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Wednesday
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Part II

The President

Memorandum of December 23, 1994—Acceptance of the WTO Agreement

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Presidential Documents

Title 3—

The President

Memorandum of December 23, 1994

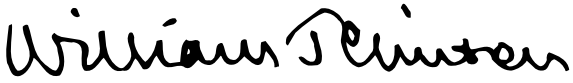
Acceptance of the WTO Agreement

Memorandum for the United States Trade Representative

Being advised that Canada, the European Community, Mexico, Japan, and other major trading countries have committed to acceptance of the Uruguay Round Agreements, I have determined that a sufficient number of foreign countries are accepting the obligations of those Agreements, in accordance with article XIV of the Agreement Establishing the World Trade Organization (WTO Agreement), to ensure the effective operation of, and adequate benefits for the United States under, those Agreements.

Pursuant to section 101(b) of the Uruguay Round Agreements Act (Public Law 103–465; 108 Stat. 4809) and section 301 of title 3, United States Code, I hereby direct the United States Trade Representative, or his designee, to accept the Uruguay Round Agreements, as described in section 101(d) of that Act, on behalf of the United States in accordance with article XIV of the WTO Agreement.

You are authorized and directed to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, December 23, 1994.

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Part III

The President

Proclamation 6763—To Implement the Trade Agreements Resulting From the Uruguay Round of Multilateral Trade Negotiations, and for Other Purposes

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Presidential Documents

Title 3—

The President

Proclamation 6763 of December 23, 1994

To Implement the Trade Agreements Resulting From the Uruguay Round of Multilateral Trade Negotiations, and for Other Purposes

By the President of the United States of America

A Proclamation

1. On April 15, 1994, the President entered into trade agreements resulting from the Uruguay Round of multilateral trade negotiations (''the Uruguay Round Agreements''). In section 101(a) of the Uruguay Round Agreements Act (''the URAA'') (Public Law 103–465; 108 Stat. 4809), the Congress approved the Uruguay Round Agreements listed in section 101(d) of that Act.

2. (a) Sections 1102 (a) and (e) of the Omnibus Trade and Competitiveness Act of 1988, as amended (''the 1988 Act'') (19 U.S.C. 2902 (a) and (e)), authorize the President to proclaim such modification or continuance of any existing duty, such continuance of existing duty-free or excise treatment, or such additional duties, as he determines to be required or appropriate to carry out any trade agreements entered into under those sections.

(b) Accordingly, I have determined that it is required or appropriate in order to carry out the Uruguay Round Agreements, which were entered into under sections 1102 (a) and (e) of the 1988 Act (19 U.S.C. 2902 (a) and (e)), that I proclaim the modifications and continuances of existing duties, duty-free treatments, excise treatments, and additional duties set forth in the Annex to this proclamation.

3. (a) Section 111(a) of the URAA authorizes the President to proclaim such other modification of any duty, such other staged rate reduction, or such other additional duties beyond those authorized by section 1102 of the 1988 Act (19 U.S.C. 2902) as the President determines to be necessary or appropriate to carry out Schedule XX—United States of America, annexed to the Marrakesh Protocol to the General Agreement on Tariffs and Trade 1994 (''Schedule XX'').

(b) Accordingly, I have determined that it is necessary or appropriate to carry out Schedule XX to proclaim such other modifications of duties, such other staged rate reductions, and such other additional duties, beyond those authorized by section 1102 of the 1988 Act (19 U.S.C. 2902), as are set forth in the Annex to this proclamation.

4. Section 111(d) of the URAA requires the President to proclaim the rate of duty set forth in Column B of the table set forth in that section as the column 2 rate of duty for the subheading of the Harmonized Tariff Schedule of the United States (''HTS'') that corresponds to the subheading in Schedule XX listed in Column A.

5. (a) Section 22(f) of the Agricultural Adjustment Act (''the Adjustment Act'') (7 U.S.C. 624(f)), as amended by section 401(a)(1) of the URAA, provides that, as of the date of entry into force of the Agreement Establishing the World Trade Organization (''the WTO Agreement''), no quantitative limitation or fee shall be imposed under that section with respect to any article that is the product of a World Trade Organization member, as defined in section 2(10) of the URAA.

(b) Section 401(a)(2) of the URAA further provides that, with respect to wheat, amended section 22(f) of the Adjustment Act (7 U.S.C. 624(f))

shall be effective on the later of the date of entry into force of the WTO Agreement or September 12, 1995.

(c) Accordingly, I have decided that it is necessary to provide for the termination of all quantitative limitations and fees previously proclaimed under section 22 of the Adjustment Act (7 U.S.C. 624), other than those for wheat, as provided in the Annex to this proclamation.

6. (a) Section 404(a) of the URAA directs the President to take such action as may be necessary in implementing the tariff-rate quotas set out in Schedule XX to ensure that imports of agricultural products do not disrupt the orderly marketing of commodities in the United States.

(b) Section 404(d)(3) of the URAA authorizes the President to allocate the in-quota quantity of a tariff-rate quota for any agricultural product among supplying countries or customs areas and to modify any allocation, as he determines appropriate.

(c) Section 404(d)(5) of the URAA authorizes the President to proclaim additional U.S. note 3 to chapter 17 of the HTS, dealing with imports of sugar, together with appropriate modifications thereto, to reflect Schedule XX.

(d) Section 405 of the URAA directs the President to cause to be published in the **Federal Register** the list of special safeguard agricultural goods and, if appropriate, to impose price-based or volume-based safeguards with respect to such goods consistent with Article 5 of the Agreement on Agriculture annexed to the WTO Agreement, and authorizes the President to exempt from any safeguard duty any goods originating in a country that is a party to the North American Free Trade Agreement (''the NAFTA'').

