah Nuclear Plant (SQN) Units 1 and 2 Technical Specifications (TS). The changes affect the limiting condition for operation (LCO) 3.4.8, Specific Activity, for radioiodine in the reactor coolant system. The proposed changes would (1) delete the Action a for Modes 1, 2 and 3, eliminating the reporting requirement for the number of hours above the allowable dose equivalent Iodine 131 (I-131) limit; (2) delete the part of the Action a for Modes 1, 2, 3, 4 and 5 that involves the special report requirement for I-131 and proposed an additional requirement in TS Section 6.9, Annual Reports, to include an annual report to NRC regarding instances when the I-131 specific activity limit was exceeded; and (3) within the Bases sections for TS 3/4.4.8, delete the discussion of the Specific Activity shutdown requirement for operation in excess of 800 hours above the dose limit in a 12-month period.

Basis for proposed no significant hazards consideration determination: TVA provided the following information on the proposed TS changes in its submittal:

TVA is requesting this change to reduce unnecessary reporting requirements and eliminate an unnecessary shutdown requirement. The proposed changes are made in response to NRC Generic Letter (GL) 85-19.

The primary coolant-specific activity is sampled for radioiodine in accordance with SQN technical specification table 4.4-4. Technical specification 3.4.8 contains specific actions to be taken in response to high specific [I-131] activities. These requirements ensure plant operation within the assumptions of previous accident analyses. In addition, waste sampling for radioiodine is performed in accordance with technical specification tables 4.11-1 and 4.11-2. Radioiodine effluent monitoring instrumentation requirements are specified in technical specification tables 3.3-12 and 3.3-13 for liquid and gaseous effluent release paths. These sampling and monitoring programs ensure that radioactive effluent

releases are maintained within regulatory limits.

NRC issued GL 85-19 to recommend that licensees delete unnecessary reporting and plant shutdown requirements. The recommendation was based on the NRC review of nuclear fuel quality and performance and an assessment of the usefulness of the standard technical specification reporting and plant shutdown requirements. TVA's fuel performance at SQN is consistent with the industry experience. Therefore, the recommendations of GL 85-19 are applicable to SQN.

The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

TVA has evaluated the proposed technical specification change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of SQN in accordance with the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change to the unnecessary reporting requirements regarding radioiodine 131 levels in the primary coolant system is strictly administrative and involves no change to plant hardware or its configuration. The shutdown requirement deleted by this change has been evaluated by the NRC in GL 85-19 as being unnecessary and serving in no way to increase plant safety. TVA fuel performance at SQN is consistent with industry experience. The remaining requirements of technical specification 3.4.8 ensure that the probability or consequences of accidents previously evaluated remain unchanged. Therefore, deletion of the unnecessary administrative requirements changes neither the probability of occurrence nor the consequences of a previously evaluated accident.

(2) Create the possibility of a new or different kind of accident from any previously analyzed. The administrative change to delete certain unnecessary reporting and plant shutdown requirements does not affect plant hardware or its configuration. Therefore, deletion of the unnecessary administrative requirements creates no new or different type of accident. The remaining requirements of technical specification 3.4.8 ensure plant operation within the bounds of previous accident analyses. The requirements of technical specifications 3.3.3.9, 3.3.3.10, 3.11.1.1, and 3.11.2.1 ensure that radioactive effluent releases are maintained within regulatory limits.

(3) Involve a significant reduction in a margin of safety. The margin of safety is not reduced by the administrative change to delete certain unnecessary reporting and shutdown requirements. The remaining requirements of technical specification 3.4.8 and the requirements of technical specifications 3.3.3.9, 3.3.3.10, 3.11.1.1, and 3.11.2.1 ensure that the margin of safety is preserved.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment requests: October 11, 1988

Description of amendment requests: The proposed amendments would modify Surry Units 1 and 2 Technical Specifications (TS) Sections 3.6, "Turbine Cycle," 3.9, "Station Service System," and 3.13, "Emergency Power Systems." The proposed modifications address the operability and redundancy requirements of the cross-connect feature of the Auxiliary Feedwater (AFW) System. The proposal is the result of the identification of an apparent discrepancy between the analyses presented in the Updated Final Safety Analysis Report (UFSAR) and the requirements of the TS. This discrepancy was found to result in the potential for inadequate AFW flow via the Unit-to-Unit Cross-Connect for certain high energy line break events.

Surry Units 1 and 2 AFW systems can be cross-connected. Thus, in the event of a failure of all of one Unit's AFW pumps, core cooling can be provided by the other Unit's AFW pumps via the cross-connect. The current TS require that in order to operate a Unit, only one of the other Unit's AFW pumps need be operable. The proposed change would increase the number of required available pumps to two. This would provide an additional margin of safety for common mode failure events. Allowance is made for the outage time necessary to conduct maintenance on the AFW pumps.

Basis for proposed no significant hazards consideration determination: The Commission has provided criteria for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three criteria in the amendment application and made a proposed no significant hazards consideration determination. In regard to the first criterion, the licensee provided the following analysis:

The effect of the changes will be to increase the reliability of the auxiliary feedwater cross-connect feature, which is relied on for mitigation of certain high energy line breaks outside containment and fires [sic]. The current UFSAR accident analysis results and conclusions are not affected by the proposed changes.

With respect to the second criterion, the licensee stated:

The redundancy requirements for the auxiliary feedwater system have no impact on the range of initiating events previously assessed.

In regard to the third criterion, the licensee provided the following statement:

Since the results of the existing UFSAR accident analyses remain bounding, the safety margins are not impacted.

The staff has reviewed the analysis provided by the licensee in support of a proposed no significant hazards consideration determination. The staff agrees with the licensee's analysis and believes that the licensee has met the criteria for such a determination. In addition, the Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples (51 FR 7751). One of the examples of actions involving no significant hazards considerations is example (ii), a change that constitutes an additional restriction not presently included in the TS; e.g., a more stringent surveillance requirement. The proposed changes fall within the scope of this example. Therefore, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Swem Library, College of

William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Project Director: Herbert N. Berkow

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: December 16, 1988 as supplemented January 24, 1989

Brief description of amendment request: The proposed amendment would modify the Technical Specifications (TSs) to provide one-time exceptions to the provisions of TS 3.0.4 for three TSs for use during the second refueling outage scheduled to begin March 15, 1989. These exceptions are applicable in operations conditions 4 or 5 to allow entry into a specified operational conditions without meeting the Limiting Condition for Operation (LCO), provided that the requirements of the associated action statements are met.

Date of publication of individual notice in **Federal Register:** January 31, 1989 (54 FR 4927) and corrected February 16, 1989 (54 FR 7115)

Expiration date of individual notice: March 2, 1989

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Houston Lighting & Power Company, Docket No. 50-498, South Texas Project, Unit 1, Matagorda County, Texas

Date of amendment request: January 17, 1989

Brief description of amendment request: The proposed amendment would revise the Unit 1 Technical Specifications to incorporate the Unit 1/ Unit 2 Combined Technical Specifications which are to be issued with the Unit 2 full power license. At the time Unit 2 receives an operating license, Houston Lighting & Power Company will receive Technical Specifications that are applicable for both units, i.e., Combined Technical Specifications. To implement the Combined Technical Specifications on Unit 1, the Unit 1 license requires an administrative change.

Date of publication of individual notice in **Federal Register:** February 2, 1989 (54 FR 5292).

Expiration date of individual notice: March 6, 1989

Local Public Document Room Locations: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488 and Austin Public Library, 810 Guadalupe Street, Austin, Texas 78701

Houston Lighting & Power Company, Docket No. 50-498, South Texas Project, Unit 1, Matagorda County, Texas

Date of amendment request: January 25, 1989

Brief description of amendment request: The proposed amendment would change the technical specifications by modifying the Fuel Handling Building Exhaust Air Subsystem electric heaters to operate at 38 kW instead of the current 50 kW; modifying the Source Range Neutron Monitor calibration requirements to ensure that a new model of preamplifier can be installed for use in the Source Range Neutron Monitoring instrumentation circuit; and clarifying action statements for the Chemical Detection System and the Control Room Ventilation System.

Date of publication of individual notice in **Federal Register:** February 15, 1989 (54 FR 6789)

Expiration date of individual notice: March 16, 1989

Local Public Document Room Locations: Wharton County Junior College Library, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488 and Austin Public Library, 810 Guadalupe Street, Austin, Texas 78701

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of amendment request: June 12, 1987 as amended February 7, 1989

Brief description of amendment request: This amendment will modify the Technical Specifications to reflect the instrumentation required by ATWS (10 CFR 50.62) Rule.

Date of publication of individual notice in **Federal Register:** February 17, 1989 (54 FR 7313)

Expiration date of individual notice: March 20, 1989

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has

made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County,. Illinois

Date of application for amendments: November 15, 1988

Brief description of amendments: Delete tabular listing of safety-related snubbers from Technical Specifications in accordance with Generic Letter 84-13.

Date of issuance: February 22, 1989

Effective date: February 22, 1989

Amendment Nos.: 115 and 111

Facility Operating License Nos. DPR-29 and DPR-30. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 30, 1988 (53 FR 53091). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 22, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan

Date of application for amendment: December 22, 1986, as supplemented on October 26, 1988.

Brief description of amendment: This amendment revises the station battery surveillance test time from the present 8-hour requirement to two hours.

Date of issuance: February 15, 1989

Effective date: February 15, 1989

Amendment No.: 94

Facility Operating License No. DPR-6. The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** March 25, 1987 (52 FR 9566). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 15, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Duke Power Company, et al., Docket No. 50-414, Catawba Nuclear Station, Unit 2, York County, South Carolina

Date of application for amendment: May 24, 1988

Brief description of amendment: The amendment revised license condition 2.C.(11) to delete item 6 of Attachment 1.

Date of issuance: February 15, 1989

Effective date: February 15, 1989

Amendment No.: 53

Facility Operating License No. NPF-52. Amendment revised the Operating License.

Date of initial notice in **Federal Register:** October 19, 1988 (53 FR 40984). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 15, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: November 1, 1988

Brief description of amendment: The amendment revises license condition 2.c(5) and eliminates most fire protection specifications from the Technical Specifications. Approval of this amendment is in accordance with our Generic Letter 86-10 and 88-12.

Date of issuance: February 17, 1989

Effective date: February 17, 1989

Amendment No.: 136

Facility Operating License No. DPR-66. Amendment revised the License and the Technical Specifications.

Date of initial notice in **Federal Register:** December 14, 1988 (53 FR 50326). An earlier notice was published on July 15, 1987 (52 FR 26585) as a result of the licensee's submittal dated April 7, 1987. The November 1, 1988 submittal replaces the April 7, 1987 submittal.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 17, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Duquesne Light Company, Docket No. 50-412, Beaver Valley Power Station, Unit No. 2, Shippingport, Pennsylvania

Date of application for amendment: June 27, 1988

Brief description of amendment: The amendment revises one of the reporting requirements in Table 3.3-6, "Radiation Monitoring Instrumentation", of the Technical Specifications. The amendment also effects a number of editorial changes.

Date of issuance: February 14, 1989

Effective date: February 14, 1989

Amendment No. 13

Facility Operating License No. NPF-73. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 7, 1988 (53 FR 34603). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 14, 1989

No significant hazards consideration comments received: No

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: November 16, 1987, as revised August 25, 1988 and supplemented October 31, 1988

Brief description of amendment: The amendment revised the maximum allowable temperature of the ultimate heat sink.

Date of issuance: February 14, 1989

Effective date: February 14, 1989

Amendment No.: 109

Facility Operating License No. DPR-72. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 30, 1988 (53 FR 48338). The letter dated October 31, 1988 provided additional information which did not alter the staff's proposed determination that the amendment involved no significant hazards considerations.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 14, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Crystal River Public Library,

668 N.W. First Avenue, Crystal River, Florida 32629

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: April 15, 1987

Brief description of amendment: The amendment revised the Technical Specifications surveillance requirements to allow testing of the high and low pressure systems in Modes 3, 4, 5, or 6, rather than in Mode 6 only.

Date of issuance: February 16, 1989

Effective date: February 16, 1989

Amendment No.: 110

Facility Operating License No. DPR-72. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 20, 1988 (53 FR 13015). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 16, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629

General Public Utilities Nuclear Corporation, Docket No. 50-320, Three Mile Island Nuclear Station, Unit No. 2, (TMI-2), Dauphin County, Pennsylvania

Date of application for amendment: March 11, 1988

Brief description of amendment: The amendment modifies Appendix A Technical Specification Section 6 changing the requirement that all retraining and replacement training for TMI-2 personnel be under the direction of the Plant Training Manager and substitutes the requirement that this training be under his cognizance. Actual direction of the specific training program would be the responsibility of the TMI-2 organization requiring the training. The exception to this change, which is consistent with the existing Technical Specifications, is the Radiological Controls Training which may remain under the direction of the Vice President Radiological and Environmental Controls.

Date of Issuance: February 14, 1989

Effective date: February 14, 1989

Amendment No.: 32

Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 7, 1988 (53 FR 34605). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated February 14, 1989

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.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-321, Edwin I. Hatch Nuclear Plant, Unit 1, Appling County, Georgia

Date of application for amendment: September 6, 1988

Brief description of amendment: The amendment modified the definitions of hot shutdown and cold shutdown and modified relevant Technical Specification sections to specify which equipment must be, or need not be, operable during performance of hydrostatic and leakage pressure testing.

Date of issuance: February 24, 1989

Effective date: February 24, 1989

Amendment No.: 160

Facility Operating License No. DPR-57. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 2, 1988 (53 FR 44251). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 24, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Illinois Power Company, Docket No. 50-461, Clinton Power Station, Unit 1, DeWitt County Illinois

Date of application for amendment: October 30, 1987, as supplemented December 21, 1988.

Description of amendment request: The proposed changes will achieve consistency with previously approved changes and to clarify existing requirements.

Date of issuance: February 22, 1989

Effective date: February 22, 1989

Amendment No.: 19

Facility Operating License No. NPF-62. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 27, 1988 (53 FR 2317 and 53 FR 2318). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 22, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Indiana Michigan Power Company, Dockets Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Units Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: March 26, 1987, as supplemented August 25, 1987, June 7, 1988 and August 31, 1988.

Brief description of amendments: The amendments revise the Technical Specifications (TS) on boron concentrations; change the moderator temperature coefficient to a ramp function rather than a step function; remove 3-loop operation in Modes 1 and 2; add additional restrictions because of safety analyses; add footnotes such that addition of water from the RWST does not constitute a boron dilution; clarify trip channel positions for different pressure between steam lines in 3-loop operation; require two PORV's be available in Modes 1, 2, and 3; add 4.0.4 and 3.0.4 section exemptions; change values related to boron dilution events, half-loop operation, RCS flow measurement, auxiliary feedwater flow measurements, and flow measurement error; change descriptions of P-12 interlock; simplify power distribution and APDMS requirements; make changes to achieve similarity between units; and make miscellaneous editorial changes

Date of issuance: February 10, 1989

Effective date: February 10, 1989

Amendments Nos.: 120 and 107

Facility Operating Licenses Nos. DPR-58 and DPR-74. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 3, 1987 (52 FR 20801) and May 6, 1988 (53 FR 16949). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 10, 1989

No significant hazards consideration comments received: No. Clarifications to the proposed TS changes were submitted in letters dated August 25, 1987 and January 13, June 7 and August 31, 1988. A portion of the amendment request was withdrawn by letter dated June 7, 1988. These changes did not substantially alter the action initially noticed or affect the Commission's initial determination of no significant hazards consideration.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Indiana Michigan Power Company, Docket No. 50-315, Donald C. Cook Nuclear Plant, Unit No. 1, Berrien County, Michigan

Date of application for amendment: August 9, 1988, as revised January 10, 1989.

Brief description of amendment: The amendment grants one-time surveillance interval extensions for surveillances associated with ice basket weighing and resistance temperature detector calibrations.

Date of issuance: February 23, 1989

Effective date: February 23, 1989

Amendment No.: 121

Facility Operating License No. DPR-58. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 17, 1989 (54 FR 1806). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 23, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: August 19, 1988, as supplemented October 10, 1988.

Brief description of amendment: The amendment changes the downtravel power cutoff setpoint for the refueling platform hoist in TS 3/4.9.6, "Refueling Equipment."

Date of issuance: February 15, 1989

Effective date: February 15, 1989

Amendment No. 55

Facility Operating License No. NPF-29. This amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** November 2, 1988 (53 FR 44252). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 15, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: February 16, 1987, as revised August 17, 1988

Brief description of amendment: This amendment revises the plant Technical Specifications (TSs) to: (1) clarify the location for monitoring airborne radioiodine and particulates consistent with and as set forth in the approved Offsite Dose Calculation Manual; (2) delete page 251a, incorrectly retained, and which should have been deleted by License Amendment No. 46 (July 1, 1986); (3) delete Section 6.8 which was superseded by the publication of 10 CFR 50.49, "Environmental qualification of electric equipment important to safety for nuclear power plants"; (4) standardize reports and correspondence to reflect addressee changes in conformance with 10 CFR 50.4; and (5) indicate the current ANSI standard referenced in the updated Qualify Assurance Plan for Monticello operation by replacing "Paragraph 4.4 of ANSI N18.7-1972" with "ANSI N18.7-1976 as modified by the Operational Quality Assurance Plan" on page 239 of the TSs.

Date of issuance: February 16, 1989

Effective date: February 16, 1989

Amendment No.: 59

Facility Operating License No. DPR-22. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 5, 1988 (53 FR 39173). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 16, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: December 16, 1988.

Brief description of amendment: This amendment modified the Technical Specifications to (1) increase the minimum allowable Safety Injection and Refueling Water Tank (SIWRT) temperature from 40° F to 50° F, (2) change the title of the Senior Vice President - Nuclear Operations, Production Operations, Production Engineering, and Quality and Environmental Affairs to Senior Vice President - Nuclear Operations, Production Engineering, and Quality and Environmental Affairs, (3) administratively correct the listed NRC address to which the Monthly Operating Reports are sent, and (4) correct two references to the Updated Safety Analysis Report in T 3.5(8)b.(i) and 2.1.3. Additionally, the amendment revised Facility Operating License DPR-40 to delete a license condition, related to a modification to the Spent Fuel Pool storage capacity, which has been satisfied.

Date of issuance: February 14, 1989

Effective date: Full implementation within 30 days from the date of issuance.

Amendment No.: 119

Facility Operating License No. DPR-40. Amendment revised the Technical Specifications and license.

Date of initial notice in **Federal Register:** January 11, 1989 (54 FR 1022). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 14, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Philadelphia Electric Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: March 21, 1988 as supplemented on September 23, 1988. The supplemental letter did not make substantive changes to the original application.

Brief description of amendments: The amendments (a) revised the Technical Specifications (TS) Bases to reflect the Codes now applicable to the recirculation system piping for Units 2 and 3, (b) revised the TS to reflect removal of the head spray piping for Unit 3, and (c) revised the TS to reflect removal of the recirculation system cross-tie piping and equalizer valves for Units 2 and 3.

Date of issuance: February 10, 1989

Effective date: February 10, 1989

Amendments Nos.: 138 and 140

Facility Operating License Nos. DPR-44 and DPR-56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 15, 1988 (53 FR 22404). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 10, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Philadelphia Electric Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: August 26, 1988

Brief description of amendments: These amendments authorized the removal of that portion of the carbon dioxide fire suppression system (CARDOX) which is installed in the control room due to the potential for unexpected releases of carbon dioxide in the control room.

Date of issuance: February 13, 1989

Effective date: February 13, 1989

Amendments Nos.: 139 and 141

Facility Operating License Nos. DPR-44 and DPR-56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 30, 1988 (53 FR 53095). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 13, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

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: September 13, 1988

Brief description of amendment: The amendment reflects deletion of pressure switches used to bypass the main steam line isolation valve (MSIV) reactor scram signal and to bypass the MSIV isolation signal on low main condenser vacuum when reactor pressure was below the setpoint, with the mode switch in the refuel or startup positions. The effect of the changes is to make the bypass dependent on the position of the mode switch alone, and independent of reactor pressure.

Date of issuance: February 7, 1989.

Effective date: February 7, 1989.

Amendment No.: 122

Facility Operating License No. DPR-59: Amendment revised the Technical Specification.