7. Presidential Proclamation No. 6641 of December 15, 1993, implemented the NAFTA with respect to the United States and, pursuant to sections 201 and 202 of the North American Free Trade Agreement Implementation Act (''the NAFTA Act'') (19 U.S.C. 3331 and 3332), incorporated in the HTS the tariff modifications and rules of origin necessary or appropriate to carry out or apply the NAFTA. Certain technical errors were made in the Annexes to that proclamation. I have determined that, in order to reflect accurately the intended tariff treatment and rules of origin provided for in the NAFTA, it is necessary to modify certain provisions of the HTS, as set forth in the Annex to this proclamation.

8. Presidential Proclamation No. 6455 of July 2, 1992, implementing the Andean Trade Preference Act (''the ATPA'') (19 U.S.C. 3201 *et seq.*), provided duty-free entry for all eligible articles, and duty reductions for certain other articles that are the product of any designated beneficiary country under that Act. Through technical error, the tariff treatment of ethyl alcohol, ethyl tertiary-butyl ether, and mixtures containing these products was incompletely stated. Accordingly, I have decided that it is appropriate to modify the provisions of subchapter I of chapter 99 of the HTS to provide fully for the tariff treatment of such products under the ATPA.

9. Section 242 of the Compact of Free Association (''the Compact'') between the United States and Palau provides that, upon implementation of the Compact, the President shall proclaim duty-free entry for most products of designated freely associated states. Such duty-free treatment, pursuant to the Compact of Free Association Approval Act (''the Compact Act'') (Public Law 99–658; 100 Stat. 3672, 48 U.S.C. 1681 note), is subject to the limitations of section 201 of the Compact Act and sections 503(b) and 504(c) of the Trade Act of 1974 (''the 1974 Act'') (19 U.S.C. 2463(b) and 2464(c)). In Presidential Proclamation No. 6726 of September 27, 1994, I proclaimed that the Compact would enter into force on October 1, 1994. In order to accord such duty-free treatment to products of Palau, I have decided that it is necessary and appropriate to modify general note 10 to the HTS to designate the Republic of Palau as a freely associated state. Further, I have decided that it is appropriate to modify general note 4(a) to the HTS, which enumerates designated beneficiary countries for purposes

of the Generalized System of Preferences, to delete Palau from the list of non-independent countries and territories.

10. Presidential Proclamation No. 5759 of December 24, 1987, imposed increased rates of duty on certain products of the European Community (''EC''), in response to the EC's implementation of the Council Directive Prohibiting the Use in Livestock Farming of Certain Substances Having a Hormonal Action. Austria, Finland, and Sweden have indicated that they will become member states of the EC on January 1, 1995. Accordingly, to clarify that the increased rates of duty imposed by Proclamation No. 5759 continue to apply to the EC in its capacity as a foreign instrumentality, it is necessary to amend the HTS to indicate that the duties are to be imposed on products of the EC, including products of all new and future member states, and not just on products of countries that were members of the EC in 1987 and that were listed in the HTS for illustrative purposes.

11. Additional U.S. note 24 to chapter 4 of Schedule XX provides for a delay in the effective date, or prorating, of the expansion of tariff-rate quotas for cheeses above the existing quota quantities provided for in subchapter IV of chapter 99 of the HTS that will result from the implementation of United States commitments under the Uruguay Round Agreements, in the case of countries or areas that implement their market access commitments on a date later than the effective date of Schedule XX. The current members of the European Community (Belgium, Denmark, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, and the United Kingdom), Austria, Poland, Sweden, and Switzerland all have indicated their intention not to implement their market access commitments until July 1, 1995. Accordingly, I have determined, pursuant to my authority under sections 111 (a) and (b) of the URAA and section 1102 of the 1988 Act (19 U.S.C. 2902), that it is appropriate not to make available the amounts specified in section K of the Annex to this proclamation until July 1, 1995.

12. Section 604 of the 1974 Act (19 U.S.C. 2483) authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to section 604 of the 1974 Act (19 U.S.C. 2483), section 1102 of the 1988 Act (19 U.S.C. 2902), sections 201 and 202 of the NAFTA Act (19 U.S.C. 3331 and 3332), and title I and title IV of the URAA, do hereby proclaim:

(1) In order to provide generally for the tariff treatment being accorded under the Uruguay Round Agreements, including the modification or continuance of existing duties or other import restrictions and the continuance of existing duty-free or excise treatment provided for in Schedule XX, the URAA, and the other authorities cited in this proclamation, including the termination of quantitative limitations and fees previously imposed under section 22 of the Adjustment Act (7 U.S.C. 624), the HTS is modified as set forth in the Annex to this proclamation.

(2)(a) The modifications to the HTS made by sections A (except with respect to paragraphs thereof specifying other effective dates), C, E, and IJ of the Annex to this proclamation shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on and after January 1, 1995;

(b) The modifications to the HTS made by sections B, D(1)–(5), F, G, H, and L of the Annex to this proclamation, and by those paragraphs of section A specifying effective dates other than January 1, 1995, shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on and after the dates set forth in such sections of the Annex;

(c) The modifications to the HTS made by section D(6) of the Annex to this proclamation shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on and after the dates set forth in such section, unless the United States Trade Representative (USTR) announces that the scheduled staged duty reductions set forth in such Annex section are being withheld because other major countries have not afforded adequate entity coverage under the Agreement on Government Procurement annexed to the WTO Agreement, and so advises the Secretary of the Treasury and publishes this information in a notice in the **Federal Register**;

(d) The modifications to the HTS made by section D(7) of the Annex to this proclamation shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on and after the date announced by the USTR in a notice published in the **Federal Register** as the date on which other major countries have afforded adequate entity coverage under the Agreement on Government Procurement annexed to the WTO Agreement; and

(e) Section K of the Annex to this proclamation, providing for a delay in implementation of the expansion of tariff-rate quotas of cheeses, applies during the period January 1, 1995, through June 30, 1995, unless the USTR determines that it is in the interest of the United States for any such delays to apply to a different period and publishes notice of the determination and applicable period in the **Federal Register**. The USTR also is authorized to prorate over the applicable period any of the quantities that may be imported.

(3) The USTR is authorized to exercise my authority under section 404(d)(3) of the URAA to allocate the in-quota quantity of a tariff-rate quota for any agricultural product among supplying countries or customs areas and to modify any allocation as the USTR determines appropriate.

(4) The Secretary of Agriculture is authorized to exercise my authority to make determinations under section 405(a) of the URAA and to publish those determinations in the **Federal Register**.

(5) Effective January 1, 1995, in order to clarify that the additional duty provided for in subheadings 9903.23.00 through 9903.23.35, inclusive, of the HTS shall apply to new member states of the European Community, the superior text to those subheadings is modified as provided in the Annex to this proclamation. The USTR is authorized to alter the application of the increased duties imposed by Presidential Proclamation No. 5759, as modified herein, by further modifying the superior text to those subheadings so that it reflects accurately all member states of the European Community or any successor organization. Notice of any such modification shall be published in the **Federal Register**.

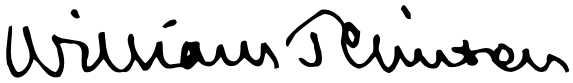
(6) Whenever the rate of duty in the general subcolumn of rates of duty column 1 of the HTS is reduced to ''Free'', all rates of duty set forth in the special subcolumn of column 1 shall be deleted from the HTS.

(7) The USTR, the Secretary of Agriculture, and the Secretary of the Treasury are authorized to exercise my authority under the statutes cited in this proclamation to perform certain functions to implement this proclamation, as assigned to them in the Annex to this proclamation.

(8) Paragraphs (1)–(4), (6), and (7) shall be effective on January 1, 1995, unless the USTR announces prior to that date that the WTO Agreement will not enter into force on that date.

(9) All provisions of previous proclamations and Executive orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of December, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and nineteenth.



Billing Code 3195–01–P

Rules and Regulations

Federal Register
Vol. 60, No. 2
Wednesday, January 4, 1995

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 532

RIN 3206–AG25

Prevailing Rate Systems; Abolishment of Detroit Special Wage Schedules for Printing Positions

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing a final rule to abolish the Federal Wage System special wage schedule for printing positions in the Detroit, Michigan, wage area. Printing and lithographic employees in Detroit will now be paid rates from the regular Detroit, Michigan, wage schedule.

EFFECTIVE DATE: February 3, 1995.

FOR FURTHER INFORMATION CONTACT: Paul Shields, (202) 606–2848.

SUPPLEMENTARY INFORMATION: On November 2, 1994, OPM published an interim rule to abolish the Federal Wage System special wage schedule for printing positions in the Detroit, Michigan, wage area. The interim rule provided a 30-day period for public comment. OPM received no comments during the comment period. Therefore, the interim rule is being adopted as a final rule.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Accordingly, under the authority of 5 U.S.C. 5343, the interim rule amending 5 CFR part 532 published on November 2, 1994 (59 FR 54787), is adopted as final without any changes.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 95–9 Filed 1–3–95; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1005

[DA–95–05]

Milk in the Carolina Marketing Area; Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This document suspends for a cooperative association the diversion limitation of the Carolina Federal milk marketing order (Order 5) for the months of January and February 1995. The suspension was requested by Carolina Virginia Milk Producers Association. The cooperative association contends the action is necessary to maintain orderly marketing conditions and ensure that the milk of its member producers will continue to be pooled during these months.

EFFECTIVE DATE: January 1, 1995, through February 28, 1995.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued November 21, 1994; published November 25, 1994 (59 FR 60571).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

The Department is issuing this final rule in conformance with Executive Order 12866.

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

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the order regulating the handling of milk in the Carolina marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on November 25, 1994 (59 FR 60571), concerning the proposed suspension of the diversion limitation for cooperative associations under Order 5. Interested persons were afforded opportunity to file written data, views and arguments thereon. No comments were received.

After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that

for the period of January 1, 1995, through February 28, 1995, the following provision of the order does not tend to effectuate the declared policy of the Act:

In § 1005.13(d)(2), the words ''and January and February''.

Statement of Consideration

This rule suspends the 25 percent diversion limitation for a cooperative association for the months of January and February.

It allows a cooperative association to divert an unlimited quantity of each member producer's milk to nonpool plants if at least six days' production was delivered to a pool plant during the month. The Carolina order requires that during each of the months of July through November, January, and February, the total quantity of milk diverted to nonpool plants by a cooperative association not exceed 25 percent of the producer milk that such cooperative caused to be delivered to or diverted from such pool plants.

Carolina Virginia Milk Producers Association, a cooperative association with member producers pooled on the Alabama (Order 93), Georgia (Order 7), Tennessee Valley (Order 11), and Carolina (Order 5) Federal milk marketing orders, indicates that effective August 1, 1994, it lost Class I sales with a handler regulated under Order 7. The cooperative then gained Class I sales with a handler regulated under Order 5 effective October 1, 1994, and shifted the producer milk supply formerly associated with the Order 7 handler to Order 5. This realignment resulted in additional producer milk delivered to Carolina handlers during the summer and fall months of 1994.

The cooperative states that it is the balancing agent for its Class I customers under Order 5 for their weekly and seasonal milk supply. It asserts that the proposed suspension is necessary to accommodate pooling the anticipated production of its member producers during these months.

It is appropriate to suspend the aforesaid provision for the period of January 1, 1995, through February 28, 1995. The suspension will prevent the uneconomic and inefficient movement of producers' milk and allow producers to continue to have their milk priced and pooled under an order during these months. Thus, the Class I needs of the Carolina order should still be met.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area, in that such rule is necessary to permit the continued pooling of the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No comments were received.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1005

Milk marketing orders.