Date of initial notice in **Federal Register:** November 16, 1988 (53 FR 46152). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated Februray 7, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

NRC Project Director: Robert A. Capra.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: February 5, 1988 (TAC 67145)

Brief description of amendment: Reflects management reorganization of the New York Power Authority headquarters staff which merged the engineering staff and construction management functions into the existing operations departments.

Date of issuance: February 13, 1989

Effective date: February 13, 1989

Amendment No.: 123

Facility Operating License No. DPR-59: Amendment revised the Technical Specification.

Date of initial notice in **Federal Register:** April 20, 1988 (53 FR 13017). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 13, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: December 1, 1986, November 19, 1987, and March 7, 1988

Brief description of amendment: This amendment modifies paragraph 2.D of the license to require compliance with the amended Physical Security Plan. This Plan was amended to conform to the requirements of 10 CFR 73.55. Consistent with the provisions of 10 CFR 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 180 days from the effective date of this amendment.

Date of issuance: February 14, 1989

Effective date: February 14, 1989

Amendment No.: 124

Facility Operating License No. DPR-59: This amendment revised the license.

Date of initial notice in **Federal Register:** December 30, 1988 (53 FR 53097). The Commission's related evaluation of the amendment is contained in a letter to the Power Authority of the State of New York dated February 14, 1989 and a Safeguards Evaluation Report dated February 14, 1989

No significant hazards consideration comments received: No

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: November 9, 1988

Brief description of amendment: The amendment completes the Commission action initiated in our letter of November 18, 1988, "Temporary Waiver of Compliance With Technical Specification Surveillance Tests 4.7.A.2.a(10) and 4.7.A.2.f." and supersedes the Temporary Waiver. This amendment also completes the Commission Action Concerning our letter dated November 29, 1988 which transmitted the "Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration and Opportunity For Hearing." This Notice was published in the **Federal Register** on December 7, 1988 (53 FR 49366). The amendment eliminates two tests required by the Technical Specifications during the 1988 refueling outage. These tests are a Type A primary containment integrated leak rate test and a Type A, Type B, or Type C leak rate test following replacement of the turbine exhaust line manual block valve in the high pressure coolant injection system. An exemption from the requirements of Appendix J to 10 CFR Part 50 to perform the tests was granted by our letter of November 16, 1988 and published in the **Federal Register** on November 25, 1988 (53 FR 47784).

Date of issuance: February 17, 1989

Effective date: February 17, 1989

Amendment No.: 125

Facility Operating License No. DPR-59: Amendment revised the Technical Specification. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 17, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Tennessee Valley Authority, Docket No. 50-260, Browns Ferry Nuclear Plant, Unit 2, Limestone County, Alabama

Date of application for amendment: July 29, 1988 (TS 248)

Brief description of amendment: This Technical Specification change updates and corrects all references to the present ADS timers in Table 3.2.B, "Instrumentation that Initiates or Controls the Core and Containment Cooling Systems." These modifications involve changes to the setpoints for the existing automatic depressurization system and add surveillance and setpoint requirements for the high drywell pressure bypass timer.

TVA's September 12, 1988 response to NRC's August 10, 1988 request for additional information provided the complete design package change for the ADS actuator modification, which did not change the substance of the Notice of Consideration of issuance of an amendment which the staff issued in the Federal Register on August 24, 1988 on TVA's application for TS 248.

Date of issuance: January 30, 1989

Effective date: January 30, 1989, and shall be implemented within 60 days

Amendment No.: 162

Facility Operating License No. DPR-52: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 24, 1988 (53 FR 32297). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 30, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of applications for amendment: December 1, 1986 and January 12 and January 29, 1988

Brief description of amendment: The amendment modified paragraph 2.D of the license to require compliance with the amended Physical Security Plan. This plan was amended to conform to the requirements of 10 CFR 73.55. Consistent with the provisions of 10 CFR 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 180 days from the effective date of this amendment. The amendment also permits modifications to vital area designations and the vital area access authorization system at the site.

Date of issuance: February 14, 1989.

Effective date: February 14, 1989.

Amendment No. 129

Facility Operating License No. NPF-3. Amendment revised the license.

Date of initial notice in Federal Register: December 30, 1988 (53 FR 53103). The Commission's related evaluation of the amendment is contained in a Safeguards Evaluation Report dated February 14, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: December 16, 1988

Brief description of amendment: The amendment revised Technical Specification 5.3.2, "Control Rod Assemblies," to allow the use of hafnium and/or silver-indium-cadmium as the absorber material in the rod cluster control assemblies.

Date of issuance: February 14, 1989

Effective date: February 14, 1989

Amendment No.: 41

Facility Operating License No. NPF-30. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: January 11, 1989 (54 FR 1026). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 14, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

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: January 13, 1989

Brief description of amendments: The amendments revised the NA-1&2 TS 3/4.9.10, Refueling Operations Water Level-Reactor Vessel, to allow control rod movement with the requirement of 23 feet of water above the irradiated fuel assemblies within the reactor pressure vessel. The amendments removed the ambiguity associated with control rod latching and unlatching operations where control rods are raised (with the upper internals package installed) for weight or drag testing.

Date of issuance: February 15, 1989

Effective date: February 15, 1989

Amendment Nos.: 115 and 98

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes (54 FR 4355, dated January 30, 1989). That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by March 1, 1989, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendments. The Commission's related evaluation is contained in a Safety Evaluation dated February 15, 1989.

Local Public Document Room location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: November 19, 1987

Brief description of amendment: This amendment revises the statement of the number of channels per trip system for main steam line flow, main steam line tunnel temperature, and temperature gradient in Technical Specification Table 3.3.2-1, "Isolation Actuation Instrumentation."

Date of issuance: February 22, 1989

Effective date: February 22, 1989

Amendment No.: 65

Facility Operating License No. NPF-21: Amendment changed the Technical Specifications.

Date of initial notice in Federal Register: May 10, 1988 (53 FR 16604). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 22, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: May 24, 1988 and supplemented on November 7, 1988.

Brief description of amendments: The amendments revised the testing frequency specified in Technical Specification Table 15.4.1-1 for a number of instrumentation channels.

Date of issuance: February 8, 1989

Effective date: February 8, 1989

Amendment Nos.: 116 and 119

Facility Operating License Nos. DPR-24 and DPR-27. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 27, 1988 (53 FR 28296) and December 14, 1988 (53 FR 50336). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 8, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: October 19, 1988

Brief description of amendment: The amendment removed the operating corporation and onsite organization charts (Figure 6.2-1 and 6.2-2) from Section 6 of the Technical Specifications and incorporated essential organization requirements such as lines of authority, responsibility, and communication. The amendment also made additional editorial changes to delete references to the removed organization charts. The changes are in accordance with NRC Generic Letter 88-06, "Removal of Organization Charts from Technical Specification Administrative Control Requirements," dated March 22, 1988.

Date of Issuance: February 14, 1989

Effective date: February 14, 1989

Amendment No.: 24

Facility Operating License No. NPF-42. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 30, 1988 (53 FR 46341). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 14, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: November 21, 1988

Brief description of amendment: The amendment revised Wolf Creek Generating Station, Unit No. 1, Technical Specification Section 6.5.1.2, Plant Safety Review Committee Composition, to add the Manager Nuclear Plant Engineering Wolf Creek as an additional committee member.

Date of Issuance: February 21, 1989

Effective date: February 21, 1989

Amendment No.: 25

Facility Operating License No. NPF-42. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 30, 1988 (50 FR 53105). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 21, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant

to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By April 7, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: February 9, 1989 and a supplement thereto dated February 10, 1989

Brief description of amendment: This amendment revised the effective date of the portion previously issued Amendment No. 115 related to the Intermediate Range Monitor/Source Range Monitor Power supply from February 11, 1989 to "before loading fuel during the 1989 refueling outage" currently scheduled to begin in April 1989.

Date of issuance: February 21, 1989

Effective date: February 10, 1989

Amendment No.: 128

Facility Operating License No. DPR-46. Amendment revised the license.

Public comments requested as to proposed no significant hazards consideration: No

The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated February 21, 1989.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Dated at Rockville, Maryland, this 2nd day of March, 1989.

For the Nuclear Regulatory Commission

Elinor G. Adensam,

Acting Director, Division of Reactor Projects-I/II Office of Nuclear Reactor Regulation

[Doc. 89-5197 Filed 3-7-89; 8:45 am]

BILLING CODE 7590-01-D

[Docket No. 50-320-OLA]

General Public Utilities Nuclear Corp. et al. (Three Mile Island Nuclear Station, Unit 2) (Disposal of Accident-Generated Water); Reconstitution of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has reconstituted the Atomic Safety and Licensing Appeal Board for this operating license amendment proceeding. As reconstituted, this Appeal Board will consist of the following members:

Thomas S. Moore, Chairman, Christine N. Kohl, Howard A. Wilber.

Barbara A. Tompkins,

Secretary to the Appeal Board.

Dated: March 2, 1989.

[FR Doc. 89-5364 Filed 3-7-89 8:45 am]

BILLING CODE 7590-01-M

Gulf States Utilities Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 34 to Facility Operating License No. NPF-47, issued to Gulf States Utilities Company, (the licensee), which revised the license for operation of the River Bend Station, Unit 1 located in West Feliciana Parish, Louisiana.

The amendment was effective as of the date of its issuance.

The amendment deleted the License Condition 2.C.(4), Attachment 2, Item 1 requirement to install an additional brace on the control rod hydraulic units as used in the qualification testing.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

The Notice of Consideration of Issuance of Amendment was published in the **Federal Register** on December 2, 1988 (53 FR 48743).

No request for a hearing or petition for leave to intervene was filed following the notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action, see: (1) The application for amendment dated November 9, 1988; (2) Amendment No. 34 to Facility Operating License No. NPR-47; and (3) the Commission's related Safety Evaluation and Environmental Assessment. All these items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803. A copy of items (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 22nd day of February 1989.

For the Nuclear Regulatory Commission.

Walter A. Paulson,

Project Manager, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-5358 Filed 3-7-89; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Docket No. A89-5; Order No. 819]

Post Office Closings; Petitions for Appeal; Crawford, WV; Order Accepting Appeal and Establishing Procedural Schedule

Issued March 1, 1989.

Before Commissioners: Janet D. Steiger, Chairman; Patti Birge Tyson, Vice-Chairman; John W. Crutcher; Henry R. Folsom; W. H. "Trey" LeBanc III.

Docket Number: A89-5.

Name of Affected Post Office: Crawford, West Virginia 26343.

Name(s) of Petitioner(s): Mrs. Elsie I. Snyder.

Type of Determination: Closing.

Date of Filing of Appeal Papers: February 27, 1989.

Categories of Issues Apparently Raised:

1. Effect on postal services (39 U.S.C. 404(b)(2)(C)).
2. Effect on the community (39 U.S.C. 404(b)(2)(A)).

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule (39 U.S.C. 404(b)(5)), the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the peititoner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before March 14, 1989.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

Feb. 27, 1989	Filing of Petition.
Mar. 1, 1989	Notice and Order of Filing of Appeal.
Mar. 24, 1989	Last day of filing of petitions to intervene (*see* 39 CFR 3001.111(b)).
Apr. 3, 1989	Petitioners' Participant Statement or Initial Brief (*see* 39 CFR 3001.115(a) and (b)).
Apr. 24, 1989	Postal Service Answering Brief (*see* 39 CFR 3001.115(c)).
May 10, 1989	Petitioners' Reply Brief should Petitioners choose to file one (*see* 39 CFR 3001.115(d)).
May 17, 1989	Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
June 28, 1989	Expiration of 120-day decisional schedule (*see* 39 U.S.C. 404(b)(5)).

[FR Doc. 89-5284 Filed 3-7-89; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26588; File No. SR-NASD 89-7]

Self-Regulatory Organizations; National Association of Securities Dealers; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Revising the Fee for NASDAQ Level 2/3 Service

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 17, 1989, the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The following is the full text of a proposed amendment to Part IX of Schedule D of the Schedules to the By-Laws of the National Association of Securities Dealers, Inc. ("NASD"), revising the fee for NASDAQ Level 2/3 service. (New language is italicized; deleted language is bracketed.)

Schedule D

Part IX—Schedule of charges

A. System Services

* * * * *

2. NASDAQ Level 2/3 Service.

The charge to be paid by the subscriber for each terminal receiving NASDAQ Level 2 or NASDAQ Level 3 Service shall be $150 per month *plus $140 per month communication charge,* [and $0.02 per quotation request] plus equipment related charges as detailed in Parts B, C, and D below. Equipment and related charges include an installation charge, a terminal charge and conversion, removal and relocation charges.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the pricing modification proposed in this filing is to convert the current variable rate of $0.02 per query to a fixed monthly communication charge of $140 per month. Recent cost experience for the Level 2/3 service shows that the average regional telephone line communication costs per terminal, including allocated dial back-up charges, are approximately $140 per month. In the past, the $0.02 cost per query for Level 2/3 service on the Harris and Harris emulation terminals was sufficient to recoup the communication costs of the service, due to the number of terminals in use as well as the number of queries transmitted to the processor. Today, however, because significant numbers of the Harris terminal peopulation are converting to Workstation™ service, and the number of queries has decreased generally because of market conditions, NASDAQ is unable to recoup the full communication costs of Level 2/3 service utilizing the current query fee method. In order to maintain the quality of service available to the remaining Harris terminal population, the NASD believes that it is equitable and appropriate to establish a fixed monthly communication charge, which seeks to recover the costs of the regional telephone lines and allowable dial back-up facilities associated with delivery of the Level 2/32 service to Harris and Harris emulation terminals.

The statutory basis for the proposed rule change is found in section 15A(b)(5) of the Securities Exchange Act of 1934 ("Act"). Section 15A(b)(5) requires that the rules of the NASD "provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the association operates or controls." The communication fee proposed in this filing has been formulated on the basis of the cost of operating that service in light of the decreasing use of the query function and the diminishing Harris terminal population. The NASD believes that assessing the users of Level 2/3 service for the costs of communication lines is an equitable allocation of reasonable fees as prescribed in section 15A(b)(5); further, we believe that converting to a flat rate based on communication line costs is a non-discriminatory method of allocating Level 2/3 service costs among the remaining Harris terminal users, rather than readjusting the individual query rate upward to support the system as the Harris population continues to decline.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not foresee any burden on competition by the proposed rule change not necessary or appropriate in furtherance of purposes of the Act because the proposed fee seeks to recover costs of regional telephone lines, and will be applicable to all NASDAQ Level 2/3 subscribers. In addition, there are other services equivalent to Level 2 service currently available from vendors.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectivenes of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549, Copies of such filing will also be

available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number SR-NASD-89-7, and should be submitted by March 29, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: March 2, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-5427 Filed 3-7-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24830]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

March 2, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 27, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the manner. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Alabama Power Company (70-7211)

Alabama Power Company ("Alabama"), 600 North 18th Street, Birmingham, Alabama 35291, an electric utility subsidiary of The Southern Company, a registered holding company, has filed a post-effective amendment to its application filed with this Commission pursuant to section 6(b) of the Act and Rule 50(a)(5) thereunder.

By supplemental order dated March 17, 1987 (HCAR No. 24347), Alabama was authorized, in relevant part, to issue and sell short-term notes ("Notes") to banks and commercial paper ("Commercial Paper") to dealers in an aggregate principal amount at any one time outstanding of up to $300 million, from time-to-time prior to April 1, 1989, pursuant to an exception from the competitive bidding requirements of Rule 50 under subsection (a)(5) thereunder. Alabama now proposes to extend its authorization to issue and sell its Notes and Commercial Paper through April 1, 1991, pursuant to an exception from competitive bidding, and to increase the aggregate principal amount of Notes and Paper at any one time outstanding to $350 million.

New England Energy Incorporated, et al. (70-7613)

New England Electric System ("NEES"), a registered holding company, its fuel subsidiary, New England Energy Incorporated ("NEEI") and NEES' generation and transmission subsidiary, New England Power Company ("NEP"), (together, "Applicants"), all located at 25 Research Drive, Westborough, Massachusetts, 01582, have filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rule 45 thereunder.

NEEI proposes to issue short-term notes to refinance its existing short-term bank debt in connection with its oil and gas exploration program ("Old Program") ("New Program") (HCAR No. 23658, April 8, 1985), through a financing arrangement with a syndicate of banks led by Citibank, N.A., as Agent ("Credit Agreement"). The Credit Agreement would provide for a revolving short-term credit facility of up to $400 million aggregate principal amount outstanding at any one time, which would reduce incrementally to $50 million by December 31, 1997, and terminate on December 31, 1998. NEEI would also have the option to further reduce the available facility. In order to secure borrowings under the Credit Agreement, Applicants also propose to extend the term of the Fuel Purchase Contract between NEEI and NEP (HCAR No. 23873, October 22, 1985) and the Capital Funds Agreement, the Loan Agreement (both authorized by HCAR No. 23658, April 8, 1985) and the Capital Maintenance Agreement (HCAR No. 23873, October 22, 1985) between NEEI and NEES, so they will be in effect throughout the term of the Credit Agreement.

NEEI's interest rate options under the Credit Agreement would be based upon and selected among the then applicable LIBOR rate plus a margin of ¼% in years 1-3, ⅜% in years 4-5, ⅝% in years 6-7 and ⅞% in years 8-10; the Citibank base rate in years 1-3, the base rate plus a margin of ⅛% in years 4-5, ⅜% in years 6-7, and ⅝% in years 8-10; the Certificate of deposit rate plus a margin of ⅜% in years 1-3, ½% in years 4-5, ¾% in years 6-7, and 1% in years 8-10; and rates obtained through competitive bids.

The security for the borrowings would be an assignment by NEEI to the banks of its rights under the Fuel Purchase Contract, the Capital Funds Agreement and the Loan Agreement to secure Old Program borrowings, and an assignment to the banks of its rights under the Capital Maintenance Agreement to secure New Program borrowings. NEEI would pay a facility fee of ⅛% per year on the available facility; and a commitment fee of 1/16% per year on the unused balance.

The Applicants also request that the authorization previously granted for NEES to invest in NEEI be increased by $25 million to $75 million, to replace, on a less costly basis, investments that may be required under the Capital Maintenance Agreement.

The Southern Company, et al. (70-7614)

The Southern Company ("Southern"), a registered holding company, 64 Perimeter Center East, Atlanta, Georgia, and two of its public utility subsidiaries, Gulf Power Company ("Gulf"), 75 North Pace Boulevard, Pensacola, Florida 32505, and Mississippi Power Company ("Mississippi"), 2992 West Beach, Gulfport, Mississippi 39501, have filed an application-declaration subject to sections 6(a), 6(b), 7(e), 12(b) and 12(e) of the Act and Rules 45, 50(a)(5), 62 and 65 thereunder.

Southern proposes to use the proceeds of borrowings previously authorized by the order dated December 29, 1987 (HCAR No. 24552), together with treasury funds and the proceeds from other external sources including but not limited to the issuance of common stock authorized in the order dated September 13, 1988 (HCAR No. 74713), to make additional equity investments, through March 31, 1991, in the form of capital contributions to Gulf, Mississippi and Georgia Power Company, also a utility subsidiary of Southern, in amounts not to exceed $200 million, $10 million and $20 million, respectively.

Gulf and Mississippi propose to issue and sell from time to time, up to the aggregate principal amount of $50 million for Gulf and $120 million for Mississippi, through March 31, 1991: (1) Short-term notes to banks; (2)

commercial paper to dealers; and/or (3) Short-term non-negotiable promissory notes to public entities in connection with the financing of certain pollution control facilities through the issuance by public entities of their revenue bond anticipation notes. Borrowings from banks will be at the lending bank's prevailing rate offered to corporate borrowers of similar quality or the prime rate. Compensation for the credit facilities is currently provided by balances equal to approximately 5% of the available facility or by fees equal to ⅛ of 1% per annum of the amount of the facility.

Mississippi also proposes to submit to the holders of its outstanding preferred stock for consideration and action at a special meeting of such holders to be held on or about May 16, 1989, a proposal that Mississippi be authorized, by vote of its preferred stockholders, to issue or assume, until July 1, 1999, securities representing unsecured debt having maturities of less than ten years in excess of 10% of capital, surplus and secured debt, provided that (a) the amount of securities representing unsecured debt having maturities of less than ten years outstanding on January 1, 2000 shall not exceed said 10% limitation, and (b) Mississippi's total indebtedness represented by unsecured securities shall at no time exceed 20% of capital stock, surplus and secured debt. Mississippi also proposes to solicit proxies from the holders of its preferred stock in connection with the proposed amendment to its Charter.