For the reasons set forth in the preamble, the following provision in Title 7, Part 1005, is amended as follows:

PART 1005—MILK IN THE CAROLINA MARKETING AREA

1. The authority citation for 7 CFR Part 1005 continues to read as follows:

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

§ 1005.13 [Suspended in part]

2. In § 1005.13(d)(2), the words ''and January and February'', are suspended for the period of January 1, 1995, through February 28, 1995.

Dated: December 23, 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95–156 Filed 1–3–95; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 1032

[DA–95–04]

Milk in the Southern Illinois-Eastern Missouri Marketing Area; Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This document suspends a portion of the supply plant shipping requirement of the Southern Illinois-Eastern Missouri Federal milk marketing order (Order 32) for the months of December 1994 and January 1995. The suspension is necessary to ensure that producers historically associated with Order 32 will continue to have their milk pooled under the order without having to move milk uneconomically.

EFFECTIVE DATE: December 1, 1994, through January 31, 1995.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of Proposed Suspension: Issued November 21, 1994; published November 25, 1994 (59 FR 60573).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

The Department is issuing this final rule in conformance with Executive Order 12866.

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

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition,

provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and the order regulating the handling of milk in the Southern Illinois-Eastern Missouri marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on November 25, 1994 (59 FR 60573), concerning the proposed suspension of a portion of the supply plant shipping requirement for Order 32. The public was afforded the opportunity to comment on the notice by submitting written data, views, and arguments by December 2, 1994. Two comment letters supporting the proposed suspension were received.

After consideration of all relevant material, including the proposal in the notice, the comment received, and other available information, it is hereby found and determined that for the period of December 1, 1994, through January 31, 1995, the following provision of the order does not tend to effectuate the declared policy of the Act:

In § 1032.7(b), the words ''and at least 75 percent of the total producer milk marketed in that 12-month period by such cooperative association was delivered'' and the words ''and physically received at''.

Statement of Consideration

This document will suspend a portion of the supply plant shipping requirement for a cooperative association that operates a supply plant under Order 32. It will permit a supply plant operated by a cooperative association to qualify as a pool plant if the cooperative shipped 25 percent of the plant's total producer receipts to pool distributing plants during the month and milk from the plant was delivered to a pool distributing plant during each of the immediately preceding months of September through August. It removes a requirement that the cooperative must have shipped 75 percent of its milk to pool distributing plants during the September through August period.

The suspension was requested by Prairie Farms, a dairy farmer cooperative based in Carlinville, Illinois, which owns and operates four fluid milk processing plants and a cultured product/supply plant regulated under the Southern Illinois-Eastern Missouri Federal milk order. These plants are supplied by Prairie Farm's own member dairy farmers and balanced by four cooperative associations, two of which operate supply plants.

Prairie Farms indicates that for recent months its producer milk at its plants is about 12 to 14 percent higher than the same period in 1993 from approximately the same number of producers. It states that the increased production from its members—primarily due to improved growing conditions that resulted in an abundant supply of high quality feed—has caused it to reduce purchases from other cooperative associations. As a result, it states that two pool supply plants operated by the cooperative associations barely met the shipping requirements for the month of October. Prairie Farms anticipates that a similar situation will occur in November and expects the problem to worsen in the months of December 1994 and January 1995.

Mid-America Dairymen, Inc., and Wisconsin Dairies, a cooperative which operates an Order 32 supply plant located in Waukon, Iowa, filed letters supporting the proposed suspension.

Wisconsin Dairies indicates that it has been supplying milk to Prairie Farms from the Waukon plant for 27 years. The cooperative states that shipments to Prairie Farms in October 1994 were less than 55 percent of plant receipts, compared to 66 percent during October of 1993. It states that it will be impossible for it to ship the required 40 percent in December and 50 percent in January without costly backhauls that would be difficult to justify.

The suspension request should be granted. It will continue to require Order 32 supply plants to serve the market, but at a level that should reduce or eliminate the need to make expensive and inefficient movements of milk simply to meet the supply plant shipping requirement.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given to interested parties, and they were afforded opportunity to file written data, views, or arguments concerning this suspension.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1032

Milk marketing orders.

For the reasons set forth in the preamble, Title 7, Part 1032, is amended as follows:

PART 1032—MILK IN THE SOUTHERN ILLINOIS-EASTERN MISSOURI MARKETING AREA

1. The authority citation for 7 CFR, Part 1032, continues to read as follows:

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

§ 1032.7 [Suspended in part]

2. In § 1032.7(b), the words ''and at least 75 percent of the total producer milk marketed in that 12-month period by such cooperative association was delivered'' and the words ''and physically received at'' are suspended for the period of December 1, 1994, through January 31, 1995.

Dated: December 23, 1994

Patricia Jensen,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95–157 Filed 1–3–95; 8:45 am]

BILLING CODE 3410–02–P

Commodity Credit Corporation

7 CFR Part 1434

RIN 0560–AD73

General Price Support Regulations for Honey

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The final rule adopts, without change, the interim rule amending the Honey Price Support Loan Program published in the **Federal Register** at 59 FR 23789–23792 on May 9, 1994. The interim rule made certain changes to the Honey Price Support Loan Program for the 1994 through the 1998 crops of honey.

EFFECTIVE DATE: January 4, 1995.

FOR FURTHER INFORMATION CONTACT: James Tegeler, Program Specialist, Consolidated Farm Service Agency (CFSA), USDA, P.O. Box 2415, Washington, DC 20013–2415; telephone 202–720–3110.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866 and has not been reviewed by the Office Management and Budget (OMB).

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are Commodity Loans and Purchases—10.051.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable because the 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.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of human environment.

Executive Order 12372

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).

Executive Order 12778

This final rule has been reviewed pursuant to Executive Order 12788. To the extent State and local laws are in conflict with these regulatory provisions, it is the intent of CCC that the terms of the regulations prevail. The provisions of this final rule are not retroactive. Prior to any judicial action in a court of competent jurisdiction, administrative review under 7 CFR part 780 must be exhausted.

Paperwork Reduction Act

Public reporting burden for the information collections contained in this regulation with respect to price support programs is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. The information collections have previously been cleared under the current regulations by OMB, and assigned OMB Nos. 0560–0087 and 0560–0129.

Interim Rule

The interim rule published in the **Federal Register** on May 9, 1994, with respect to the Honey Price Support Loan Program amended the price support loan rates for 1994 through 1998; revised the limitation on the total amount of payments a producer may receive; revised the provisions of the honey marketing assessment; lessened the administrative actions Commodity Credit Corporation (CCC) imposes on producers who violate the loan and loan deficiency payment agreements; provided more authority to State and county CFSA committees in administering the program; eliminated obsolete provisions, and incorporated the provisions of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1994, and the Omnibus Budget Reconciliation Act of 1993.

Comments

No comments were received during the comment period which ended on June 8, 1994.

Accordingly, the interim rule published at 59 FR 23789 on May 9, 1994, which amended 7 CFR part 1434 is hereby adopted as a final rule without change.

Signed in Washington, DC, on December 27, 1994.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 95–00133 Filed 1–3–95; 8:45 am]

BILLING CODE 3410–05–P–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 32

RIN: 3150–AD69

Preparation, Transfer for Commercial Distribution, and Use of Byproduct Material for Medical Use

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; clarification.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending regulatory text and the response to a public comment contained in a final rule published in the **Federal Register** on Friday, December 2, 1994, entitled ''Preparation, Transfer for Commercial Distribution, and Use of Byproduct Material for Medical Use.'' This action is necessary following reconsideration by the NRC regarding the requirements for the information to be included on labels for radioactive drugs to be transferred for commercial distribution. The effect of this action is to reduce regulatory burden and uncertainty for licensees that manufacture and distribute radiopharmaceuticals that contain byproduct material for medical use.

EFFECTIVE DATE: January 1, 1995.

ADDRESSES: Copies of the public record, including the final regulatory analysis and any public comments received on the proposed rule, may be examined and copied for a fee in the Commission's Public Document Room at 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Telford (301) 415–6229 or Mr. Samuel Z. Jones (301) 415–6198, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

SUPPLEMENTARY INFORMATION:

I. Background

On Friday, December 2, 1994 (59 FR 61767), the NRC published in the **Federal Register** a final rule regarding 10 CFR Parts 30, 32, and 35 (Preparation, Transfer for Commercial Distribution, and the Use of Byproduct Material for Medical Use). On Thursday, November 17, 1994, the NRC staff received comments on the regulatory guides associated with this rulemaking action during a public meeting with the NRC's Advisory Committee on the Medical Uses of Isotopes (ACMUI). Initially, the NRC staff believed that these comments could be resolved through appropriate regulatory guidance. However, these comments resulted in the NRC staff concluding that the final published requirements in 10 CFR 32.72(a)(4)

(1) Contained an undue burden with regard to the information required to be included on syringe labels; and

(2) Were not clear with regard to what was meant by a ''container.''

The NRC staff subsequently developed revised regulations to specify the information to be included on each label. In this rulemaking, the NRC is modifying the requirements of 10 CFR 32.72(a)(4) before the published effective date of January 1, 1995. This rulemaking will minimize intrusion into areas related to the practice of medicine in a manner consistent with the Commission's policy as published on February 9, 1979 (44 FR 8242), entitled ''Regulation of the Medical Uses of Radioisotopes; Statement of General Policy'' and minimize the regulatory burden on licensees. The specific revised requirements and response to the public comment are provided in this document.

II. Discussion

A. Revised NRC Response to the Public Comment

The following comment, in regard to 10 CFR 32.72(a)(4), was published in the **Federal Register** on Friday, December 2, 1994 (59 FR 61771):

''(3) *Comment.* The syringe label should not be limited to the clinical procedure. On the other hand, it is unnecessary to require that the label, or the leaflet or brochure that accompanies the radioactive drug, contain all of the statements specified in the proposed rule.''

The Commission agrees with the comment regarding syringe labels. The revised response is:

On page 61771, in the first column, the second complete paragraph and the first sentence of the third complete paragraph are withdrawn and replaced by the following text:

Response. (a) The revised regulations in § 32.72(a)(4)(ii) require that labels for syringes, vials, or other containers used to hold radioactive drugs to be transferred for commercial distribution must include the radiation symbol and the words ''CAUTION, RADIOACTIVE MATERIAL'' or ''DANGER, RADIOACTIVE MATERIAL'' and an identifier that ensures that the syringe, vial, or other container can be correlated with the information on the transport radiation shield label. The radiation symbol has been included for the protection of public health and safety. In the event that a syringe, vial, or other container becomes separated from its transport radiation shield, it would be readily identifiable as radioactive. The radiation symbol is currently required by § 20.1904 to be on containers of radioactive material and that requirement is restated in § 32.72 as a matter of convenience for licensees. This radiation symbol will also need to be the same as described in § 20.1901. The identifier has been included to provide a correlation between a syringe, vial, or other container and the information on the label of its transport radiation shield. The benefits of this correlation are: the transport radiation shield label provides more information than the syringe, vial, or other container label; it allows confirmation that the syringe, vial, or other container is in the correct transport radiation shield; and this additional information facilitates the radioactive drug being administered as directed by a physician authorized user. Thus, this correlation is necessary for both radiation safety and patient safety. By not specifying the identifier, the NRC staff has provided maximum flexibility for licensees to select the identifier that best suits their operations. Acceptable identifiers may include prescription number, name of the radioactive drug or its abbreviation, the patient's name, or the clinical procedure.