Gulf and Mississippi have requested an exception from the competitive bidding requirements of Rule 50 pursuant to Rule 50(a)(5) in connection with the issue and sale of the commercial paper.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-5426 Filed 3-7-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 33-6821, File No. S7-6-89]

Securities Uniformity; Annual Conference on Uniformity of Securities Law

AGENCY: Securities and Exchange Commission.

ACTION: Publication of release announcing issues to be considered at a conference concerning uniformity of securities laws, announcing a hearing and requesting written comments.

SUMMARY: In conjunction with a conference to be held on April 26, 1989, the Commission and the North America Securities Administrators Association, Inc. today announced public hearings and published a request for comments on the proposed agenda for the conference. This inquiry is intended to carry out the policies and purposes of section 19(c) of the Securities Act of 1933, adopted as part of the Small Business Investment Incentive Act of 1980, to increase uniformity in matters concerning state and federal regulation of securities, maximize the effectiveness of securities regulation in promoting investor protection, and reduce burdens on capital formation through increased cooperation between the Commission and the state securities regulatory authorities.

DATES: The conference will be held on April 26, 1989. A public hearing will be held on April 7, 1989 commencing at 10:00 a.m. All witnesses are requested to submit 15 copies of their prepared statments no later than March 31, 1989. Written comments not prepared in connection with an oral presentation must be received on or before April 21, 1989 in order to be considered by the conference participants.

ADDRESSES: The public hearing will be held at the headquarters of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549, Room 1C-35, on April 7, 1989. All witnesses should notify Richard K. Wulff or William E. Toomey in writing of their desire to testify as soon as possible and submit 15 copies of their prepared statements by March 31, 1989 to Richard K. Wulff or William E. Toomey, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Written comments not prepared in connection with an oral presentation should be submitted in triplicate by April 21, 1989 to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Comments should refer to File No. S7-6-89. All written submissions, including the written texts submitted in connection with oral presentations and the transcripts of such oral presentations, will be available for public inspection at the Commission's Public Reference Room, 450 5th Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Richard K. Wulff or William E. Toomey, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549, (202) 272-2644.

SUPPLEMENTARY INFORMATION:

I. Discussion

A dual system of federal-state securities regulation has existed since the adoption of a federal regulatory structure in the Securities Act of 1933 (the "Securities Act").[1] Issuers attempting to raise capital through securities offerings, as well as participants in the secondary trading markets, are responsible for complying with federal securities laws as well as all applicable state regulations. In recent years, it has been recognized that there is a need to increase uniformity between federal and state regulatory systems and to improve cooperation among those regulatory bodies so that capital formation can be made easier while investor protections are retained.

The importance of facilitating greater uniformity in securities regulation was endorsed by Congress with the enactment of section 19(c) of the Securities Act in the Small Business Investment Incentive Act of 1980 (the "Investment Incentive Act").[2] Section 19(c) authorizes the Commission to cooperate with any association of state securities regulators which can assist in carrying out the declared policy and purpose of section 19(c). The declared policy of the section is that there should be greater federal and state cooperation in securities matters, including: (1) Maximum effectiveness of regulation; (2) maximum uniformity in federal and state standards; (3) minimum interference with the business of capital formation; and (4) a substantial reduction in costs and paperwork to diminish the burdens of raising investment capital, particularly by small business, and to diminish the costs of the administration of the government programs involved. In order to establish methods to accomplish these goals, the Commission is required to conduct an annual conference. The 1989 conference will be the sixth annual conference.

II. 1989 Conference

The Commission and the North American Securities Administrators Association, Inc. ("NASAA")[3] are

[1] 15 U.S.C. 77a et seq.

[2] Pub. L. 96-77 (October 21, 1980).

[3] NASAA is an association of securities administrators from each of the 50 states, the District of Columbia, Puerto Rico and ten Canadian provinces.

planning the 1989 Conference on Federal-State Securities Regulation (the "Conference") to be held April 26, 1989, in Washington, DC. At the Conference, representatives from the Commission and NASAA will divide into working groups in the areas of corporation finance, investment management, market regulation, and enforcement, to discuss methods of enhancing cooperation in securities matters in order to improve the efficiency and effectivess of federal and state securities regulation. Generally, attendance will be limited to representatives from the Commission and NASAA in an effort to maximize the ability of Commission and state representatives to engage in frank and uninhibited discussion. However, each working group, in its own discretion, may decide to invite certain self-regulatory organization to attend and participate in certain sessions.

Representatives from the Commission and NASAA currently are in the process of formulating an agenda for the Conference. As part of that process, the public, securities associations, self-regulatory organizations, agencies, and private organizations are invited to participate through the submission of written comments or by making oral presentations to a panel of Commission and NASAA representatives at a public hearing on April 7, 1989 on the issues set forth below. In addition, comment is requested on other appropriate subjects that commenters wish to be included in the Conference agenda. All comments will be considered by the Conference attendees.

III. Tentative Agenda and Request for Comments

The tentative agenda for the Conference consists of the following topics in the areas of corporation finance, investment management, market regulation and oversight and enforcement.

(1) Corporation Finance Issues

a. Uniform Limited Offering Exemption

Congress specifically acknowledged the need for a uniform limited offering exemption in enacting section 19(c) of the Securities Act and authorized the Commission to cooperate with NASAA in its development. Working with the states, the Commission developed Regulation D, the federal exemption governing exempt limited offerings. Regulation D was adopted by the Commission in March 1982. On September 21, 1983, NASAA endorsed a revised form of the Uniform Limited Offering Exemption ("ULOE") that is intended to coordinate with Regulation D.

ULOE provides a uniform exemption from state registration for certain issuers. An issuer raising capital in a state which has adopted ULOE may take advantage of both a state registration exemption and a federal exemption under Regulation D. To date, more than half of the states have adopted some form of ULOE. Both the Commission and NASAA continue to make a concerted effort toward the universal adoption of ULOE.

Because Regulation D provides the framework for ULOE, NASAA's assistance in developing proposals to change Regulation D is invaluable. During 1986, the Commission, with NASAA's cooperation, adopted several changes for Form D, the notice used to report offerings pursuant to Regulation D, and revised Rule 503 to delete six-month updates and final filings on Form D.[4] At its 1987 Spring meeting, NASAA adopted these revisions as part of ULOE. In March 1988, the Commission adopted several additional changes to Regulation D,[5] which were subsequently endorsed by NASAA. In fact, all changes to Regulation D to date have been made a part of the ULOE policy statement. In December 1988, a number of proposals were made regarding Regulation D.[6] These proposals were developed with the cooperation of NASAA. Discussions regarding additional possible improvements in the regulation will be held among the conferees.

The Commission and NASAA hope to achieve the goal of uniformity envisioned by the statute. Comment is requested on approaches to achieve this goal and on other issues relating to uniformity of exemptions.

b. Disclosure Policy and Standards

The Commission has an ongoing program of considering, reviewing and revising its policies with regard to the most appropriate methods of ensuring the disclosure of material information to the public. Coordination with the states has been beneficial. For example, such cooperation was helpful in the development of guidelines for real estate offerings. Discussions have been held and will continue to be held with respect to such issues as the inclusion of various ratings of securities, such as those based upon investment risk, in filings made with the regulatory authorities as well as in the materials provided to investors. Additional consideration of a uniform legend policy at both the federal and the states levels will be undertaken.

The conferees will consider the area of general advertising and the use of sales literature in the contexts of both public and private offerings and whether any uniformity may be attanied in the regulation thereof.

Commenters are invited to discuss other areas where federal-state cooperation could be of particular significance as well as any ways in which federal-state cooperation could be improved.

c. Multinational Securities Offerings

The Commission published a release in 1985 soliciting comments on methods of harmonizing disclosure and distribution practices for multinational offerings by non-governmental issuers.[7] At that time, the Commission published for comment two conceptual approaches to facilitating such offerings—a "common prospectus" approach and a "reciprocal prospectus" approach.

A majority of the commenters favored the reciprocal approach, and the staff of the Commission commenced discussions with the staffs of the Ontario and Quebec Securities Commissions with a view toward establishing a system of multijurisdictional registration based on a reciprocal approach. The Internationalization Committee of NASAA is working with the staff of the Commission since it is important that any system developed be acceptable to the states. It is anticipated that the multijurisdictional system will initially cover investment grade debt and equity offerings by certain substantial issuers, as well as certain rights and exchange offerings. The current status of the multijurisdictional system will be discussed. Comment is specifically requested on ways to coordinate federal and state treatment of multinational offerings.

d. Other Rulemaking Initiatives and Areas for Discussion

Participants at the Conference will consider possible rulemaking initiatives which the Commission may introduce. One such proposal involves an exemptive rule from registration for the offer and sale of securities pursuant to certain offerings with an issuer's existing securityholders. Outstanding Commission rulemakings such as

[4] Release No. 33-6663 (October 2, 1986) (51 FR 36385).

[5] Release No. 33-6758 (October 3, 1988) (53 FR 7866).

[6] Release No. 33-6812 (December 20, 1988) (54 FR 309).

[7] Release No. 33-6568 (February 28, 1985) (50 FR 9281).

Regulation S[8] and Rule 144A[9] also will be considered.

It is expected that the conferees will address the general areas of classifying issuers to govern their entry into and exit from the Commission's full disclosure system, takeover regulation and the impact of the Edgar system upon the full disclosure program.

(2) Investment Management Issues

a. Investment Companies

(i) *Uniform Disclosure Requirements.* At the 1988 Conference, representatives from NASAA met with the staff of the Commission and discussed the possibility of finding a method by which the Commission and as many states as possible could accept the same disclosure documents from investment company registrants. This result could be achieved by either harmonizing the federal and state disclosure requirements, as was done with Form ADV, the investment adviser registration form, or by providing a way to create a disclosure filing that meets Commission and all state requirements even if the Commission or some states would not alone require all of the disclosure. With respect to open-end manangement investment companies and unit investment trusts, it is important to note that many states use the currently existing uniform application forms, Forms U-1 and U-2. Streamlining uniform state filing procedures would have the added advantage of facilitating eventual one-stop electronic filing meeting both federal and state requirements. The conferees will review what progress has been made to achieve this goal.

(ii) *Blue Sky Laws.* In the past year the Commission has encountered situations in which investment companies have failed to register initially or to maintain the registration of their shares under state "Blue Sky" laws. Failure to register may result in the investment company accruing substantial contingent liabilities. This, in turn, raises questions concerning the accurate calculation of net asset values and the adequacy of prospectus disclosure. The conferees will discuss how to better assure compliance with applicable state registration requirements and the regulatory problems resulting from the failure of an investment company to comply with these requirements.

(iii) *Use of Company Assets To Pay for Distribution Expenses.*

In June 1988, the Commission proposed amendments to Rule 12b-1 under the Investment Company Act of 1940 that would substantially revise conditions under which open-end management investment companies (mutual funds) are permitted to use fund assets to pay for distribution expenses.[10] The conferees expect to discuss state and federal regulatory concerns that arise out of the use of mutual fund assets to pay these expenses.

b. Investment Advisers

(i) *Proposed Federal Registration Exemptions.* In March, 1986, the Commission authorized its staff to seek NASAA's views on possible rulemaking to exempt certain smaller investment advisers from most federal adviser regulations, other than statutory antifraud prohibitions, if the advisers were registered in all states in which they do business. NASAA polled its members in response to the staff's draft exemptive rules and, in December 1987, its Board of Directors endorsed the concept of the draft rules, with certain changes.

On September 16, 1987, the Commission proposed rules exempting certain small and intrastate advisers similar to the draft rules endorsed by the NASAA Board of Directors.[11] The proposals, which include both an interstate and intrastate exemption, would determine eligibility for the exemptions by reference to the size of the adviser's business, whether the adviser has custody of clients' funds or securities, and whether the adviser is registered as an adviser in all states in which it does business. In addition, the Commission proposed amendments to Rules 206(4)-1 (advertising), 206(4)-3 (cash solicitation), and 206(4)-4 (financial and disciplinary disclosures) to make these rules and those provisions of the Advisers Act that restrict principal agency cross transactions inapplicable to advisers taking advantage of the small and intrastate adviser exemptions. The comment period ended on November 22, 1988, and the Commission received 15 comments on the proposals including letters from NASAA and two states. The purpose of the proposed exemptions is to place primary regulatory responsibility for certain smaller advisers with states that regulate advisers. The conferees will discuss the status of the rulemaking proposals.

(ii) *Central Registration Depository.* The Central Registration Depository ("CRD") is a computerized system that was developed by NASAA and the National Association of Securities Dealers, Inc. ("NASD") and is used to register securities industry personnel with the NASD and the states. In October, 1985, NASAA and the Commission adopted a uniform adviser registration form for advisers registering with the Commission and the states that register advisers. At that time NASAA and the Commission indicated that a clearing house procedure, such as the CRD, would be considered to process adviser registration filings. In 1986, the CRD, in a pilot test, began registering investment adviser representatives for the state of Virginia, which had just begun to require registration of advisers and their representatives.

The conferees will continue to discuss developing a central registration system for advisers. The discussions will consider, among other things, how the system should be designed, what cost savings to advisers and regulatory benefits would result from a central registration processing system, what the experience is of the Virginia representative registration pilot, and whether costeffective means can be developed for Commission participation in any central processing system using the CRD. As discussed below, participants in the sessions on Market Regulation issues will discuss the use of the CRD in connection with broker-dealer registration.

(iii) *Investment Adviser Registration Form.* Last summer, the Forms Revision Committee of NASAA began exploring possible revisions to Form ADV to accommodate future entry of the form onto NASD's CRD system and to establish uniform Federal-State updating requirements. The conferees will discuss the progress of this committee's efforts.

(iv) *Inspections.* The conferees also expect to discuss the ongoing cooperative efforts of the Commission and the states to increase routine surveillance of investment advisers. A joint Commission-state inspection and training program was instituted in 1984 to coordinate regulatory efforts by sharing registration and examination information, thereby increasing the overall regulatory coverage of the investment adviser industry. To date this program has provided training to more than 125 inspectors from 30 states.

(v) *Self-Regulatory Organization for Investment Advisers.* In June 1987, the Board of Governors of the NASD passed

[8] Release No. 33-6779 (June 10, 1988) (53 FR 22661).

[9] Release No. 33-6806 (October 25, 1988) (53 FR 44016).

[10] Investment Company Act Rel. No. 16431 (June 13, 1988) (53 FR 23258).

[11] Investment Advisers Act Rel. No. 1140 (September 16, 1988) (53 FR 36997).

a resolution to take steps to become a self-regulatory organization ("SRO") with jurisdiction over the investment advisory activities of its members and affiliates that are investment advisers. Subsequent to that action, the staff of the Commission's Division of Investment Management asked the NASD to consider whether it would be feasible to expand the scope of the proposal to cover all registered investment advisers. The NASD recently informed the Division that it intends to conduct a study to determine the feasibility of such an expansion of the SRO proposal. In the meantime, the Division has been evaluating the NASD SRO proposal and expects to make a recommendation to the Commission for its consideration when the evaluation is completed. The conferees are expected to discuss the merits of investment adviser self-regulation and the NASD proposal.

(3) Market Regulation Issues

a. Central Registration Depository ("CRD")

As indicated above, certain aspects of the CRD will be discussed under investment management issues. The CRD will also be discussed by the market regulation working group. The NASD, forty-nine states, the District of Columbia, Puerto Rico and the New York Stock Exchange presently approve or register broker-dealer agents by means of the CRD. Persons filing applications for agent registration file a Form U-4 and any required fees with the CRD, which disseminates the information contained on the forms and transmits fees electronically to the appropriate jurisdictions. This agent phase of CRD, known as Phase I, similarly provides for the filing of U-4 amendments and for the transfer of agent registration under certain circumstances. Implementation of the final stage of Phase II was completed on February 1, 1989, and broker-dealers are now able to use CRD for Form BD filings as well as filings for associated persons.

During the sessions, participants will focus on the present efficacy of the CRD, future uses of the CRD by the states and the relationship of the Commission to the CRD (including processing of broker-dealer registrations with the Commission through the system). In this regard, the Commission has requested funding for fiscal year 1990 to contract with the NASD to develop a one-stop filing concept for broker-dealer documents, consistent with the Commission's electronic filing policy. This will permit broker-dealers to make one filing of a uniform registration form and amendments with the NASD, which will include the filing in the CRD. In addition to improving the efficiency of the registration process, the new system will provide better access to critical data and result in substantial cost savings to registrants by eliminating multiple filings with several regulatory bodies.

Commenters are requested to address the effectiveness and efficiency of the CRD (including any suggestions for improving the system) as well as the future direction of the system.

b. National Market System Exemption from Registration

Most state securities laws currently provide an exemption from their securities registration requirements to issuers that list on the New York ("NYSE") or American ("Amex") Stock Exchanges, or, in some cases, certain regional stock exchanges. Recently, some states have extended these exemptions to include over-the-counter ("OTC") securities designated as National Market System ("NMS") securities, while other states and legislatures have rejected such proposals. In December 1988, the Commission issued a release announcing a Memorandum of Understanding between NASAA and the NASD on the development of exemptive standards for NASDAQ/NMS securities that are comparable to the exemptive standards for exchange-listed securities. Furthermore, last year the Commission amended Rule 11Aa2-1 to designate as NMS securities all listed and OTC equity securities for which real-time last sale reporting is required by a transaction reporting plan. At the same time the Commission approved proposed amendments to the NASD's transaction reporting plan that add corporate governance standards for OTC NMS securities. The effect of these amendments is to designate as NMS securities all NYSE and Amex-listed equity securities and all equity securities listed on regional exchanges that meet Amex's listing standards and that are reported pursuant to a transaction reporting plan. All current OTC NMS securities also would continue to be designated as NMS securities if they satisfy the new corporate governance standards. Commenters are asked to address whether the states generally should exempt certain securities from registration, particularly in light of the changes to company listing standards on corporate governance and foreign issuers. Commenters are asked to address, in particular, the adoption of a uniform, objective exemptive standard, applicable to all reported securities in light of increasing competition between NASDAQ and the exchanges.

c. Forms Revisions

The Commission and NASAA are considering revisions to Schedules A, B, and C of Form BD to clarify the ownership disclosure requirements of those schedules, simplify the presentation of this information, and possibly reduce the reporting burden.

d. Internationalization of the Securities Markets

The implications of multinational securities offerings are being discussed in the corporation finance working group with a particular focus on the development of a reciprocal prospectus for certain offerings. The Market Regulation Task Force will also discuss internationalization with the resulting development of the global securities markets. The Commission continues to follow closely these developments and, to that end, requests comment on the direction of the internationalization of the trading markets. Commenters are asked to address steps that would be useful on the national and state levels to facilitate international markets while protecting investors and maintaining fair and orderly markets in the United States.

e. "Pink Sheet" Fraud

The Commission and NASAA will discuss regulatory approaches to reducing the incidence of fraud in the sale of "pink sheet" securities. The discussions will include possible rule proposals to improve information available to customers and heighten broker-dealer compliance with their fiduciary duties to customers.

(4) Enforcement Issues

In addition to the above stated topics, the state and federal regulators will discuss various enforcement related issues which are of mutual interest.

(5) General

There are a number of matters which are applicable to all, or a number, of the areas noted above. These include Edgar, the Commission's pilot electronic disclosure system, the coordination of Commission rulemaking procedures with the states, training and educating staff examiners and analysts, and sharing of information.

The Commission and NASAA request specific public comments and recommendations on the above-mentioned topics. Commenters should focus on the agenda but may also

discuss or comment on other topics in which the existing scheme of state and federal regulation can be made more uniform while high standards of investor protection are maintained.

By the Commission.

Jonathan G. Katz,

Secretary.

March 1, 1989.