The revised regulations do not require ''the clinical procedure to be performed or the patient's or the human research subject's name'' to be included on the syringe label since this information may or may not be available to commercial nuclear pharmacies. However, this regulation does not preclude other information from being included on the syringe label, such as the clinical procedure when this information is available and appropriate. Also, the phrase ''syringe radiation shield'' has been deleted to eliminate any confusion between this shield and the transport radiation shield. The phrases ''vial'' and ''other container'' have been added to make clear that the regulatory requirements of § 32.72(a)(4)(ii) are not limited to syringes but apply to any container used to hold a radioactive drug to be transferred for commercial distribution, e.g., generator or ampule.

In addition to these modifications, the revised regulations in § 32.72(a)(4)(i) replace the word ''container'' with the phrase ''transport radiation shield'' to make clear the placement of the label containing the specified information. The transport radiation shield could be constructed of lead, glass, plastic, or other material as is appropriate for the isotope to be transferred for commercial distribution. However, the phrase ''transport radiation shield'' does not refer to the outer suitcase, package, packing, or other carrying device, even though that barrier may provide some radiation shielding. Also, there are two modifications to the information to be included on this label. First, this label must now include the radiation symbol and the words ''CAUTION, RADIOACTIVE MATERIAL'' or ''DANGER, RADIOACTIVE MATERIAL.'' The radiation symbol has been included for the protection of public health and safety so that this item can be readily identified as radioactive. Second, the phrase ''date and time of assay'' has been replaced with ''at a specified date and time.'' This new phrase recognizes the current licensee practice of providing a date and time on this label that is the specified date and time at which the syringe, vial, or other container will hold the stated quantity of radioactivity rather than the actual date and time of assay. In addition, if a syringe, vial, or other container does not require a ''transport radiation shield'' because the syringe, vial, or other container itself provides sufficient radiation shielding, then the information on the label of the syringe, vial, or other container must include the items specified in § 32.72(a)(4)(i). Furthermore, complying with these NRC labeling requirements does not relieve licensees from complying with other applicable requirements (e.g., U.S. Department of Transportation) for labeling the outer suitcase or package.

(b) The Commission agrees with the comment that it is unnecessary to require that the label, or the leaflet or brochure that accompanies the radioactive drug, contain all of the statements specified in the proposed rule. Therefore, the Commission is deleting the sentence in § 32.72(a)(4) reading: ''Furthermore, the label, or the leaflet or brochure that accompanies the radioactive drug, must contain a statement that the U.S. Nuclear Regulatory Commission has approved distribution of the byproduct material to persons licensed to use byproduct material pursuant to 10 CFR 35.100, 35.200, or 35.300, as appropriate, and to persons who hold an equivalent license issued by an Agreement State.'' This sentence was deleted because as revised, the regulations provide greater flexibility and responsibility for licensees. The licensees distributing radioactive drugs must confirm that the recipients are licensed to receive the radioactive drugs and the medical use recipients who can compound radioactive drugs are responsible for ensuring the appropriate uses of those radioactive drugs. Thus, licensees will need to continue to ensure pursuant to § 30.41(c) that radioactive drugs are only distributed to persons authorized to receive such byproduct materials. The Commission is removing from the text of the rule the last sentence of § 32.72(a)(4) reading: ''The Commission's labeling requirements are independent of requirements of the U.S. Food and Drug Administration (FDA); one label is acceptable to NRC provided that it contains all of the information which NRC requires.'' This sentence is being placed in the preamble because this statement is not a regulatory requirement and simply provides factual information.

B. Justification

These modifications relieve a restriction and result in a relaxation of the labeling requirements and are exempt from the requirements for a 30-day delay in the effective date under 5 U.S.C. 553(d)(1). Therefore, this modification is being made effective on January 1, 1995, to coincide with the effective date for the remainder of the previously published final rule. Further,

as provided in 5 U.S.C. 553(d)(3), good cause exists for making the modification effective on less than 30 days notice. As originally written, the rule would have required that information be included on syringe labels that might not be available to the commercial nuclear pharmacy. This would have made compliance difficult or impossible in some instances. Failure to make this modification effective on the same date as the originally published final rule would run the risk of either disrupting the availability of radiopharmaceuticals, if nuclear pharmacies refused to ship materials without the information needed under the originally published final rule, or shipments being made in violation of the rule because of a medical need for the radioactive drugs but a lack of needed information at the nuclear pharmacy facility. Thus, even if this change did not involve a relaxation of a regulatory requirement, meeting the criteria of 5 U.S.C. 553(d)(1) for exception from the 30-day notice requirement, the Commission finds the January 1, 1995, effective date justified under the ''good cause'' exception in 5 U.S.C. 553(d)(3).

III. Administrative Statements

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this final amendment is not a major Federal action significantly affecting the quality of the human environment, and therefore an environmental impact statement is not required. This final amendment clarifies the NRC's intent regarding the information to be included on labels for radioactive drugs to be transferred for commercial distribution. It is expected that there will be no increase in radiation exposure to the public or to the environment beyond the exposures currently resulting from transporting radioactive drugs. The NRC prepared an environmental assessment and finding of no significant impact for the final rule published December 2, 1994 (59 FR 61767), and it is available for inspection at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. This rulemaking action does not make any substantive changes that would affect the conclusions reached in that assessment. Single copies of the environmental assessment and finding of no significant impact are available from John L. Telford or Samuel Z. Jones (see **FOR FURTHER INFORMATION CONTACT** heading).

Paperwork Reduction Act Statement

This rulemaking action amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq). These requirements were approved by the Office of Management and Budget, approval number 3150–0001 for amendments to 10 CFR Parts 32.

The public burden for this collection of information is estimated to be no change from the current requirements, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (T–6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0001, –0010, and –0120), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Commission prepared a regulatory analysis for the final rule published December 2, 1994 (59 FR 61767). This rulemaking action does not make any substantive changes that would change the conclusions reached in that analysis. The regulatory analysis is available for inspection at the NRC Public Document Room at 2120 L Street, NW. (Lower Level), Washington, DC. Single copies of the regulatory analysis are available from John L. Telford or Samuel Z. Jones (see **FOR FURTHER INFORMATION CONTACT** heading).

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule affects manufacturers and commercial nuclear pharmacies. These licensees would not be considered small entities under the NRC's size standards (56 FR 56671; November 6, 1991). This rulemaking action clarifies the NRC's intent regarding the information to be included on labels for radioactive drugs to be transferred for commercial distribution and is expected to result in no change of burden for the affected licensees.

Backfit Analysis

The Commission has determined that the backfit rule, 10 CFR 50.109, does not apply to this amendment because this amendment does not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1). Therefore, a backfit analysis is not required for this amendment.

List of Subjects in 10 CFR Part 32

Byproduct material, Criminal penalties, Labeling, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 32.

PART 32—SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL

1. The authority citation for Part 32 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

2. In § 32.72 paragraph (a)(4) is revised to read as follows:

§ 32.72 Manufacture, preparation, or transfer for commercial distribution of radioactive drugs containing byproduct material for medical use under Part 35.

(a) * * *

(4) The applicant satisfies the following labeling requirements:

(i) A label is affixed to each transport radiation shield, whether it is constructed of lead, glass, plastic, or other material, of a radioactive drug to be transferred for commercial distribution. The label must include the radiation symbol and the words ''CAUTION, RADIOACTIVE MATERIAL'' or ''DANGER, RADIOACTIVE MATERIAL''; the name of the radioactive drug or its abbreviation; and the quantity of radioactivity at a specified date and time. For radioactive drugs with a half life greater than 100 days, the time may be omitted.

(ii) A label is affixed to each syringe, vial, or other container used to hold a radioactive drug to be transferred for commercial distribution. The label must include the radiation symbol and the words ''CAUTION, RADIOACTIVE MATERIAL'' or ''DANGER, RADIOACTIVE MATERIAL'' and an identifier that ensures that the syringe,

vial, or other container can be correlated with the information on the transport radiation shield label.

* * * * *

Dated at Rockville, Maryland, this 28th day of December, 1994.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Acting Executive Director for Operations.

[FR Doc. 95–00124 Filed 1–3–95; 8:45 am]

BILLING CODE 7590–01–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 607, 614, 615, and 620

RIN 3052–AB44

Assessment and Apportionment of Administrative Expenses; Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Disclosure to Shareholders; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final regulation under parts 607, 614, 615, and 620 on July 22, 1994 (59 FR 37400). The final regulation amends 12 CFR parts 607, 614, 615, and 620 to establish requirements for the agreement between a Farm Credit Bank (FCB) and its related direct lender associations specifying where the earnings held by the FCB and allocated to associations may be counted as permanent capital, to specify how there earnings would be counted in the absence of an agreement, to provide a date certain for the exclusion from capital of payments by Farm Credit institutions to the Farm Credit System Financial Assistance Corporation made in connection with the repayment of Treasury-paid interest, and to make other conforming changes to implement the statutory amendments. Technical and conforming changes are made throughout the agency's regulations. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is December 31, 1994.

EFFECTIVE DATE: The regulation amending 12 CFR parts 607, 614, 615, and 620 published on July 22, 1994 (59 FR 37400) is effective December 31, 1994.

FOR FURTHER INFORMATION CONTACT:

Robert S. Child, Policy Analyst, Regulation Development, Office of Examination, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4498, TDD (703) 883–4444, or

Rebecca S. Orlich, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–4444.

(12 U.S.C. 2252(a)(9) and (10))

Dated: December 29, 1994.

Floyd Fithian,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 95–131 Filed 1–3–95; 8:45 am]

BILLING CODE 6705–01–P

12 CFR Part 612

RIN 3052–AB47

Personnel Administration; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final regulation under part 612 on May 13, 1994 (59 FR 24889). The final regulation amends 12 CFR part 612 to reflect statutory changes and the change in focus of the FCA's regulatory oversight of personnel matters. In addition, the final rule enhances and clarifies the regulations to ensure that they fulfill the purposes of section 514 of the Farm Credit Banks and Associations Safety and Soundness Act of 1992 relative to the reporting of financial information and potential conflicts of interest. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is December 31, 1994.

EFFECTIVE DATE: The regulation amending 12 CFR part 612 published on May 13, 1994 (59 FR 24889) is effective December 31, 1994.

FOR FURTHER INFORMATION CONTACT:

John J. Hays, Policy Analyst, Policy Development and Planning Division, Office of Examination, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4498, TDD (703) 883–4444, or

Dorothy J. Acosta, Assistant General Counsel, Regulatory Operations Division, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–4444.

(12 U.S.C. 2252(a)(9) and (10))

Dated: December 29, 1994.

Floyd Fithian,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 95–130 Filed 1–3–95; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–104; Special Conditions No. 25–ANM–93]

Special Conditions: Modified Cessna 550 Series Airplanes, High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions with request for comments.

SUMMARY: These special conditions are issued for the Cessna 550 series airplanes modified by Modern Avionics, Inc., of Eden Praire, Minnesota. These airplanes are equipped with digital electronic flight instrument systems (EFIS) that perform critical functions. The applicable type certification regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions provide the additional safety standards that the Administrator considers necessary to ensure that the critical functions that these systems perform are maintained when the airplane is exposed to HIRF.

DATES: The effective date of these special conditions is December 20, 1994. Comments must be received on or before February 21, 1995.