[FR Doc. 89-5297 Filed 3-7-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26578; File No. SR-BSE-87-1]

Self-Regulatory Organizations; Boston Stock Exchange, Inc. Order Partially Approving Rule Change and Request for Comment Relating to the Establishment Automated Communications Order-routing Network (BEACON)

Introduction

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 22, 1989, the Boston Stock Exchange, Inc. ("BSE") requested that the Securities and Exchange Commission ("Commission") extend a trial period for the implementation of the BSE's proposed BEACON system.[2] On August 25, 1988, BSE received approval to proceed with the implementation of BEACON up to full-scale operational levels during a six-month trial period, which ends on February 25, 1989. BSE therefore requested an extension of this trial period until the Commission has completed its review pursuant to BSE's request for permanent approval of BEACON.

As proposed by the Exchange, BEACON routes orders in eligible stocks from member firms to the BSE. For stocks traded on the Intermarket Trading System ("ITS"),[3] BEACON guarantees either an automatic or manual execution of up to either 599 or 1,299 shares, depending on the classification of the stock, at the BEACON quotation.[4] To accomplish this, a BEACON order electronically entered into the system by a member firm is transmitted to a BSE specialist's post where it is displayed on the specialist's terminal together with the automatically assigned BEACON quote at which the order would be automatically executed. The order is displayed on the specialist's terminal for up to 15 seconds to permit the specialist to intervene in the automatic execution of the order should he wish to improve on the BEACON quotation. Where the specialist does not intervene, the order automatically will be executed at the BEACON quote.

Description of Proposed Rule

The BSE's proposed BEACON rules, described below, define the specific procedures for the entry and executions of orders in the system. These include how orders are entered into the system, the types of orders that may be entered, how orders will be executed, how the execution price will be determined, and how the system may be used to route orders.

Section 1 of the proposed rules provides that BEACON is available to BSE member organizations and to foreign stock exchanges with which BSE has established a trading link.[5] All issues traded on the Exchange will be eligible for BEACON but only agency orders (orders executed on behalf of a member organization's client) will be eligible for automatic execution.

Section 2 provides that BEACON will permit orders to be routed to specialists or to floor brokers.[6] The system also will allow floor brokers to transmit orders to specialists. Under subparagraph (c), member firms may send market and limit orders to BSE over the system in size parameters established by the BSE.[7] Once orders are routed to the specialist, they may be executed either automatically (if eligible) or manually.

Execution parameters for BEACON are set out in Section 3 of the proposed rule. Market and marketable limit orders in issues traded over ITS transmitted to the specialist prior to the BSE's opening will be provided the opening price on the primary market on which the issue is traded. The primary market opening price usually will be the NYSE or Amex opening price for the stock. The only exception to applying the primary market opening price to an opening transaction would be where the member firm entering the order asks, instead, for the order to be provided the consolidated opening price.

Market and marketable limit orders entered after the opening will receive an execution price based upon the BEACON quotation.[8] As noted previously, these orders, when transmitted to the specialist for execution, will be displayed on the specialist's video display terminal for up to 15 seconds (so-called "exposure period") to allow the specialist to improve on the BEACON quotation that was automatically determined when the system received the order. Certain types of orders entered on BEACON always would be manually executed. These include cross orders entered in the system; nonmarketable limit orders; orders that are "stopped"; and orders entered prior to opening, which are

---

[1] 15 U.S.C. 78 s(b).

[2] *See* letter from George W. Mann, Jr., BSE, to Christine A. Sakach, Division of Market Regulation, dated February 22, 1989. The BSE also renewed its request for permanent approval of the proposed rule change.

The term "BEACON" is an acronym for Boston Exchange Automated Communications Order-routing Network. The initial set of rules proposed for BEACON (File No. SR-BSE87-1) was noticed in Securities Exchange Act Release No. 24187 (March 6, 1987), 52 FR 8682. No comments were received on this proposal. Subsequently, the Commission received amendments to the BSE's proposed BEACON rules. These amendments were noticed in Securities Exchange Act Release No. 14690, July 9, 1987, 52 FR 26612. On December 8, 1987, June 10, 1988, July 1, 1988, and August 10, 1988, the Commission received additional amendments to the proposed BEACON rules. These amendments were not separately noticed by the Commission; however, on August 25, 1988, the Commission approved BEACON for a six-month trial period. Securities Exchange Act Release No. 26029 (August 25, 1988), 53 FR 27584.

[3] ITS is a communications system designed to facilitate trading among competing markets by providing each market with order routing capabilities based on current quotation information. Specifically, ITS links the participating markets (American Stock Exchange, BSE, Cincinnati Stock Exchange, Midwest Stock Exchange, New York Stock Exchange, Pacific Stock Exchange, Philadelphia Stock Exchange, and the National Association of Securities Dealers) and provides facilities and procedures for: (1) Display of composite quotation information from each participating market so that brokers are able to determine the best bid and offer available from any participating market for a multiply traded security; (2) efficient routing of orders and administrative messages between participating markets; and (3) participation, under certain conditions, by members of all participating markets in opening transactions in those markets. As of June 30, 1988, 1,639 stocks were traded over ITS.

[4] *See* discussion *infra* note 7.

[5] The Exchange currently has a trading link with the Montreal Stock Exchange. The BSE has informed the Commission, however, that it has no plans to make BEACON available for transactions over the Montreal linkage. Should the BSE subsequently decide that it wants to make access to BEACON available over the Montreal linkage, a proposed rule change would have to be submitted to the Commission for consideration under the requirements of section 19(b) of the Act and Rule 19b-4 thereunder.

[6] A floor broker receiving such an order would bring the order to the trading crowd for execution.

[7] The BSE has informed the Commission that there are currently no size limits for orders routed on BEACON and that it has no plans to adopt such limits. Telephone conversation between George Mann, Senior Vice President and General Counsel, BSE, and Howard Kramer, Assistant Director, Division of Market Regulation, on June 30, 1988. Automatic execution limits for BEACON are discussed *infra* at 5.

[8] The BEACON quotation, defined in Section 5(c) of the proposed rule, is the primary market quotation price, except that, where bids and offers from other markets are displayed that are superior to the BEACON price, the BEACON order will be executed at that superior price up to the size of the quote displayed.

executed at the primary market opening price.

The circumstances under which orders entered on BEACON are eligible for automatic execution are set out in section 5 of the proposed rule.[9] The system automatically will execute all market and marketable limit orders in ITS issues up to 1,299 shares for Tier I stocks and 599 shares for Tier II stocks.[10] This section also permits specialists to provide guaranteed automatic execution of 2,500 shares on specific stocks.[11] Automatic execution guarantee levels for BEACON orders will be published in BEACON and in hard copy. Guarantee levels in excess of 2,500 shares may be made by arrangement between a specialist and a specific member organization. These guarantees will not be published in BEACON unless requested by the specialist.

Market orders that would be executed outside the primary market price range for the day will be "stopped" and will be executed at the BEACON quotation or better as subsequent trades occur on the consolidated tape. An order that has been "stopped" must be executed by the close of trading.

Discussion

The Commission has determined that it is appropriate to grant the BSE an extension of the trial period of the implementation and operation of the BEACON system until the Commission has determined to approve or disapprove permanently the BSE's proposed rule change. The BSE stated that it currently received orders in 500 stocks (out of a total of 1,500 stocks listed on the exchange) from 5 firms through BEACON. All specialists on the floor have at least one stock where market orders are automatically executed and reported back to the firm. In addition, day limit orders are maintained for all 500 issues through BEACON to the specialist. In addition, one completed book (77 issues) has been activated in total. The BSE believes that it should have full floor participation by mid-June. Thus, the Commission believes it is appropriate to extend the trial period while the BSE continues to bring BEACON fully operational to afford the Commission further opportunities to review BEACON's performance.

The proposed BEACON system is similar in many respects to automatic execution systems currently in operation on other regional stock exchanges such as the Midwest Stock Exchange's "MAX" system, the Pacific Stock Exchange's "SCOREX" system, and the Philadelphia Stock Exchange's "PACE" system. These systems are all designed to receive small orders electronically from member firms and route them to the appropriate specialist for automatic or manual execution. These systems provide the primary means of handling the vast majority of small orders executed on these regional exchanges.

Before the development of BEACON, the BSE was unique among the regional exchanges because it only had manual systems for the routing and execution of small orders. BEACON is a key element in the BSE's overall effort to automate a substantial portion of its operations. The Exchange's development of BEACON represents a major improvement for the BSE in terms of the speed and efficiency with which it can process and execute retail orders and provide reports of executed trades. BEACON, once it is fully operational, will interface with the BSE's BASE system,[12] a computerized back office system that currently processes all orders executed on the Exchange floor. Once the BEACON and BASE interface is completed, BASE will be able to generate a report immediately confirming the execution of a BEACON order, including the number of shares and the execution price, and transmit it to the member firm that entered the order. The new system will also be able to provide BSE specialists with continuous updates of their positions, average costs, concentrations (short or long), and a computerized limit order book.

On July 15, 1988, the Commission gave approval to the BSE to proceed with the initial stages of the implementation of BEACON[13] and on August 25, 1988, authorized the BSE to institute a six-month trial period during which the BSE was to gradually phase-in use of BEACON.[14] The Commission stated that it intended to closely review results of operational tests on the system as the Exchange added stocks and connected more specialist posts and member firms to BEACON. In addition, the order stated that the BSE would submit results of stress tests on the system to demonstrate that BEACON has the capacity to handle transaction and order volume levels similar to those encountered by the Exchange during the October 1987 market break without experiencing significant order queues or delays in execution.

The Commission has received and reviewed the preliminary test results on the implementation stages of BEACON. From the data provided by the Exchange and discussions with BSE officials, the Commission is satisfied with the results thus far. In addition, the BSE has provided the Commission with the results of several simulated traffic stress tests.[15] The first test was conducted by SIAC and designed to test the performance of vendors and other market participants such as the BSE to receive output from the consolidated transaction and quotation lines for equities and options. The BEACON system adequately handled the sustained output message traffic from SIAC. In addition, the BSE recently conducted a series of stress tests with SIAC during which the traffic from SIAC was well above the October, 1987 peaks. The BSE stated that BEACON was easily able to handle the traffic from SIAC and had excess capacity of approximately 20–35%.

Request for Comment

As noted above, the BSE has requested that the Commission permanently approve the proposed rule change implementing BEACON.[16] Thus, interested persons are invited to submit written data, views and arguments concerning that request. Persons making written submissions should file six copies 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

[9] As noted previously, automatic execution guarantees under BEACON are available to agency orders only.

[10] Subparagraph (b) of Section 5 provides that all ITS issues will be deemed Tier I stocks. Tier II stocks will be comprised of exceptions from Tier I. Those exceptions may be requested by specialists who must submit a statement to the BSE's Market Performance Committee that would set forth the specific reasons that would cause Tier I classification of the stock to be burdensome (e.g., a high priced, lightly traded stock).

[11] The Exchange currently has an execution guarantee under Chapter II, section 38 of the BSE Rules. Under this provision, BSE specialists guarantee execution on all agency orders from 100 up to 1,299 shares in all issues traded through ITS registered to a BSE member specialist. For the 100 most actively traded stocks reported to the consolidated tape, BSE specialists must guarantee execution on all agency orders of up to 2,500 shares. Market orders filled under this guarantee must be filled on the basis of the best Consolidated Quotation System ("CQS") bid or offer or better.

[12] "BASE" is an acronym for Brokerage Accounting Systems Element.

[13] Securities Exchange Act Release No. 25918 (July 15, 1988).

[14] Securities Exchange Act Release No. 26029 (August 25, 1988).

[15] *See* letter from George Mann, Senior Vice President and General Counsel, BSE, to Howard Kramer, Assistant Director, Division of Market Regulation, dated July 12, 1988.

[16] *See supra* note 2.

all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR-BSE-88-1 and should be submitted by March 29,1989.

Partial Approval of Proposed Rule Change

The BSE also requested that the Commission extend the trial period under which the BSE has been implementing BEACON. On the basis of the BSE's experience with BEACON in the trial period to date, the Commission has concluded that it is appropriate to grant the BSE an extension of the trial period for the implementation of BEACON up to full-scale operational levels. During this extension the Commission will continue to review closely the BSE's operational test results as more stocks, specialists, and member firms are brought on to the system. Once the system is fully operational, BSE should be able to provide the Commission with additional stress test data to ensure that BEACON has the capacity to handle order and transaction levels like those BSE encountered in the October 1987 market break without experiencing significant queues or execution delays.

Accordingly, the Commission has determined that the BSE may continue its implementation of BEACON up to full-scale operational levels, operating under the procedures outlined in the proposed BEACON rule, as amended.

In view of the above, the Commission concludes that an extension of the trial period of the BSE's proposed BEACON system while the Commission determines to approve or disapprove permanently the proposed rule change is reasonable and is consistent with the requirements of the Act, particularly Section 6(b)(5).

It is therefore ordered, Pursuant to Section 19(b)(2) of the Act that the proposed rule change be, and hereby is, approved with the limitations cited above.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary,

Dated: February 28, 1989.

[FR Doc. 89-5302 Filed 3-7-89; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and Opportunity for Hearing; Boston Stock Exchange, Incorporated

March 2, 1989

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Bariod Corp., Common Stock, $.10 Par Value (File No. 7-4247)
Lyondell Petrochemical Co., Common Stock, $1 Par Value (File No. 7-4248)
Magma Copper Co., Class B Common, $.01 Par Value (File No. 7-4249)
Athlone Industries, Inc., Common Stock, $.10 Par Value (File No. 7-4250)
Carpenter Technology Corp., Common Stock, $5 Par Value (File No. 7-4251)
Crompton & Knowles Corp., Common Stock, $5 Par Value (File No. 7-4252)
CRS Sirrine, Inc., Common Stock, $1 Par Value (File No. 7-4253)
Premier Industrial Corp., Common Stock, $1 Par Value (File No. 7-4254)
British Steel, PLC, Interim American Depository Shares, No Par Value (File No. 7-4255)
Beazer, PLC, American Depository Shares, No Par Value (File No. 7-4256)
Hong Kong Telecommunications, Ltd., American Depository Shares, No Par Value (File No. 7-4257)
Racal Telecom, PLC, American Depository Shares, No Par Value (File No. 7-4258)
Service Merchandise Co., Inc., Common Stock, $.50 Par Value (File No. 7-4259)
Shawmut National Corp., Common Stock, $.01 Par Value (File No. 7-4260)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 23, 1989, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-5290 Filed 3-7-89;8:45am]

Billing Code 8010-01-M

[Release No. 34-26577; File No. DTC-88-18]

Self Regulatory Organizations; Depository Trust Company; Order Extending Temporary Approval of a Proposed Rule Change

On October 26, 1988, the Depository Trust Company ("DTC") filed a proposed rule change (File No. SR-DTC-88-18) with the Commission pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposal established a pilot program for DTC's International Institutional Delivery ("IID") System. The Commission published notice of the proposal in the **Federal Register** November 10, 1988.[2]

On December 20, 1988, the Commission temporarily approved the proposed rule change through January 31, 1989.[3] At DTC's request, on January 26, 1989, the Commission extended the temporary approval until February 28, 1989.[4] DTC again has requested that the pilot program be extended, this time through March 31, 1989.[5] DTC also has filed a proposed rule change requesting approval of the IID System as a full service, effective sometime in March.[6] Extension of the temporary approval through March 31, 1989, will ensure that DTC may continue to operate the pilot

[1] 15 U.S.C. 78(b)(1).

[2] Securities Exchange Act Release No. 26249 (November 3, 1988), 53 FR 45637.

[3] Securities Exchange Act Release No. 26374 (December 20, 1988), 53 FR 52283.

[4] Securities Act Release No. 26492 (January 26, 1989), 54 FR 5184.

[5] *See* letter from Karen Lind, Associate Counsel, DTC, to Sandra Sciole, Special Counsel, Commission, dated February 27, 1989.

[6] Notice of the proposed rule change was published in Securities Exchange Act Release No. 26505 (January 31, 1989), 54 FR 6223.

program until permanent approval is obtained. For the reasons expressed in Securities Exchange Act Release Nos. 26374 and 26492, the Commission believes the proposal is consistent with the Act, and is therefore extending temporary approval of the proposed rule change through March 31, 1989.

It is therefore ordered, Pursuant to section 19(b) of the Act, that DTC's proposed rule change (File No. SR-DTC-88-18), be, and it hereby is, approved temporarily through March 31, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: February 28, 1989.

[FR Doc. 89-5299 Filed 3-7-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26579; File Nos. SR-MBS-88-7, MBS-88-9, and MBS-88-11]

Self-Regulatory Organizations; MBS Clearing Corporation; Order Temporarily Approving Proposed Rule Changes.

On April 11, 1988, the MBS Clearing Corporation ("MBSCC") filed with the Commission three proposed rule changes (File Nos. SR-MBS-88-7, MBS-88-9, and MBS-88-11) under section 19(b) of the Securities Exchange Act of 1934 ("Act"). [1] The proposals would amend various MBSCC Depository Division rules including those pertaining to participant accounts, transfers of mortgage-backed securities, the MBSCC participants fund, and the MBSCC certificate withdrawal policy. The Commission published notice of the proposals in the **Federal Register** on May 11, 1988.[2]

The Commission preliminarily believes that the proposals are consistent with the Act and is approving the proposals on a temporary basis. The Commission believes that the proposals are designed appropriately to clarify MBSCC's rules and to strengthen MBSCC's procedures, thereby enhancing MBSCC's ability to safeguard securities and funds and promote prompt and accurate clearance and settlement. The Commission, however, intends to continue to analyze the proposals and to discuss with MBSCC the actual operation of the proposals and the need for any refinements or enhancements to the proposals. For those reasons, the Commission is temporarily approving the proposals through March 31, 1989.

It is therefore ordered, Pursuant to section 19(b) of the Act, that MBSCC's proposed rule changes (File Nos. SR-MBS-88-7, MBS-88-9, and MBS-88-11) be, and thereby are approved temporarily through March 31, 1989.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: February 28, 1989.

[FR Doc. 89-5300 Filed 3-7-89; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release Nos. 25660 (May 4, 1988), 53 FR 16812; 25662 (May 4, 1988), 53 FR 16808; 25659 (May 4, 1988), 53 FR 16818.

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and Opportunity for Hearing; Midwest Stock Exchange, Incorporated

March 2, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Diasonics, Inc.
Common Stock, $.01 Par Value (File No. 7-4237)
Jan Bell Marketing
Common Stock $.01 Par Value (File No. 7-4238)
U.S. Cellular
Common Stock, $1 Par Value (File No. 7-4239)
Union Planters Corp.
Common Stock, $5 Par Value (File No. 7-4240)
Williams Corp. (A.L.) The
Common Stock, $.10 Par Value (File No. 7-4241)
Fiat, S.P.A.
American Depositary Shares, No Par Value (File No. 7-4242)
L.A. Gear, Inc.
Common Stock, No Par Value (File No. 7-4243)
Colonial High Income Municipal Trust
Shares of Beneficial Interest, No Par Value (File No. 7-4244)
Huntingdon International Holdings, PLC
American Depositary Shares, No Par Value (File No. 7-4245)
Putnam Managed Municipal Income Trust
Shares of Beneficial Interest, No Par Value (File No. 7-4246)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 23, 1989, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-5291 Filed 3-7-89; 8:45 am]

BILLING CODE 8010-01-M

(Release No. 34-26584; File No. SR-NASD-88-51)

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Proposed Rule Change Relating to the Composition of Arbitration Panels and the Content of Arbitration Awards

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 7, 1988, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change, and two amendments thereto, filed on December 23, 1988 and January 26, 1989, as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to amend sections 9, 19, and 41 of the Code of Arbitration Procedure ("Code"). The following is the text of the proposed rule change. New language is italicized; deleted language is in brackets.

Code of Arbitration Procedure

* * * * *

Composition of Panels

Section 9(*a*) Except as otherwise provided in Section 10 of the Code, in all arbitration matters between or among members and/or persons associated with members, [a panel shall consist of no fewer than three nor more than five arbitrators,] *and where the amount in controversy does not exceed $30,000, the Director of Arbitration shall appoint a single arbitrator to decide the matter in controversy. The arbitrator chosen shall be from the securities industry. Upon the request of a party in its initial filing or the arbitrator, the Director of Aribitration shall appoint a panel of three (3) arbitrators, all of whom shall be from the securities industry.*

(b) In all arbitration matters between or among and/or persons associated with members and where the amount in controversy exceeds $30,000, a panel shall consist of three arbitrators, all of whom shall be from the securities industry.

* * * * *

Designation of Number of Arbitrators

Section 19(*a*) Except as otherwise provided in *Section 13 of the* [this] Code, in all arbitration matters involving public customers and where the [matter] *amount* in controversy [exceeds $10,000,] *does not exceed $30,000,* [or where the amount in controversy does not involve or disclose a money claim, the Director of Arbitration shall appoint an arbitration panel which consists of no fewer than three (3) nor more than five (5) arbitrators] *the Director of Arbitration shall appoint a single arbitrator knowledgeable in but who is not from the securities industry to decide the dispute, claim or controversy. Upon the request of a party in its initial filing or the arbitrator, the Director of Arbitration shall appoint a panel of three (3) arbitrators which shall decide the matter in controversy. At* least a majority of [whom] *the arbitrators appointed* shall not be from the securities industry, unless the public customer requests a panel consisting of at least a majority from the securities industry.

(b) In arbitration matters involving public customers and where the amount in controversy exceeds $30,000, or where the matter in controversy does not involve or disclose a money claim, the Director of Arbitration shall appoint an arbitration panel which consists of no fewer than three (3) nor more than five (5) arbitrators, at least a majority of whom shall not be from the securities industry, unless the public customer requests a panel consisting of at least a majority from the securities industry.

(c) An arbitrator will be deemed as being from the securities industry if he or she:

(1) is a person associated with a member or other broker/dealer, municipal securities dealer, government securities broker, or government securities dealer, or

(2) has been associated with any of the above within the past three (3) years, or

(3) is retired from any of the above, or

(4) is an attorney, accountant, or other professional who has devoted twenty (20) percent or more of his or her professional work effort to securities industry clients within the last two years.

(d) An arbitrator who is not from the securities industry shall be deemed a public arbitrator. A person will not be classified as a public arbitrator if he or she has a spouse or other members of the household who is a person who is associated with a member or other broker/dealer, municipal securities dealer, government securities broker, or government securities dealer.

* * * * *

Awards

Section 41

* * * * *

(e) The award shall contain the names of the parties, a summary of the issues in controversy, the damages and other relief requested, the damages and other relief awarded, a statement of any other issues resolved, the names of the arbitrators, and the signatures of the arbitrators concurring in the award.

(f) All awards involving public customers and their contents, excluding the names of the arbitrators, shall be made publicly available. A party to an arbitration involving a public customer may request that the Director of Arbitration provide copies of all awards rendered by the arbitrator(s) chosen to decide its case. A party wishing to obtain such information must notify the Director of Arbitration within three (3) business days of receipt of notification of the identity of the person(s) named to the panel.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A Uniform Arbitration Code (the "Uniform Code") has been developed by the Securities Industry Conference on Arbitration ("SICA"), which is composed of representatives of the NASD, nine other self-regulatory organizations, four public members, and the Securities Industry Association. The Uniform Code, as implemented by the various self-regulatory organizations, has established throughout the securities industry a uniform system of arbitration procedures. The proposed rule change to subparagraphs (c) and (d) of section 19 of the Code is intended substantially to conform the provisions of the NASD's Code to changes in the Uniform Code approved by SICA on August 16, 1988, except as discussed below; and the proposed rule change to subparagraph (e) of section 41 is intended to conform the provisions of the Code to changes in the Uniform Code approved by SICA on July 28, 1988.

The proposed changes to section 9 and subparagraphs (a) and (b) of section 19 were recommended by the NASD's National Arbitration Committee.

Composition of Panels: Section 9 of the Code currently requires, in all arbitration proceedings other than those conducted under the Simplified Industry Arbitration procedures set forth in section 10 of the Code, that in all arbitration matters between or among members and/or persons associated with members, an arbitration panel consisting of no fewer than three (3) nor more than five (5) arbitrators, all of whom are from the securities industry, shall be used. The proposed rule change to section 9(a) would permit the Director of Arbitration to assign such industry cases in which the amount in controversy exceeds $10,000 but does not exceed $30,000 to a single arbitrator from the securities industry. However, either at the request of an industry party in its initial complaint or answer or at the request of the designated arbitrator, the rule change provides that the Director of Arbitration would be required to designate a panel of three (3) arbitrators, all from the securities industry. Proposed new section 9(b) would continue the current practice of appointing a panel of three (3) arbitrators from the securities industry

to hear industry cases in which the amount in controversy exceeds $30,000.

By authorizing the handling of claims between securities professionals of less than $30,000 by a single industry arbitrator, the proposed rule change to section 9(a) would appreciably reduce costs and delays while preserving the opportunity to be heard before a three-person industry panel upon timely motion of a party or the designated arbitrator. Proposed section 9(b) would, in addition, codify the current administrative practice of appointing no more than three arbitrators to panels hearing industry disputes, a measure taken to reduce costs and delays generated by the appointment of five-member panels.

Designation of Number of Arbitrators: Section 19 of the Code currently requires in all arbitration matters involving public customers and where the matter in controversy exceeds $10,000 or does not involve or disclose a money claim, that the Director of Arbitration appoint a panel of no fewer than three (3) nor more than five (5) arbitrators, at least a majority of whom shall not be from the securities industry, unless the public customer requests a panel consisting of at least a majority from the securities industry. The proposed section 19(a) would permit the Director of Arbitration to assign cases involving public customers in which the amount in controversy exceeds $10,000 but does not exceed $30,000 to a single public arbitrator. At the request of a party in its initial complaint or answer, or at the request of the designated arbitrator, the Director of Arbitration would be required to designate a panel of three (3) arbitrators, constituted as set forth in current section 19 of the Code. Proposed new section 19(b) would continue the current requirement that the Director of Arbitration, in all arbitration matters involving public customers, where the matter in controversy exceeds $30,000 or does not involve or disclose a money claim, appoint a panel of no fewer than three (3) nor more than five (5) arbitrators, constituted as set forth in current section 19 of the Code.

By authorizing the handling of claims involving public customers of less than $30,000 by a single public arbitrator, the proposed rule change to section 19(a) would appreciably reduce costs and delays while preserving the opportunity to be heard before a three-person panel upon timely motion of a party or the designated arbitrator. Proposed new section 19(b) would, in addition, require the appointment of a three- or five-person arbitration panel in all matters involving public customers where the amount in controversy exceeds $30,000 or where the matter does not involve or disclose a money claim. Both sections 19 (a) and (b) would continue to require that a majority of the arbitrators not be from the securities industry, unless the public customer requests a panel consisting of at least a majority from the securities industry.

Proposed new sections 19 (c) and (d) codify in substantial part the definitions of "securities industry arbitrator" and "public arbitrator" approved by SICA on August 16, 1988. In an effort to address possible perceptions of bias or interest, and in the absence of recorded instances in which the bias or interest occurring as a result of familial relationship was shown to have influenced the rendition of an award, SICA determined, as set forth in proposed section 19(d), that a person should not be classified as a public arbitrator if he or she has a spouse or other member of the household who is a person associated with a member or other broker/dealer, municipal securities dealer, government securities broker or government securities dealer. Attorneys, accountants, or other professionals who have devoted 20% or more of their professional work effort to Securities industry clients within the last 2 years would now be classified as securities industry arbitrators rather than public arbitrators. In addition, the NASD's proposed definition of "securities industry arbitrator," in contrast with the corresponding SICA proposal, does not include current or former registered investment advisors not associated with a member firm, their spouses, or members of their households. The NASD believes that registered investment advisors are generally well-informed and well-qualified individuals and are, in fact, independent from the securities industry in that their income is derived from investors rather than from the securities industry. Further, such individuals represent an untapped source whose enrollment would serve to replenish the NASD's pool of public arbitrators, which would be significantly depleted by proposed sections 19 (c) and (d).

Awards: Proposed new sections 41 (e) and (f) represent the results of initiatives of the Commission, and were approved by SICA on July 28, 1988. Proposed section 41(e) codifies the minimum content of all NASD arbitration awards, which would contain the names of the parties, a summary of the factual issues, the relief requested and awarded, a statement of any other issues resolved, the names of the arbitrators, and the signatures of the arbitrators concurring in the award.

Consistent with SICA's endorsement of the practice of making the information contained in arbitration awards involving public customers, including any opinions voluntarily prepared by the arbitrators in such cases, publicly available in accordance with the individual policies of the sponsoring self-regulatory organization, Proposed section 41(f) would make all NASD awards involving public customers, with the exclusion of the names of the arbitrators, publicly available. Upon implementation of Proposed sections 41 (e) and (f), the NASD will make all awards involving public customers issued subsequent to the effective date of these sections available to the public by means of a reading room. Proposed section 41(f) would also permit parties to an arbitration involving a public customer to obtain copies of all awards rendered pursuant to proposed section 41(e) by the arbitrator or arbitrators assigned to hear their case if a request is made to the Director of Arbitration within 3 business days of receipt of notification of the identity of the arbitrators.

The NASD believes that the proposed rule change is consistent with section 15A(b)(6) of the Act, as the proposed rule change will facilitate the arbitration process in the public interest and, therefore, is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The NASD has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and

publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-88-51 and shoud be submitted by March 29, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: March 1, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-5301 Filed 3-7-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26585; File No. SR-NSCC-89-2]

National Securities Clearing Corp.; Proposed Rule Change Relating to Acceleration of the OTC Comparison Cycle and Modification of NSCC Procedures With Respect Thereto

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 8, 1989, NSCC filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NSCC. 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 proposed rule change would amend NSCC's Rules and Procedures concerning certain aspects of trade comparison.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The primary purpose of the proposed rule change is to accelerate the comparison of transactions executed Over-the-Counter ("OTC") and on national securities exchanges other than the New York Stock Exchange (hereinafter referred to as "OTC transactions"). The proposed rule change accelerates by approximately 11 hours the time frame for input and accelerates by approximately 24 hours the time frame for the corresponding output relative to comparison of OTC transactions.

The market break in October, 1987 prompted the securities industry to review processing time frames for comparison of securities transactions. It was recognized that by shortening the comparison process, Members will be able to reconcile transactions earlier, thereby reducing financial exposure. As a result, initiatives are underway to accelerate and redesign the comparison process for transactions in listed and OTC securities.

In December of 1988 NSCC convened a Comparison Advisory Committee comprised of representatives from NSCC, the New York Stock Exchange, the National Association of Securities Dealers, Inc., the American Stock Exchange and fourteen firms representing different aspects of the industry. The purpose of the Committee was to discuss developments in the comparison process, including new systems being developed by the self-regulatory organizations and to obtain guidance from Member firms on the best way for all entities to implement and coordinate the changes. The Committee, at a meeting in January 1989, discussed the proposed modifications to listed and OTC comparison. The Committee discussed the fact that the listed project involves *both* acceleration and redesign. It was, therefore, agreed that it would be prudent to familiarize the firms with acceleration first so that the redesign portion, when implemented, could be accomplished more smoothly. Moreover, it was determined that implementation of one project at a time would provide the Members with greater control over each project and, therefore, promote greater efficiency. Members input OTC and listed transactions separately. Accordingly, there is no difficulty in bifurcating the acceleration process. The proposed rule change reflects the accelerated input and output time frames for comparison of OTC transactions.

Currently, Members submit non-systematized transactions to NSCC by 1:00 p.m. on T+1. Members may also submit deletes to this T+1 input by 3:00 p.m. on T+1. NSCC runs an initial match and issues Regular Way T+1 Contract Lists, reflecting the results of the initial match by 8:00 a.m. on T+2.

Under the proposal, Members will be required to submit all non-systematized transactions to NSCC no later than 2:00 a.m. the morning of T+1. NSCC will then produce Regular Way T+1 Contract Lists by 7:00 a.m. on T+1. Upon receiving these contracts, Members will be able to submit adjustments until 2:00 p.m. on T+1, rather than 2:00 p.m. on T+2, with NSCC issuing corresponding output by 7:00 a.m. on T+3. After this point, Members will be able to submit adjusting information with NSCC generating corresponding output until the final comparison output on T+4.

Presently, the procedures for comparison of OTC transactions incorporate by reference some of the procedures for comparison of listed transactions. Since the proposed rule change will accelerate the OTC comparison process, certain of the procedures covered by the listed section must be set forth separately in the procedures section on OTC comparison and modified accordingly.

In addition, the proposed rule change makes clarifying changes to the entire Trade Comparision Service by differentiating between the comparison of regular way transactions and when-issued transactions. Further, the term "T+1 input" is being changed to "Original Trade Data" in order to differentiate that type of input from the time the input is required. Finally, NSCC

is modifying the reference throughout the rules from "Advisory Notice" and "Contract List" to "Advisory Listing" and "Regular Way T+1 Contract List", to reflect current usage.

(b) Earlier comparison is integtral to an efficient, settlement system. By accelerating the comparison cycle, less trades will be unresolved at later points in the settlement process, and thus participants will achieve a higher comparison rate closer to the point of trade execution. Since the proposed rule change promotes the prompt and accurate clearance and settlement of securities transactions, it is consistent with the requirements of the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to NSCC.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Members have been advised by Important Notice dated November 16, 1988. One written comment was received. NSCC will notify the Commission of any other written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and published its reason 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 approved.

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 provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR-NSCC-89-01 and should be submitted by March 29, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: March 1, 1989.

[FR Doc. 89-5298 Filed 3-7-89; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

March 2, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Audio/Video Affiliates, Inc., Common Stock, $.01 Par Value (File No. 7-4227)
Energy Service Company, Inc., Common Stock, $.01 Par Value (File No. 7-4228)
KeyCorp., Common Stock, $5 Par Value (File NO. 7-4229)
L.A. Gear, Inc., Common Stock, No Par Value (FIle No. 7-4230)
Acme-Cleveland Corporation, Common Stock, $1 Par Value (File No. 7-4231)
Central Vermont Public Service Corp., Common Stock, $6 Par Value (File No. 7-4232)
Copperweld Corporation, Common Stock, $0.833 Par Value (File No. 7-4233)
Excel Industries, Inc., Common Stock, No Par Value (File No. 7-4234)
Fiat, S.P.A., American Depository Shares (File No. 7-4235)
Green Mountain Power Corporation, Common Stock, $3.33 ⅓ Par Value (File No. 7-4236)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 23, 1989, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-5292 Filed 3-7-89; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-7938]

Issuer Delisting; Application To Withdraw From Listing and Registration on the American and Pacific Stock Exchanges; First City Industries, Inc., 6¾% Convertible Subordinated Debentures, Due 1991

March 2, 1989.

First City Industries, Inc. ("Company"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American ("Amex") and Pacific ("PSE") Stock Exchanges.

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

On January 4, 1989, First City Acquisition Corp. ("Acquisition") completed a tender offer for all of the Company's common stock, pursuant to which, First City Developments Corp. (the parent corporation) along with Acquisition became the beneficial owner of approximately 99.2% of the Company's outstanding common stock. On January 30, 1989, Acquisition was merged with and into the Company and the Company became a wholly-owned subsidiary of First City Developments Corp. As a result of that merger, the remaining holders of the common stock became entitled to receive $13.10 in cash for each share of common stock they owned and the common stock was

subsequently delisted from the New York and Pacific Stock Exchanges.

On February 27, 1989, there were only 219 holders of record of $569,300 principal amount of the Company's Debentures. The Company has determined that the cost of continued listing of the Debentures is no longer justified because of the small number of holders of the Debentures and the very limited trading.

Any interested person may, on or before March 23, 1989, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-5295 Filed 3-7-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24831]

Filings Under the Public Utility Holding Company Act of 1935 ("Act"); Savannah Electric and Power Co.

March 2, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 27, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the manner. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Savannah Electric and Power Company (70-7531)

Savannah Electric and Power Company ("Savannah"), 600 Bay Street, East, Savannah, Georgia 31401, an electric utility subsidiary of The Southern Company, a registered holding company, has filed a post-effective amendment to its application-declaration pursuant to sections 6(a)(2), 6(b), 7(e) and 12(e) of the Act and Rules 50, 62 and 65 thereunder.

By order dated September 2, 1988 (HCAR No. 24709), Savannah was authorized to solicit proxies with respect to several proposals, including amendments to its Charter, to be presented at a special meeting of its shareholders held in September 28, 1988. By order dated November 30, 1988 (HCAR No. 24763) Savannah was authorized, among other things, to amend its Charter to increase the permitted amount of unsecured short-term debt. At the September 28, 1988 meeting, all of the proposals were duly adopted, with the exception of the proposal to increase the permitted amount of unsecured short-term debt.

Savannah now proposes to submit for consideration and action by its preferred stockholders at the annual meeting to be held on or about May 16, 1989, the proposal that Savannah be authorized, until July 1, 1999, to issue or assume unsecured debt having maturities of less than ten years in excess of 10% of capital stock, surplus and secured debt, provided that (a) none of such additional short-term debt outstanding on July 1, 1999, shall mature on or after January 1, 2000, and (b) Savannah's total indebtedness represented by unsecured securities shall at no time exceed 20% of capital stock, surplus and secured debt.

Savannah requests that the effectiveness of its post-effective amendment to its application-declaration with respect to the solicitation of proxies for voting by its stockholders on the proposal to amend the Charter, be permitted to become effective as provided in Rule 62(d). Savannah proposes to mail a notice of meeting, proxy statement and proxy to its preferred stockholders for the annual meeting on or about May 16, 1989.

It appearing to the Commission that Savannah's post-effective amendment to its application-declaration regarding the proposed solicitation of proxies should be permitted to become effective forthwith, pursuant to Rule 62:

It is ordered, That the post-effective amendment to its application-declaration regarding the proposed solicitation of proxies, be, and it hereby is, permitted to become effective forthwith, pursuant to Rule 62 and subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-5303 Filed 3-7-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 89-015]

Houston/Galveston Navigation Safety Advisory Committee

Prusant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of the twentieth meeting of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, May 11, 1989 in the conference room of the Houston Pilots Office, 8150 South Loop East, Houston, Texas. The meeting is scheduled to begin at approximately 9:30 a.m. and end at approximately 1:00 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Presentation of the minutes of the Inshore and Offshore Waterways Subcommittees and discussion of recommendations.
3. Discussion of previous recommendations made by the Committee.
4. Presentation of any additional new items for consideration of the Committee.
5. Adjournment.

The purpose of this Advisory Committee is to provide recommendations and guidance to the Commander, Eighth Coast Guard District on navigation safety matters affecting the Houston/Galveston area.

Attendance is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Lieutenant Commander C.T. Bohner, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Gaurd District (oan), Room 1141, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130-3396, telephone number (504) 589-4686.

Dated: February 17, 1989.

A.E. Henn,

Captain, U.S. Coast Guard, Commander, 8th Coast Guard District, Acting.

[FR Doc. 89-5405 Filed 3-7-89; 8:45 am]

BILLING CODE 4910-14-M

[CGD 89-016]

Houston/Galveston Navigation Safety Advisory Committee; Offshore Waterway Management Subcommittee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Offshore Waterway Management Subcommittee of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, April 27, 1989 at the Houston Yacht Club, 3620 Miramar Drive, Laporte, Texas. The meeting is scheduled to begin at 9:00 a.m. and end at 10:30 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Discussion of previous recommendations made by the full Advisory Committee and the Offshore Waterway Management Subcommittee.
3. Presentation of any additional new items for consideration by the Subcommittee.
4. Adjournment.

Attendance is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Lieutenant Commander C.T. Bohner, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), Room 1141, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130-3396, telephone number (504) 589-4686.

Dated: February 17, 1989.

A.E. Henn,

Captain, U.S. Coast Guard, Commander, 8th Coast Guard District, Acting.

[FR Doc. 89-5406 Filed 3-7-89; 8:45 am]

BILLING CODE 4910-14-M

[CGD 89-017]

Houston/Galveston Navigation Safety Advisory Committee; Inshore Waterway Management Subcommittee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act [Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Inshore Waterway Management Subcommittee of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, April 27, 1989 at the Houston Yacht Club, 3620 Miramar Drive, Laporte, Texas. The meeting is scheduled to begin at 10:30 a.m. and end at 12:00 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Discussion of previous recommendations made by the full Advisory Committee and the Inshore Waterway Management Subcommittee.
3. Presentation of any additional new items for consideration to the Subcommittee.
4. Adjournment.

Attendance is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Lieutenant Commander C.T. Bohner, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), Room 1141, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130-3396, telephone number (504) 589-4686.

Dated: February 17, 1989.

A.E. Henn,

Captain, U.S. Coast Guard, Commander, 8th Coast Guard District, Acting.

[FR Doc. 89-5407 Filed 3-7-89; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

Date: March 7, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Alcohol, Tobacco and Firearms

OMB Number: 1512-0034.
Form Number: ATF F 5000.9.
Type of Review: Extension.
Title: Personnel Questionnaire—Alcohol and Tobacco Products.
Description: The information listed on ATF F 5000.9, Personnel Questionnaire, enables ATF to determine whether or not an applicant for an alcohol or tobacco permit meets the minimum qualifications. The form identifies the individual, residence, business background, financial sources for business and criminal record. If the applicant is found not to be qualified, the permit may be denied.
Respondents: Individuals or households, Businesses and other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 5,000.
Estimated Burden Hours Per Response: 2 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 10,000 hours.

OMB Number: 1512-0298.
Form Number: ATF REC 5120/1.
Type of Review: Extension.
Title: Usual and Customary Business Records Relating to Wine.
Description: Usual and customary business records relating to wine are routinely inspected by ATF officers to ensure the payment of alcohol taxes due to the Federal Government.
Respondents: Individuals or households, Farms, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Recondkeepers: 1,246.
Estimated Total Recordkeeping Hours: 1 hour.
Frequency of Response: Recordkeeping.
Estimated Total Recordkeeping Burden: 1 hour.

OMB Number: 1512-0481.
Form Number: ATF Requirement 5120/5.
Type of Review: Extension.
Title: Marks on Tanks and Other Bulk Wine Containers on Wine Premises.
Description: ATF requires that tanks and other bulk wine containers on wine premises be marked with identifying information. The prescribed marks

provide a control over revenue accountability used by ATF to validate the propriety of revenue received by the Federal Government..

Respondents: Farms, Businesses and other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 1,126.

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1 hour.

Clearance Officer: Robert Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89-5366 Filed 3-7-89; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: March 2, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0755.

Form Number: None.

Type of Review: Extension.

Title: Related Group Election With Respect to Qualified Investments in Foreign Base Company Shipping Operations.

Description: The election described in the attached justification converted an annual election to an election effective until revoked. The computational information required is necessary to assure that the U.S. shareholder correctly reports any shipping income of its controlled foreign corporations which is taxable to that shareholder.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 100.

Estimated Burden Hours Per Response: 2 hours.

Frequency of Response: Nonrecurring annual election.

Estimated Total Reporting Burden: 205 hours.

OMB Number: 1545-0955.

Form Number: None.

Type of Review: Extension.

Title: Time and Manner of Making Quarterly Payments of the Railroad Unemployment Repayment Tax.

Description: Section 3321 imposes a tax (railroad unemployment repayment tax) on every rail employer with respect to rail wages paid to the employees of such employer and on every employee representative with respect to rail wages received by such employee representative.

Respondents: Individuals or households, Businesses or other for-profit.

Estimated Number of Respondents: 2,457.

Estimated Burden Hours Per Response: 681 hours.

Frequency of Response: Quarterly, Annually.

Estimated Total Reporting Burden: 681 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89-5367 Filed 3-7-89; 8:45 am]

BILLING CODE 4810-25-M

Customs Service

[T.D. 89-34]

Cancellation "With Prejudice" of Corporate Broker's License No. 6024; Maki International, Inc.

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

ACTION: General notice.

SUMMARY: Notice is hereby given that the Secretary of the Treasury on December 22, 1988, pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and § 111.51(b) and 111.74 of the Customs Regulations, as amended (19 CFR 111.51(b), 111.74), cancelled with prejudice the corporate broker's license No. 6042 issued to Maki International Incorporated.

Dated: March 2, 1989.

Victor G. Weeren,

Director, Office of Trade Operations.

[FR Doc. 89-5369 Filed 3-7-89; 8:45 am]

BILLING CODE 4820-02-M

[T.D. 89-35]

Cancellation "With Prejudice" of Individual Broker's License No. 4551; Walter Bruno Maki

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

ACTION: General notice.

SUMMARY: Notice is hereby given that the Secretary to the Treasury on December 22, 1988, pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and §§ 111.51(b) and 111.74 of the Customs Regulations, as amended (19 CFR 111.51(b), 111.74), cancelled with prejudice the individual broker's license No. 4551 issued to Walter Bruno Maki.

Dated: March 2, 1989.

Victor G. Weeren,

Director, Office of Trade Operations.

[FR Doc. 89-5370 Filed 3-7-89; 8:45 am]

BILLING CODE 4820-02-M

VETERANS ADMINISTRATION

Career Development Committee; Open Meeting

The Veterans Administration gives notice under Pub. L. 92-463 that a meeting of the Career Development Committee, authorized by 38 U.S.C. 4101, will be held in the State Room of the Governor's House Holiday Inn, Rhode Island Avenue at 17th Street NW, Washington, DC, April 26 through 28, 1989, starting at 8 a.m., April 26. The meeting will be for the purpose of scientific review of applications for appointment to the Career Development Program in the Veterans Administration. The committee advises the Director, Medical Research Service, on selection and appointment of Associate Investigators, Research Associates, Clinical Investigators, Medical Investigators, and Senior Medical Investigators.

The meeting will be open to the public up to the seating capacity of the room from 8 a.m. to 8:30 a.m. on April 26, 1989, to discuss the general status of the program. Because of the limited seating capacity of the room, those who plan to attend should contact Mr. David D.

Thomas, Executive Secretary of the Career Development Committee (151J), Veterans Administration Central Office, Washington, DC 20420 (202-233-2317) prior to April 21, 1989. The meeting will be closed from 8:30 a.m. to 5 p.m., on April 26, 8 a.m. to 5 p.m. on April 27, 8 a.m. to 3 p.m. on April 28, for consideration of individual applications for positions in the Career Development Program. This necessarily requires examination of personnel files and discussion and evaluation of the qualifications, competence, and potential of the candidates, disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, closure of this portion of the meeting is permitted by section 10(d) of Pub. L. 92-463 as amended, in accordance with subsection (c) (6), 5 U.S.C. 552b.

Minutes of the meeting and rosters of the committee members may be obtained from David D. Thomas, Chief, Career Development Program, Medical Research Service (151J), Veterans Administration, Washington, DC 20420 (phone 202-233-2317).

Dated: February 28, 1989.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 89-5264 Filed 03-07-89; 8:45 am]

BILLING CODE 8320-01-M

Special Medical Advisory Group; Open Meeting

The Veterans Administration gives notice under Pub. L. 92-463 that a meeting of the Special Medical Advisory Group will be held on March 23 and 24, 1989. The session on March 23 will be held at the Capital Hilton Hotel, 16th and "K" Streets, NW., Washington, DC 20036, and the session on March 24 will be held in the Omar Bradley Conference Room (19th floor) at the Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420.

The purpose of the Special Medical Advisory Group is to advise the Administrator and Chief Medical Director relative to the care and treatment of disabled veterans, and other matters pertinent to the Veterans Administration and the Department of Medicine and Surgery. The session on March 23 (held at the Capital Hilton Hotel) will convene at 6 p.m. and the session on March 24 will convene at 8 a.m. All sessions will be open to the public up to the seating capacity of the rooms. Because this capacity is limited, it will be necessary for those wishing to attend to contact Lorri Fertal, Office of the Chief Medical Director, Veterans Administration (phone 202/233-3985) prior to March 16, 1989.

Dated: February 28, 1989.

By direction of the Acting Administrator:

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 89-5265 Filed 3-7-89; 8:45 am]

BILLING CODE 8320-01-M

Cooperative Studies Evaluation Committee; Meeting

The Veterans Administration gives notice under Pub. L. 92-463 (Federal Advisory Committee Act) as amended by section 5(c) of Pub. L. 94-409 that a meeting of the Cooperative Studies Evaluation Committee will be held at the Royal Sonesta Hotel, 5 Cambridge Parkway, Cambridge, MA 02142, April 11 and 12, 1989. The session on April 11 is scheduled to begin at 7:30 a.m. and end at 6 p.m. and the session on April 12 is scheduled to begin at 7:30 a.m. and end at 3:10 p.m. The meeting will be for the purpose of reviewing five proposed new clinical trials, one in diabetes, one in arthritis, one in alcoholic liver disease, one in hypertension, one in heart disease, and the progress of two ongoing cardiovascular cooperative studies. 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 to 6 a.m., on April 11, 1989 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, Veterans Administration Central Office, Washington, DC (202-233-2861), prior to April 6, 1989.

The meeting will be closed from 8 a.m. to 6 p.m. on April 11, and from 7:30 a.m. to 3:10 p.m. on April 12, 1989, for consideration of specific proposals in accordance with provisions set forth in section 10(d) of Pub. L. 92-463 (the Federal Advisory Committee Act), as amended by section 5(c) of Pub. L. 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 clearly unwarranted invasion of personal privacy.

Dated: February 27, 1989.

By direction of the Acting Administrator.

Rosa Maria Fountanez,

Committee Management Officer.

[FR Doc. 89-5266 Filed 3-7-89; 8:45 am]

BILLING CODE 8320-01-M

Advisory Committee on Structural Safety of Veterans Administration Facilities; Meeting

The Veterans Administration gives notice under Public Law 92-463 that a meeting of the Advisory Committee on Structural Safety of Veterans Administration facilities will be held in Room 442 of the Lafayette Building, 811 Vermont Avenue, NW., Washington, DC, on April 14, 1989, at 10 a.m. The committee members will review Veterans Administration construction standards and criteria relating to fire, earthquake and other disaster resistant construction.

The meeting will be open to the public up to the seating capacity of the room. Because of the limited seating capacity, it will be necessary for those wishing to attend to contact Mr. Richard D. McConnell, Director, Structural Engineering Service, Office of Facilities, Veterans Administration Central Office (phone 202-233-2864) prior to April 12, 1989.

Dated: February 27, 1989.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 89-5267 Filed 3-7-89; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 44
Wednesday, March 8, 1989

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).

NATIONAL LABOR RELATIONS BOARD

TIME AND DATE: 10:00 a.m., Thursday, March 23, 1989.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue NW., Washington, DC 20570.

STATUS: Open to public observation.

MATTERS TO BE CONSIDERED: Rulemaking—29 CFR Part 103 (Collective-Bargaining Units in the Health Care Industry).

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, National Labor Relations Board, Washington, DC 20570, Telephone: (202) 254-9430.

Dated, Washington, DC, March 6, 1989.

By direction of the Board.

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 89-5504 Filed 3-6-89; 3:36 pm]

BILLING CODE 7545-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, March 14, 1989.

PLACE: The Board Room, Eighth Floor, 800 Independence Avenue SW., Washington, DC 20594.

STATUS: The first three items are open to the public. The last three items are closed under Exemption 10 of the Government in Sunshine Act.

MATTERS TO BE CONSIDERED:

1. Highway Accident Report: Collision of Levy County Schoolbus and Airdrome Tire Centers, Inc., Truck, Bronson, Florida, August 28, 1987.
2. Petition for Reconsideration: Highway Accident Report and Safety Study—Multiple Vehicle Collision and Fire, Snow Hill, North Carolina, May 31, 1985, and Crashworthiness of Large Poststandard Schoolbuses.
3. Recommendation to FAA: Engine Stoppage in Fuel Injected Piper Model Airplanes Due to Ice/Snow Blockage of Induction Air Filters.
4. Opinion and Order: Administrator v. Hanson, Docket SE-8273; disposition of Administrator's appeal.
5. Opinion and Order: Administrator v. Saccoman, Docket SE-8117; disposition of the Administrator's appeal.
6. Opinion and Order: Administrator v. Funk, Docket SE-8031; disposition of Administrator's appeal.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

Bea Hardesty,

Federal Register Liaison Officer.

March 3, 1989.

[FR Doc. 89-5442 Filed 3-6-89; 9:21 am]

BILLING CODE 7533-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of March 13, 1989.

Open meetings will be held on Tuesday, March 14, 1989, at 10:00 a.m., followed by a closed meeting, and on March 15, 1989 at 9:30 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Tuesday, March 14, 1989, at 10:00 a.m., will be:

1. Consideration of whether to approve proposed rule changes by the Philadelphia Stock Exchange, Inc. ("Phlx"), American Stock Exchange, Inc. ("Amex"), and the Chicago Board Options Exchange, Inc. ("CBOE") to establish index participations trading rules and list for trading index participations based on both established and newly developed broad based stock indices. For further information, please contact Ivan D. Davis at (202) 272-2066.
2. Consideration of whether to withdraw proposed amendments to rules 134, 436, and 482 under the Securities Act of 1933 and a staff guideline to Form N-1A. The rule amendments would have permitted money market mutual funds assigned a rating by a nationally recognized statistical rating organization ("NRSRO") to include that rating in tombstone ads, prospectuses, and "omitting prospectuses" without obtaining the NRSRO's consent to being named as having prepared or certified the rating. The staff guideline to Form N-1A concerned disclosure of ratings in registration statements. For further information, please contact Ernest P. Francis at (202) 272-2107.

The subject matter of the closed meeting scheduled for Tuesday, March 14, 1989, following the 10:00 a.m. open meeting, will be:

Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceeding of an enforcement nature.
Opinions.

The subject matter of the open meeting scheduled for Wednesday, March 15, 1989, at 9:30 a.m., will be:

The Commission is hosting a roundtable to discuss proposed Rule 144A and issues in the Securities Act Release No. 6806. Rule 144A, which was published for comment on October 25, 1988, would provide a safe harbor from the registration requirements of the Securities Act of 1933 for resale of securities to institutional investors. For further information, please contact Sara Hanks at (202) 272-3246.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Pat Daugherty at (202) 272-2200.

Jonathan G. Katz,

Secretary.

March 3, 1989.

[FR Doc. 89-5519 Filed 3-6-89; 3:58 pm]

BILLING CODE 8010-01-M

federal register

Wednesday
March 8, 1989

Part II

Enforcement of Nondiscrimination on the Basis of Handicap in Federally Assisted Programs; Notice of Proposed Rulemaking

Department of Agriculture
Department of Education
Department of Energy
Department of Health and Human Services
Department of State
ACTION
Environmental Protection Agency
International Development Cooperation Agency
    Agency for International Development
National Aeronautics and Space Administration
National Foundation on the Arts and the Humanities
    National Endowment for the Arts
    National Endowment for the Humanities
National Science Foundation
Nuclear Regulatory Commission
Small Business Administration
Veterans' Administration

DEPARTMENT OF AGRICULTURE

7 CFR PART 15B

NUCLEAR REGULATORY COMMISSION

10 CFR PART 4

DEPARTMENT OF ENERGY

10 CFR PART 1040

SMALL BUSINESS ADMINISTRATION

13 CFR PART 113

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR PART 1251

DEPARTMENT OF STATE

22 CFR PART 142

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR PART 217

DEPARTMENT OF EDUCATION

34 CFR PART 104

VETERANS ADMINISTRATION

38 CFR PART 18

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 7

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR PART 84

NATIONAL SCIENCE FOUNDATION

45 CFR PART 605

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

45 CFR PART 1151

National Endowment for the Humanities

45 CFR PART 1170

ACTION

45 CFR PART 1232

Enforcement of Nondiscrimination on the Basis of Handicap in Federally Assisted Programs

AGENCIES: ACTION, Departments of Agriculture, Education, Energy, Health and Human Services, and State, Environmental Protection Agency, International Development Cooperation Agency, National Aeronautics and Space Administration, National Foundation on the Arts and the Humanities, National Endowment for the Arts and National Endowment for the Humanities, National Science Foundation, Nuclear Regulatory Commission, Small Business Administration, Veterans Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation would amend the regulations issued by the agencies listed above for enforcement of section 504 of the Rehabilitation Act of 1973, as amended, in federally assisted programs or activities to include a cross-reference to the Uniform Federal Accessibility Standards (UFAS). Because some facilities subject to new construction or alteration requirements under section 504 are also subject to the Architectural Barriers Act, governmentwide reference to UFAS will diminish the possibility that recipients of Federal financial assistance would face conflicting enforcement standards. In addition, reference to UFAS by all Federal funding agencies will reduce potential conflicts when a building is subject to the section 504 regulations of more than one Federal agency.

DATE: Comments must be received by May 8, 1989.

ADDRESSES: See individual agencies below.

Copies of this notice are available on tape for persons with impaired vision. They may be obtained from the Coordination and Review Section, Civil Rights Division, Department of Justice, Washington, DC 20530; (202) 724-2222 (voice) or 724-7678 (TDD).

FOR FURTHER INFORMATION CONTACT: See individual agencies below.

SUPPLEMENTARY INFORMATION: Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), provides in part that

> No otherwise qualified individual with handicaps in the United States * * * shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance * * *.

The above listed agencies' existing section 504 regulations for federally assisted programs or activities require that new construction be designed and built to be accessible and that alterations of facilities be made in an accessible manner. Except as otherwise noted in the additional supplementary information, the regulations state that new construction or alteration accomplished in accordance with the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped" published by the American National Standards Institute, Inc. (ANSI A117.1-1961 (R1971) (ANSI)) meets the requirements of section 504. Three agencies (the Department of Agriculture, the Environmental Protection Agency, and the Small Business Administration) reference the 1980 edition, ANSI A117.1-1980. The proposed revision set forth in this document will reference UFAS in place of the current standard.

On August 7, 1984, UFAS was issued by the four agencies establishing standards under the Architectural Barriers Act (49 FR 31528 (see discussion *infra*)). The Department of Justice (DOJ), as the agency responsible under Executive Order 12250 for coordinating the enforcement of section 504, has recommended that agencies amend their section 504 regulations for federally assisted programs or activities to establish that, with respect to new construction and alterations, compliance with UFAS shall be deemed to be compliance with section 504. Because some facilities subject to new construction or alteration requirements under section 504 are also subject to the Architectural Barriers Act, governmentwide reference to UFAS will diminish the possibility that recipients of Federal financial assistance would face conflicting enforcement standards. In addition, reference to UFAS by all Federal funding agencies will reduce potential conflicts when a building is subject to the section 504 regulations of more than one Federal agency.

Background of Accessibility Standards

The Architectural Barriers Act of 1968, 42 U.S.C. 4151-4157, requires certain Federal and federally funded buildings to be designed, constructed, and altered in accordance with accessibility standards. It also designates four agencies (the General Services Administration, the Departments of Defense, and Housing and Urban Development, and the U.S. Postal Service) to prescribe the accessibility standards. Section 502 of the Rehabilitation Act of 1973 established the Architectural and Transportation Barriers Compliance Board (ATBCB). In 1978 the Rehabilitation Act was amended to require the ATBCB, *inter alia*, to issue minimum guidelines and requirements for the standards to be issued by the four standard-setting

agencies. The minimum guidelines were published on August 4, 1982 (47 FR 33862), and are codified at 36 CFR Part 1190.[1]

On August 7, 1984, the four standard-setting agencies issued UFAS as an effort to minimize the differences among their Barriers Act standards, and among those standards and accessibility standards used by the private sector. The General Services Administration (GSA) and Department of Housing and Urban Development (HUD) have incorporated UFAS into their Barriers Act regulations (*see* 41 CFR Subpart 101-19.6 (GSA) and 24 CFR Part 40 (HUD)). In order to ensure uniformity, UFAS was designed to be consistent with the scoping and technical provisions of the ATBCB's minimum guidelines and requirements, as well as with the technical provisions of ANSI A117.1-1980. ANSI is a private, national organization that publishes recommended standards on a wide variety of subjects. The original ANSI A117.1 was adopted in 1961 and reaffirmed in 1971. The current edition, issued in 1986, is ANSI A117.1-1986. The 1961, 1980, and 1986 ANSI standards are frequently used in private practice and by State and local governments.

This proposed amendment would amend the agencies' section 504 regulations to refer to UFAS.

The agencies have determined that they will not require the use of UFAS, or any other standard, as the sole means by which recipients can achieve compliance with the requirement that new construction and alterations be accessible. To do so would unnecessarily restrict recipients' ability to design for particular circumstances. In addition, it might create conflicts with State or local accessibility requirements that may also apply to recipients' buildings and that are intended to achieve ready access and use. It is expected that in some instances recipients will be able to satisfy the section 504 new construction and alteration requirements by following applicable State or local codes, and vice versa.

Effect of Amendment

Except as otherwise noted in the additional supplementary information for individual agencies, the agencies' current section 504 rules require that new facilities be designed and constructed to be readily accessible to and usable by persons with handicaps and that alterations be accessible to the maximum extent feasible. The amendment would not affect the current requirement but would merely provide that compliance with UFAS with respect to buildings (as opposed to "facilities," a broader term that encompasses buildings as well as other types of property) shall be deemed compliance with these requirements with respect to those buildings. Thus, for example, an alteration is accessible "to the maximum extent feasible" if it is done in accordance with UFAS. It should be noted that UFAS contains special requirements for alterations where meeting the general standards would be impracticable or infeasible (*see, e.g.,* UFAS sections 4.1.6(1)(b), 4.1.6(3), 4.1.6(4), and 4.1.7).

The amendment also includes language providing that departures from particular UFAS technical and scoping requirements are permitted so long as the alternative methods used will provide substantially equivalent or greater access to and utilization of the building. Allowing these departures from UFAS will provide recipients with necessary flexibility to design for special circumstances and will facilitate the application of new technologies that are not specified in UFAS. As explained under "Background of Accessibility Standards," the agencies anticipate that compliance with some provisions of applicable State and local accessibility requirements will provide "substantially equivalent" access. In some circumstances, recipients may choose to use methods specified in model building codes or other State or local codes that are not necessarily applicable to their buildings but that achieve substantially equivalent access.

The amendment requires that the alternative methods provide "substantially" equivalent or greater access, in order to clarify that the alternative access need not be precisely equivalent to that afforded by UFAS. Application of the "substantially equivalent access" language will depend on the nature, location, and intended use of a particular building. Generally, alternative methods will satisfy the requirement if in material respects the access is substantially equivalent to that which would be provided by UFAS in such respects as safety, convenience, and independence of movement. For example, it would be permissible to depart from the technical requirement of UFAS section 4.10.9 that the inside dimensions of an elevator car be at least 68 inches or 80 inches (depending on the location of the door) on the door opening side, by 54 inches, if the clear floor area and the configuration of the car permits wheelchair users to enter the car, make a 360° turn, maneuver within reach of controls, and exit from the car. This departure is permissible because it results in access that is safe, convenient, and independent, and therefore substantially equivalent to that provided by UFAS.

With respect to UFAS scoping requirements, it would be permissible in some circumstances to depart from the UFAS new construction requirement of one accessible principal entrance at each grade floor level of a building (see UFAS section 4.1.2(8)), if safe, convenient, and independent access is provided to each level of the new facility by a wheelchair user from an accessible principal entrance. This departure would not be permissible if it required an individual with handicaps to travel an extremely long distance to reach the spaces served by the inaccessible entrances or otherwise provided access that was substantially less convenient than that which would be provided by UFAS.

It would not be permissible for a recipient to depart from UFAS' requirement that, in new construction of a long-term care facility, at least 50% of all patient *bedrooms* be accessible (see UFAS section 4.1.4(9)(b)), by using large accessible wards that make it possible for 50% of all *beds* in the facility to be accessible to individuals with handicaps. The result is that the population of individuals with handicaps in the facility will be concentrated in large wards, while able-bodied persons will be concentrated in smaller, more private rooms. Because convenience for persons with handicaps is therefore compromised to such a great extent, the degree of accessibility provided to persons with handicaps is not substantially equivalent to that intended to be afforded by UFAS.

It should be noted that the amendment does not require that existing buildings leased by recipients meet the standards for new construction and alterations. Rather, it continues the current Federal practice under section 504 of treating newly leased buildings as subject to the program accessibility standard for existing facilities.

Buildings under design on the effective date of this amendment will be governed by the amendment if the date that bids were invited falls after the effective date. This interpretation is consistent with GSA's Architectural

[1] The ATBCB Office of Technical Services is available to provide technical assistance to recipients upon request relating to the elimination of architectural barriers. Its address is: U.S. ATBCB, Office of Technical Services, 1111 18th Street, NW., Suite 500, Washington, DC 20036. The telephone number is (202) 653-7834 [voice/TDD]. This is not a toll free number.

Barriers Act regulation incorporating UFAS, at 41 CFR Subpart 101–19.6.

The proposed revision includes language modifying the effect of UFAS section 4.1.6(1)(g), which provides an exception to UFAS 4.1.6, *Accessible buildings: Alterations.* Section 4.1.6(1)(g) of UFAS states that "mechanical rooms and other spaces which normally are not frequented by the public or employees of the building or facility or which by nature of their use are not required by the Architectural Barriers Act to be accessible are excepted from the requirements of 4.1.6." Particularly after the development of specific UFAS provisions for housing alterations and additions, UFAS section 4.1.6(1)(g) could be read to exempt alterations to privately owned residential housing, which is not covered by the Architectural Barriers Act unless leased by the Federal Government for subsidized housing programs. This exception, however, is not appropriate under section 504, which protects beneficiaries of housing provided as part of a federally assisted program. Consequently, the proposed amendment provides that, for purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries, or result in the employment or residence therein of persons with handicaps.

The proposed revision also provides that whether or not the recipient opts to follow UFAS in satisfaction of the ready access requirement, the recipient is not required to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member. This provision does not relieve recipients of their obligation under the current regulation to ensure program accessibility.

Several agencies' section 504 regulations for federally assisted programs are contained in parts entitled "Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance." This document deletes the phrase "or benefiting from" from those titles. The phrase is being deleted pursuant to *Department of Transportation* v. *Paralyzed Veterans of America,* 477 U.S. 597 (1986), which held that air transportation services provided by airlines were not part of the covered program or activity because the airlines were not the intended recipient of the Federal financial assistance to airports, even if the airlines benefited from that assistance. The recent passage of the Civil Rights Restoration Act of 1987, Pub. L. 100–259, does not overrule or alter this result. S. Rep. No. 64, 100th Cong., 1st Sess. 29 (1987).

This document has been reviewed by DOJ. It is an adaptation of a prototype prepared by DOJ under Executive Order 12250 of November 2, 1980. The ATBCB has been consulted in the development of this document in accordance with 28 CFR 41.7.

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

Adoption of the Common Rule

The adoption of the common rule by the agencies in this document appears below.

DEPARTMENT OF AGRICULTURE

7 CFR Part 15b

ADDRESSES: Comments should be sent to: The Associate Director, Equal Opportunity, Office of Advocacy and Enterprise, U.S. Department of Agriculture, Washington, DC 20250.

Comments received will be available for public inspection in the Office of Advocacy and Enterprise, Equal Opportunity, Room 1226, South Bldg., 14th and Independence Ave., SW., Washington, DC 20250 from 8:30 a.m. to 5:00 p.m. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: James A. Westbrooks, Special Assistant, Equal Opportunity, Office of Advocacy and Enterprise, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–5681, TTY 382–1130.

ADDITIONAL SUPPLEMENTARY INFORMATION: This notice also revises the definition of "historic properties" in § 15b.3(q) in order to conform it to UFAS section 4.1.7(1)(a). Historic properties under the current definition are limited to those listed or eligible for listing in the National Register of Historic Places. The special historic preservation section of UFAS applies additionally to buildings and facilities designated as historic under State and local law.

List of Subjects in 7 CFR Part 15b

Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Grant programs, Handicapped, Historic preservation, Loan programs.

For the reasons stated in the preamble, Part 15b of title 7 of the Code of Federal Regulations is proposed to be amended as follows:

PART 15b—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

1. The title for Part 15b is revised to read as set forth above.

2. The authority citation for Part 15b is revised to read as follows:

Authority: 29 U.S.C. 794.

2. In § 15b.3, "Definitions," paragraph (q) is revised to read as follows:

§ 15b.3 Definitions.

* * * * *

(q) For purposes of § 15b.18(d), "Historic properties" means those buildings or facilities that are eligible for listing in the National Register of Historic Places, or such properties designated as historic under a statute of the appropriate State or local government body.

* * * * *

§ 15b.19 [Amended]

4. In § 15b.19, "New construction," paragraph (c) is revised to read as set forth at the end of this document.

William C. Payne, Jr.,

Deputy Associate Director.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 4

ADDRESSES: Comments should be sent to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing & Service Branch. Comments received will be available for public inspection at The NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555 from 7:30 a.m. to 4:15 p.m. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Edward E. Tucker, Manager, Civil Rights Program, Office of Small and Disadvantaged Business Utilization/ Civil Rights, U.S. Nuclear Regulatory Commission. Washington, DC 20555.Telephone: (301) 492-7697 (voice) or (800) 638-8282 (TDD).

List of Subjects in 10 CFR Part 4

Administrative practice and procedure, Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Federal aid programs,

Grant programs, Handicapped, Loan programs, Reporting and recordkeeping requirements, Sex discrimination.

For the reasons stated in the preamble, Part 4 of title 10 of the Code of Federal Regulations is proposed to be amended as follows:

PART 4—NONDISCRIMINATION IN FEDERALLY ASSISTED COMMISSION PROGRAMS

1. The authority citation for Part 4 is revised to read as follows:

AUTHORITY: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 274, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 207, Pub. L. 95-604, 92 Stat. 3033.

Subpart A also issued under secs. 602-605, Pub. L. 88-352, 78 Stat. 252, 253 (42 U.S.C. 2000d-1-2000d-4); sec. 401, 88 Stat. 1254 (42 U.S.C. 5891). Subpart B also issued under sec. 504, Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 706); sec. 119, Pub. L. 95-602, 92 Stat. 2984 (29 U.S.C. 794); sec. 122, Pub. L. 95-602, 92 Stat. 2984 (29 U.S.C. 706(6)). Subpart C also issued under Title III of Pub. L. 94-135, 89 Stat. 728, as amended (42 U.S.C. 6101). Subpart E also issued under 29 U.S.C. 794.

§ 4.128 [Amended]

2. In § 4.128, "New construction," paragraph (a) is amended by adding the heading *"Design, construction, and alteration."* to the beginning of the paragraph.

3. Section 4.128 is further amended by revising paragraph (b) to read as set forth at the end of this document.

Victor Stello, Jr.

Executive Director for Operations.

DEPARTMENT OF ENERGY

10 CFR Part 1040

ADDRESSES: Comments should be sent to: Marion A. Bowden, 1000 Independence Avenue, SW., Rm. 4B-112, Washington, DC 20585.

Comments received will be available for public inspection at 1000 Independence Avenue, SW., Rm. 4B-112, Washington, DC 20585 from 8 a.m. to 5 p.m. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: Marion A. Bowden, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2218 (voice) or 252-9777 (TDD).

List of Subjects in 10 CFR Part 1040

Aged, Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Grant programs, Handicapped, Loan programs, Sex discrimination.

For the reasons stated in the preamble, Part 1040 of title 10 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1040—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS

1. The authority citation for Part 1040 is revised to read as follows:

Authority: 20 U.S.C. 1681-1686; 29 U.S.C. 794, 794a., 794b., 42 U.S.C. 2000d to 2000d-4, 3601-3631, 5891, 6101-6107, 6870, 7101 *et seq.*

§ 1040.73 [Amended]

2. In § 1040.73, "New construction," paragraph (c) is revised to read as set forth at the end of this document.

July 1, 1988.

Marion A. Bowden,

Director, Office of Equal Opportunity

SMALL BUSINESS ADMINISTRATION

13 CFR Part 113

ADDRESSES: Comments should be sent to: J. Arnold Feldman, Chief, Office of Civil Rights Compliance, 1441 L Street NW., Suite 501, Washington, DC 20416.

Comments received will be available for public inspection at 1441 L Street NW., Suite 501, Washington, DC, from 8:30 a.m. to 5 p.m. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: J. Arnold Feldman, Chief, Office of Civil Rights Compliance, Small Business Administration, 1441 L Street NW., Suite 501, Washington, DC 20416, (202) 653-6054 (Voice), (202) 653-6579 (TDD) These are not toll-free numbers

ADDITIONAL SUPPLEMENTARY INFORMATION: The Small Business Administration currently requires compliance with a particular standard (the 1980 edition of the ANSI). Under this amendment, compliance with a particular standard is no longer mandated. Rather, recipients are encouraged to follow UFAS for new construction and alterations subject to the regulation

List of Subjects in 13 CFR Part 113

Blind, Buildings, Civil rights, Discrimination based on race, Color Religion, Sex, Marital status, Age Handicap or national origin, Employment, Equal employment opportunity, Grant programs, Handicapped, Loan programs

For the reasons stated in the preamble, Part 113 of title 13 of the Code of Federal Regulations is proposed to be amended as follows:

PART 113—NONDISCRIMINATION IN FINANCIAL ASSISTANCE PROGRAMS OF SBA—EFFECTUATION OF POLICIES OF FEDERAL GOVERNMENT AND SBA ADMINISTRATOR

1. The authority citation for Part 113 is revised to read as follows:

Authority: Secs. 5, 308, 72 Stat. 385, 694, as amended; 15 U.S.C. 633, 634, 687, 1691; 20 U.S.C. 1681-1688; 29 U.S.C. 794.

§ 113.3-3 [Amended]

1. In 113.3-3, "Structural accommodations for handicapped clients," paragraph (a) is amended by adding the heading *"Existing facilities."* at the beginning of the paragraph.

2. Section 113.3-3 is further amended by adding the heading *"Design, construction, and alteration."* at the beginning of paragraph (b) and by adding a new sentence after the heading to read as follows: "New facilities shall be designed and constructed to be readily accessible to and usable by persons with handicaps."

3. Section 113.3-3 is further amended by revising paragraph (c) to read as set forth at the end of this document.

James Abdnor,

Administrator.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1251

ADDRESS: Ms. Lynda Sampson, Handicapped and Aged Employment Program Manager, National Aeronautics and Space Administration, Room 6111, Code UI, 400 Maryland Avenue SW., Washington, DC 20546.

Comments received will be available for public inspection at the above address from 10:00 a.m. to 3:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Lynda Sampson, (202) 453-2177 (voice) or (202) 426-1436 (TDD)

List of Subjects in 14 CFR Part 1251

Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Grant programs, Handicapped, Loan programs.

For the reasons stated in the preamble, Part 1251 of title 14 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1251—NONDISCRIMINATION ON BASIS OF HANDICAP

1. The authority citation for Part 1251 is revised to read as follows:

Authority: 29 U.S.C. 794.

§ 1251.302 [Amended]

2. In § 1251.302, "New construction," paragraph (c) is revised to read as set forth at the end of this document.

James C. Fletcher,

Administrator.

DEPARTMENT OF STATE

22 CFR Part 142

ADDRESSES: Comments should be sent to: William O. Wallace, Attorney-Adviser, Office of Equal Employment Opportunity and Civil Rights, Department of State, Room 4216, Washington, DC 20520.

Comments received will be available for public inspection at Room 4216, Department of State, Washington, DC 20520 from 8:15 a.m. to 4:45 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: William O. Wallace, Attorney-Adviser, Office of Equal Employment Opportunity and Civil Rights, Department of State, Room 4216, Washington, DC 20520, (202) 647-9258 (voice or TDD).

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of State's existing section 504 requirement for alterations, contained at 22 CFR 142.17(b), mandates compliance with the standards set forth in 41 CFR subpart 101-19.6 (*i.e.*, UFAS). Under this amendment, compliance with UFAS is no longer mandated, but is merely encouraged. This notice also amends paragraph (a), which incorrectly implies that all federally funded construction since 1968 is subject to the Architectural Barriers Act. In fact, only certain federally funded construction triggers Architectural Barriers Act coverage.

List of Subjects in 22 CFR Part 142

Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Grant programs, Handicapped, Loan programs.

For the reasons stated in the preamble, Part 142 of title 22 of the Code of Federal regulations is proposed to be amended as follows:

PART 142—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

1. The title for Part 142 is revised to read as set forth above.

2. The authority citation for Part 142 is revised to read as follows:

Authority: 29 U.S.C. 794.

3. In § 142.17, paragraphs (a) and (b) are revised to read as follows:

§ 142.17 New construction.

(a) *Design and construction.* Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed, constructed, and operated in a manner so that the facility or part of the facility is accessible to and usable by persons with handicaps, if the construction was commenced after the effective date of this part.

(b) *Alteration.* Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered so that the altered portion of the facility is readily accessible to and usable by persons with handicaps.

* * * * *

3. Section 142.17 is further amended by revising paragraph (c) to read as set forth at the end of this document.

Kenneth Hunter,

Associate Director for Personnel, Department of State.

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR Part 217

ADDRESSES: Comments should be sent to: Dennis G. Diamond, Acting Director, Office of Equal Opportunity Programs, Agency for International Development, Washington, DC 20523.

Comments received will be available for public inspection at Room 1224 SA-1, 2401 "E" Street NW., Washington, DC from 8:45 a.m. to 5:30 p.m. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: Leticia Peoples, 663-1340 (Voice) or 663-1337 (TDD).

List of Subjects in 22 CFR Part 217

Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Grant programs, Handicapped, Loan programs.

For the reasons stated in the preamble, Part 217 of title 22 of the Code of Federal Regulations is proposed to be amended as follows:

PART 217—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

1. The title for Part 217 is revised to read as set forth above.

2. The authority citation for Part 217 is revised to read as follows:

Authority: 29 U.S.C. 794.

§ 217.23 [Amended]

3. In § 217.23, "New construction," paragraph (c) is revised to read as set forth at the end of this document.

Dennis Diamond,

Acting Director.

DEPARTMENT OF EDUCATION

34 CFR Part 104

ADDRESSES: Comments should be sent to: LeGree S. Daniels, Assistant Secretary for Civil Rights, Room 5000, Mary E. Switzer Building, 330 C Street SW., Washington, DC 20202-1100.

Comments received will be available for public inspection at Office for Civil Rights Law Library, Room 5022, Mary E. Switzer Building, 330 C Street SW., Washington, DC 20202-1100 from 9 a.m. to 5 p.m. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: Frederick T. Cioffi, Acting Director, Policy and Enforcement Service, Room 5046A, Mary E. Switzer Building, 330 C Street SW., Washington, DC 20202-1100, 732-1635 (Voice) or 566-2673 (TDD).

List of Subjects in 34 CFR Part 104

Blind, Buildings, Civil rights, Education, Educational facilities, Employment, Equal educational opportunity, Equal employment opportunity, Grant programs, Handicapped, Loan programs, School construction.

For the reasons stated in the preamble, Part 104 of title 34 of the Code of Federal Regulations is proposed to be amended as follows:

PART 104—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

1. The title for Part 104 is revised to read as set forth above.

2. The authority citation for Part 104 is revised to read as follows:

Authority: 20 U.S.C. 1405; 29 U.S.C. 794.

§ 104.23 [Amended]

3. In § 104.23, "New construction," paragraph (c) is revised to read as set forth at the end of this document.

Appendix A—[Amended]

4. Appendix A, No. 21, referring to the ANSI standard, is removed.

Laura F. Cavazos,

Secretary of Education.

VETERANS ADMINISTRATION

38 CFR Part 18

ADDRESS: Interested person are invited to submit written comments, suggestions, or objections to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW, Washington, DC 20420. All written comments received will be available for public inspection in the Veterans Services Unit, room 132, at the above address only between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until April 17, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. William Nunn, Equal Opportunity Specialist, Office of Equal Opportunity, (202) 233-2150 or (202) 233-3710 (TDD).

ADDITIONAL SUPPLEMENTARY INFORMATION: The VA has determined that this proposed regulation is not a "major rule" within the meaning of Executive Order 12291, Federal Regulation. It will not have an annual effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers or individual industries, and will not have any other significant adverse effects on the economy.

The Administrator hereby certifies that this proposed regulation will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), this proposed regulation is therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reasons for this certification are that the proposed regulation does not impact on small entities.

The Catalog of Federal Domestic Assistance program numbers affected by this regulation are 64.005, 64.013, 64.014, 64.015, 64.016, 64.018, 64.019, 64.020, 64.021, 64.121, 64.124, 64.203. Other financial assistance to which this requirement applies is listed in Appendix A of 38 CFR Part 18, Subpart D.

List of Subjects in 38 CFR Part 18

Administrative practice and procedure, Aged, Authority delegations, Blind, Buildings, Civil rights, Employment, Equal educational opportunity, Equal employment opportunity, Grant programs, Handicapped, Investigations.

Approved: February 24, 1988.

Thomas K. Turnage,

Administrator.

38 CFR Part 18, Nondiscrimination in Federally-Assisted Programs of the Veterans Administration—Effectuation of Title VI of the Civil Rights Act of 1964, is proposed to be amended as follows:

PART 18—[AMENDED]

1. The heading and authority citation for Subpart D are revised to read as follows:

Subpart D—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Federal Financial Assistance

Authority: 29 U.S.C. 794; 42 U.S.C. 2000d-1 to 2000d-4, 6101-6107.

2. In § 18.423, paragraph (c) is revised to read as set forth at the end of this document.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 7

ADDRESSES: Comments should be sent to: Ms. Suzanne E. Olive, Associate Director for Discrimination Complaints and External Compliance Programs, Office of Civil Rights (A-105), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Comments received will be available for public inspection at the U.S. Environmental Protection Agency, Office of Civil Rights, Room 206 West Tower, 401 M Street SW., Washington, DC 20460, from 9:00 a.m. to 3:00 p.m., Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Nereid Maxey, Office of Civil Rights, EPA, at the above address; telephone 202/382-4567 (Voice) or TDD 202/382-4565.

List of Subjects in 40 CFR Part 7

Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Grant programs, Handicapped, Loan programs, Sex discrimination.

For the reasons stated in the preamble, Part 7 of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 7—NONDISCRIMINATION IN PROGRAMS RECEIVING FEDERAL ASSISTANCE FROM THE ENVIRONMENTAL PROTECTION AGENCY

1. The authority citation for Part 7 is revised to read as follows:

Authority: 42 U.S.C. 2000d to 2000d-4, 29 U.S.C. 794; 33 U.S.C. 1251 nt.

§ 7.70 [Amended]

2. In § 7.70, "New construction," paragraphs (b), (c), and (d) are removed.

3. Section 7.70 is further amended by adding a new paragraph (b) to read as set forth at the end of this document.

Nathaniel Scurry,

Director, Office of Civil Rights.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 84

ADDRESSES: Comments should be sent to: Audrey F. Morton, Director, Office for Civil Rights, Department of Health & Human Services, Washington, DC 20201.

Comments received will be available for public inspection at Room 5034, HHS-North Building, 330 Independence Avenue SW., Washington, DC 20201, from 9:00 a.m. to 5:30 p.m. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: Marcella Haynes, Director, Policy & Special Projects Staff, or Frank EG Weil, Chief, Policy Branch on (202) 245-6671 TDD (202) 472-2916.

List of Subjects in 45 CFR Part 84

Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Grant programs, Handicapped, Health facilities, Hospitals, Loan programs.

For the reasons stated in the preamble, Part 84 of title 45 of the Code of Federal Regulations is proposed to be amended as follows:

PART 84—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

1. The title for Part 84 is revised to read as set forth above.

2. The authority citation for Part 84 is revised to read as follows:

Authority: 20 U.S.C. 1405; 29 U.S.C. 794; 42 U.S.C. 290dd-2; 21 U.S.C. 1174.

§ 84.23 [Amended]

3. In § 84.23, "New construction," paragraph (c) is revised to read as set forth at the end of this document.

Don Newman,

Acting Secretary.

NATIONAL SCIENCE FOUNDATION

45 CFR Part 605

ADDRESSES: Comments should be sent to: Brenda M. Brush, Director, Office of Equal Opportunity, National Science Foundation, 1800 G Street NW., Room 546, Washington, DC 20550.

Comments received will be available for public inspection at the National Science Foundation, Room 546, 1800 G Street NW., Washington, DC 20550, from 8:30 a.m. to 5:00 p.m. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: Brenda M. Brush, Director, Office of Equal Opportunity, 1800 G Street NW., Room 546, Washington, DC 20550, (202) 357-9819. TDD No.: (202) 357-9867.

List of Subjects in 45 CFR Part 605

Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Grant programs, Handicapped, Loan programs.

For the reasons stated in the preamble, Part 605 of title 45 of the Code of Federal Regulations is proposed to be amended as follows:

PART 605—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

1. The title for Part 605 is revised to read as set forth above.

2. The authority citation for Part 605 is revised to read as follows:

Authority: 29 U.S.C. 794.

§ 605.23 [Amended]

3. In § 605.23, "New construction," paragraph (c) is revised to read as set forth at the end of this document.

John H. Moore,

Acting Director, National Science Foundation.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

45 CFR Part 1151

ADDRESS: Comments should be sent to: Arthur A. Warren, Deputy General Counsel, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Room 522, Washington, DC 20506.

Comments received will be available for public inspection at National Endowment for the Arts, Office of General Counsel, Room 522, 1100 Pennsylvania Avenue NW., Washington, DC 20506, from 9:00 a.m. to 5:30 p.m. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: Paula Terry, Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, (202) 682-5532, TTY Number: (202) 682-5496.

List of Subjects in 45 CFR Part 1151

Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Grant programs, Handicapped, Loan programs.

For the reasons stated in the preamble, Part 1151 of title 45 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1151—NONDISCRIMINATION ON THE BASIS OF HANDICAP

1. The authority citation for Part 1151 is revised to read as follows:

Authority: 29 U.S.C. 794.

§ 1151.23 [Amended]

2. In § 1151.23, "New construction," paragraph (a) is amended by adding the heading "*Design, construction, and alteration*" to the beginning of the paragraph.

3. Section 1151.23 is further amended by revising paragraph (b) to read as set forth at the end of this document.

Francis S.M. Hodsoll,

Chairman, National Endowment for the Arts.

National Endowment for the Humanities

45 CFR Part 1170

ADDRESS: Comments should be sent to: Carol M. Gordon, Director, Office of Equal Opportunity.

Comments received will be available for public inspection at 1100 Pennsylvania Avenue NW., Room 419, Washington, DC 20506 from 8:30 a.m. to 4:00 p.m. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: Carol M. Gordon (202) 786-0410 (Voice) or 786-0282 (TDD).

List of Subjects in 45 CFR Part 1170

Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Grant programs, Handicapped, Loan programs.

For the reasons stated in the preamble, Part 1170 of title 45 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1170—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN FEDERALLY ASSISTED PROGRAMS AND ACTIVITIES

1. The authority citation for Part 1170 is revised to read as follows:

Authority: 29 U.S.C. 794.

§ 1170.33 [Amended]

2. In § 1170.33 "New construction," paragraph (a) is amended by adding the heading "*Design, construction, and alteration*" to the beginning of the paragraph.

3. Section 1170.33 is further amended by revising paragraph (b) to read as set forth at the end of this document.

Lynne V. Cheney,

Chairman.

ACTION

45 CFR Part 1232

ADDRESSES: Comments should be sent to: Jeanne D. McCamley, ACTION, Office of the Director, Equal Opportunity Staff, 806 Connecticut Avenue NW., Washington, DC 20525.

Comments received will be available for public inspection at 806 Connecticut Avenue NW—Room 207, Washington, DC from 9:00 a.m. to 5:00 p.m. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: Jeanne D. McCamley, ACTION, Office of the Director, Equal Opportunity Staff, 806 Connecticut Avenue NW., Washington, DC 20525. 634-9312 (voice) or 566-2673 (JDD).

List of Subjects in 45 CFR Part 1232

Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Grant programs, Handicapped, Loan programs.

For the reasons stated in the preamble, Part 1232 of title 45 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1232—NON-DISCRIMINATION ON BASIS OF HANDICAP IN PROGRAMS RECEIVING FEDERAL FINANCIAL ASSISTANCE FROM ACTION

1. The authority citation for Part 1232 is revised to read as follows:

Authority: 29 U.S.C. 794.

§ 1232.15 [Amended]

2. In § 1232.15, "New construction," paragraph (a) is amended by adding the heading "*Design, construction, and alternation.*" to the beginning of the paragraph.

3. Section 1232.15 is further amended by revising paragraph (b) to read as set forth at the end of this document.

Donna M. Alvarado,
Director.

Text of the Common Rule

The text of the common rule as adopted by the agencies in this document appears below.

§ _____

* * * * *

(____) *Conformance with Uniform Federal Accessibility Standards.* (1) Effective as of [insert the effective date of this regulation], design, construction, or alteration of buildings in conformance with sections 3-8 of the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR Subpart 101-19.6) shall be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

(2) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of persons with physical handicaps.

(3) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

[FR Doc. 89-5260 Filed 3-7-89; 8:45 am]

BILLING CODES 3410-01-M; 7590-01-M; 6450-01-M; 6025-01-M; 7510-01-M; 4710-15-M; 6116-01-M; 4000-01-M; 8320-01-M; 6560-50-M; 4150-04-M; 7555-01-M; 7537-01-M; 7536-01-M; 6050-28-M

federal register

Wednesday
March 8, 1989

Part III

Department of Education

Office of Special Education and Rehabilitative Services

Handicapped Special Studies Program; Notice Inviting Applications for New Awards for Fiscal Year 1989; Notices

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Handicapped Special Studies Program

AGENCY: Department of Education.

ACTION: Notice of final annual evaluation priority.

SUMMARY: The Secretary announces an annual evaluation priority for the Handicapped Special Studies program. This priority has been selected to ensure effective use of program funds and to meet requirements of the Education of the Handicapped Act (EHA).

EFFECTIVE DATE: This priority takes effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of this priority call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3511-M/S 2313), Washington, DC 20202. Telephone: (202) 732-1099.

SUPPLEMENTARY INFORMATION: The Handicapped Special Studies program, authorized by section 618 of Part B of the Education of the Handicapped Act (EHA), as amended, supports studies to evaluate the impact of the Act, including efforts to provide a free appropriate public education and early intervention services to infants, toddlers, children and youth with handicaps. The results of these studies must be included in the annual report submitted to the Congress by the Department.

A notice of proposed funding priorities was published in the **Federal Register** on September 29, 1988 at 53 FR 38254, which contained the following two proposed priorities for fiscal year 1989 awards under this program:

(1) State Agency/Federal Evaluation Studies Projects; and

(2) Design Study for Obtaining National Estimates of Outcome Data on Children and Youth with Handicaps.

There is no difference between the proposed priorities and these final priorities.

However, due to budget constraints, the Secretary intends to award a contract in fiscal year 1990 to carry out the study described in priority (2). Under the Department's procedures, requests for proposals for individual contracts are announced in the *Commerce Business Daily* pursuant to the Federal Acquisition Regulation in 48 CFR Chapter 1 and the Education Department Acquisition Regulation in 48 CFR Chapter 34, and are not subject to section 431 of the General Education Provisions Act, which establishes procedures for promulgating rules and regulations that apply to the Department's non-procurement programs. The priority described under (1), *State Agency/Federal Evaluation Studies Projects,* has been selected as a final priority for cooperative agreements to be entered into by the Secretary and State agencies, and, therefore, is included in this notice of final annual evaluation priority, in accordance with section 431.

Public Comment

In the September 29th notice, the Secretary invited comments on the proposed annual priorities. The Secretary did not receive any comments. The Secretary has made no changes in the priorities since publication of the proposed priorities.

Priority

The Secretary announces a priority under the Handicapped Special Studies Program. In accordance with the Education Department General Administrative Regulations (EDGAR, 34 CFR 75.105(c)(1)), the Secretary invites applications for cooperative agreements to support certain types of studies.

Priority 1. State Agency/Federal Evaluation Studies Projects. (CFDA No. 84.159)

The purpose of this priority is to support evaluation studies by State agencies to assess the impact and effectiveness of activities assisted under the Education of the Handicapped Act. Within this priority, the Secretary particularly invites studies that: (1) Examine the relationship between State and local administrative factors (e.g., funding formulas, personnel certification, or other policies and procedures) and placement of students with handicaps in regular education environments; (2) examine the impact of various aspects of educational reform (e.g., increased graduation requirements, use of minimum competency testing to determine graduation eligibility, increased academic and curricular requirements, more rigorous promotion policies, etc.) on special education; or (3) examine the relationship between students' educational characteristics and their adult service needs.

In accordance with the Education Department General Administrative Regulations (EDGAR, 34 CFR 75.105(c)(1)), applications for studies described in items (1), (2), and (3) will not receive a competitive or absolute preference over other applications that propose evaluation studies to assess the impact and effectiveness of activities assisted under the Education of the Handicapped Act.

Authority: 20 U.S.C. 1418.

Dated: February 21, 1989.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.159; Handicapped Special Studies Program)

[FR Doc. 89-5262 Filed 3-7-89; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No. 84.159]

Handicapped Special Studies Program; Notice Inviting Applications for New Awards for Fiscal Year 1989

Purpose of Program: To support the collection of data, studies, investigations, and evaluations to assess the impact and effectiveness of programs assisted under the Education of the Handicapped Act, and to provide Congress and others with this information.

Deadline for Transmittal of Applications: April 19, 1989.

Applications Available: March 9, 1989.

Available Funds: $760,000.

Estimated Average Size of Awards: $95,000.

Estimated Number of Awards: 7.

Project Period: up to 18 months.

Applicable Regulations: (a) The Handicapped Special Studies Program Regulations, 34 CFR Part 327, (b) The Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 80, and 85.

Priority: See the Notice of Final Annual Evaluation Priority published in this issue of the **Federal Register.**

For Applications or Information Contact: Susan Sanchez, Division of Innovation and Development, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3519—MES 2725), Washington, DC 20202. Telephone: (202) 732-1117.

Program Authority: 20 U.S.C. 1418.

Dated: March 1, 1989.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 89-5261 Filed 3-7-89; 8:45 am]

BILLING CODE 4000-01-M

Reader Aids

Federal Register

Vol. 54, No. 44

Wednesday, March 8, 1989

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, MARCH

8519-8722 1
8723-9024 2
9025-9194 3
9195-9412 6
9413-9752 7
9753-9978 8

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

2 9670
3 9670
5 9670
6 9670
7 9670
8 9670
9 9670
10 9670
11 9670
12 9670
15 9670
16 9670
17 9670
18 9670
19 9670
20 9670
21 9670
22 9670

3 CFR

Proclamations:
5938 8723
5939 9193
5940 9195

Administrative Orders:
Memorandums:
Feb. 14, 1989 9753
Presidential Determinations:
No. 89-11 of Feb. 28, 1989 9413

5 CFR

317 9755
339 9761
1204 8725

Proposed Rules:
1201 8753

7 CFR

21 8912
401 9766
800 9197
907 9025
910 9026
959 8519
980 8521
985 9766
989 9415
1809 8521
1922 8521
1930 9197
1944 8521
1945 8521
1965 8521

Proposed Rules:
15b 9966
51 9824
58 9452
318 9453
401 9825
402 9826
411 9827
416 9828
422 9829
425 9830
430 9831
433 9831
435 9832
436 9833
437 9834
443 9835
800 9054
906 9455
917 9457
927 8544
1106 9458
1951 9217

8 CFR

Proposed Rules:
204 9459
210a 9054

9 CFR

92 9768
313 9198

Proposed Rules:
91 9459
92 9836
145 9842
147 9842
317 9370
381 9370

10 CFR

1039 8912

Proposed Rules:
4 9966
50 9229
1040 9966

12 CFR

202 9416
205 9416
226 9417

13 CFR

Proposed Rules:
113 9966
120 ..... 9233, 9424
129 9424

14 CFR

39 ..... 8527, 9026
71 ..... 8528, 8726, 8727, 9028, 9009, 9406
97 9030
241 9590
1208 8912
1260 9426

Proposed Rules:
1 9276

21 ... 9738
23 ... 9276, 9338
36 ... 9738
39 ... 8544-8550, 8758, 8759
43 ... 9738
71 ... 8551-8556, 8760, 8761, 9061, 9063
75 ... 9063-9065
91 ... 9338, 9738
135 ... 9338
141 ... 9738
147 ... 9738
1251 ... 9966

15 CFR

11 ... 8912
799 ... 9770
Proposed Rules:
787 ... 9233

16 CFR

13 ... 9198, 9199, 9428

17 CFR

229 ... 9770
249 ... 9770
Proposed Rules:
34 ... 9460
240 ... 9842
270 ... 9843

18 CFR

Ch. I ... 9031
141 ... 8529
154 ... 8728
157 ... 8728
260 ... 8529, 8728
277 ... 8529
284 ... 8728
357 ... 8529
385 ... 8728
388 ... 8728
410 ... 9199
1306 ... 8912
Proposed Rules:
270 ... 8557
271 ... 8557

19 CFR

Ch. 1 ... 9429

21 CFR

1 ... 9033
2 ... 9033
5 ... 9033
7 ... 9033
10 ... 9033
12 ... 9033
13 ... 9033
14 ... 9033
16 ... 9033
20 ... 9033
21 ... 9033
25 ... 9033
50 ... 9033
56 ... 9033
58 ... 9033
74 ... 9200
178 ... 9774
291 ... 8954
510 ... 8880
520 ... 8880
522 ... 9590
558 ... 9429
Proposed Rules:
291 ... 8973, 8976

22 CFR

51 ... 8531
Proposed Rules:
142 ... 9966
217 ... 9966

23 CFR

646 ... 9039

24 CFR

42 ... 8912
219 ... 9708
840 ... 8880
968 ... 8880, 9039

26 CFR

1 ... 8728
7 ... 9200
Proposed Rules:
1 ... 9236, 9460
7 ... 9236

28 CFR

60 ... 9430
64 ... 9043

29 CFR

12 ... 8912
1910 ... 9294
1952 ... 9044
2520 ... 8624

30 CFR

701 ... 9724
773 ... 8982
778 ... 8982
785 ... 9724
843 ... 8982
Proposed Rules:
202 ... 9066
206 ... 9066
210 ... 9066
212 ... 9066
761 ... 9847
935 ... 8561, 8562

31 CFR

203 ... 8532
214 ... 8532
515 ... 9431

32 CFR

199 ... 8733, 9202
259 ... 8912
383 ... 8534

33 CFR

165 ... 9775, 9776, 9778
Proposed Rules:
401 ... 9504

34 CFR

15 ... 8912
Proposed Rules:
76 ... 8708
77 ... 8708
104 ... 9966
298 ... 8708

36 CFR

904 ... 8912
Proposed Rules:
290 ... 9066

37 CFR

1 ... 9431
Proposed Rules:
1 ... 9507
2 ... 9514

38 CFR

25 ... 8912
Proposed Rules:
18 ... 9966
21 ... 9237

39 CFR

111 ... 9210
Proposed Rules:
3001 ... 9848

40 CFR

4 ... 8912
52 ... 8537, 8538, 9212, 9432-9434, 9780, 9781, 9783, 9796
62 ... 9045
124 ... 9596
147 ... 8734
180 ... 8540, 9799
270 ... 9596
Proposed Rules:
7 ... 9966
52 ... 8762, 8764
60 ... 8564, 8570
61 ... 9612

41 CFR

101-6 ... 9213
105-51 ... 8912
114-50 ... 8912
128-18 ... 8912

42 CFR

5 ... 8735
405 ... 8994
433 ... 8738
435 ... 8738
Proposed Rules:
110 ... 9180

43 CFR

Public Land Order:
6710 ... 9213
Proposed Rules:
4 ... 9852
8380 ... 9066

44 CFR

25 ... 8912
65 ... 8540
Proposed Rules:
59 ... 9523
60 ... 9523
65 ... 9523

45 CFR

15 ... 8912
Proposed Rules:
84 ... 9966
605 ... 9966
1151 ... 9966
1170 ... 9966
1232 ... 9966

46 CFR

Proposed Rules:
Ch. I ... 8765

47 CFR

65 ... 9047
73 ... 8742-8744, 9214, 9437, 9800, 9804
80 ... 8541, 8745
Proposed Rules:
68 ... 9067
73 ... 8765-8767

48 CFR

204 ... 9807
219 ... 9807
252 ... 9807
501 ... 9049
514 ... 9049
532 ... 9049
552 ... 9049
932 ... 9807
952 ... 9807
1532 ... 9215
1552 ... 9215
Proposed Rules:
5 ... 9720
17 ... 9720
35 ... 9720
525 ... 9067
546 ... 9067
552 ... 9067

49 CFR

1 ... 8746
24 ... 8912
580 ... 8747-8750, 9809, 9816
1105 ... 9822
1135 ... 8720
1152 ... 9822
1314 ... 9052
Proposed Rules:
571 ... 9855
580 ... 9858
1016 ... 9071
1312 ... 9863
1314 ... 9863

50 CFR

216 ... 9438
301 ... 8542
652 ... 8751
675 ... 9216
Proposed Rules:
17 ... 8574, 9529
20 ... 8880
671 ... 9072

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List February 10, 1989