ADDRESSES: Comments on these special conditions may be mailed in triplicate to: Federal Aviation Administration, Transport Airplane Directorate (ANM–100), Attn: Docket No. NM–104, 1601 Lind Avenue SW, Renton, WA 98055–4056; or delivered in triplicate to the Transport Airplane Directorate at the above address. Comments must be marked; Docket No. NM–104. Comments may be inspected weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT:

Michael Zielinski, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft

Certification Service, 1601 Lind Avenue SW, Renton, WA 98055–4056; telephone (206) 227–2279.

SUPPLEMENTARY INFORMATION

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or special conditions number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the Docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. NM–104.'' The postcard will be date stamped, and returned to the commenter.

Background

On November 9, 1994, Modern Avionics, Inc., of Eden Praire, Minnesota, applied for a supplemental type certificate to modify the Cessna 550 series airplanes. The Cessna 550 is a business jet with two aft-mounted turbofan engines. The airplane can carry two pilots and up to 11 passengers, depending on the exit and interior configuration, and is capable of operating to 43,000 feet altitude. The proposed modification incorporates the installation of digital avionics consisting of an electronic flight instrument system (EFIS) that is potentially vulnerable to HIRF external to the airplane.

Supplemental Type Certification Basis

Under the provisions of § 21.101 of the FAR, Modern Avionics, Inc., must show that the modified Cessna 550 series airplanes continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A22CE, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.''

The regulations incorporated by reference in Type Certification No. A22CE include the following: Part 25 of the Federal Aviation Regulations (FAR), dated February 1, 1965, including Amendments 25–1 through 25–17. In addition the following sections of the FAR apply to the EFIS installation: §§ 25.1303(b) and 25.1322, as amended through Amendment 25–38; §§ 25.1309, 25.1321 (a), (b), (d), and (e), 25.1331, 25.1333, and 25.1335, as amended by Amendment 25–41. These special conditions will form an additional part of the supplemental type certification basis.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Cessna 550 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.101(b)(2).

Discussion

There is no special regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Cessna 550 series airplanes that would require that new technology electrical and electronic systems, such as EFIS and digital avionics systems be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as the EFIS, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–100 KHz	50	50
100 KHz–500 KHz	60	60
500 KHz–2 MHz	70	70
2 MHz–30 MHz	200	200
30 MHz–70 MHz	30	30
70 MHz–100 MHz	30	30
100 MHz–200 MHz	150	33
200 MHz–400 MHz	70	70
400 MHz–700 MHz	4,020	935
700 MHz–1 GHz	1,700	170
1 GHz–2 GHz	5,000	990
2 GHz–4 GHz	6,680	840
4 GHz–6 GHz	6,850	310
6 GHz–8 GHz	3,600	670
8 GHz–12 GHz	3,500	1,270
12 GHz–18 GHz	3,500	360
18 GHz–40 GHz	2,100	750

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S. It will also be adopted by the European Joint Aviation Authorities.

As discussed above, these special conditions are applicable to the Cessna 550 series airplanes, modified by

Modern Avoinics, Inc., of Eden Praire, Minnesota. Should Modern Avionics, Inc., apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A22CE to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well, under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain unusual or novel design features on the Cessna 550 series airplanes modified by Modern Avionics, Inc., of Eden Praire, Minnesota. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the Cessna 550 series airplanes modified by Modern Avionics, Inc., of Eden Praire, Minnesota.

The substance of the special conditions for these airplanes has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. Therefore, these special conditions are being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may have not been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Federal Aviation Administration, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. app. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1875f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for Cessna 550 series airplanes modified by Modern Avionics, Inc., of Eden Praire, Minnesota.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields external to the airplane.

2. The following definitions apply with respect to these special conditions: *Critical Functions.* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on December 20, 1994.

Darrell M. Pederson,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–74 Filed 1–3–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 94–NM–88–AD; Amendment 39–9110; AD 94–26–15]

Airworthiness Directives; Lockheed Model 382 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Lockheed Model 382 series airplanes, that requires inspection of a kingpin riser on the lower surface of the outer wing to determine fastener placement. This AD would also require repetitive inspections for fatigue cracks in the kingpin riser if the fasteners are positioned outside certain limits, and repair, if necessary. This amendment is prompted by reports of insufficient distance between the center of the outermost fastener on the kingpin riser and the edge of the riser, which can adversely affect the fatigue resistance of the outer wing assembly. The actions specified by this AD are intended to prevent structural failure of the lower surface of the outer wing due to fatigue cracks in the kingpin riser.

DATES: Effective on February 3, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 3, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Lockheed Aeronautical Systems Support Company, Field Support Department, Department 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office,Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, Flight Test Branch, ACE–160A, FAA, Small Airplane Directorate, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–3915; fax (404) 305–7348.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Lockheed Model 382 series airplanes was published in the **Federal Register** on September 19, 1994 (59 FR 47823). That action proposed to require an inspection of a kingpin riser on the lower surface of the outer wing to determine fastener placement; and repetitive inspections for fatigue cracks in the kingpin riser if the fasteners are positioned outside certain limits, and repair, if necessary. –

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

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has

been added to this final rule to clarify this requirement. The FAA has determined that this addition will neither increase the economic burden on any operator nor increase the scope of the AD.–

The FAA has recently reviewed the figures it has used over the past several years in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $55 per work hour to $60 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

There are approximately 20 Lockheed Model 382 series airplanes of the affected design in the worldwide fleet. The FAA estimates that it will will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,800, or $240 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39–

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]–

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–26–15 Lockheed Aeronautical Systems Company: Amendment 39–9110. Docket 94–NM–88–AD.–

Applicability: Model 382, 382B, 382E, 382F, and 382G series airplanes, as listed in Hercules Service Bulletin 382–57–74 (82–688), dated January 31, 1994; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously. –

To prevent structural failure of the outer wing assembly, accomplish the following: –

(a) Within 30 days after the effective date of this AD, or prior to the accumulation of 18,000 total flight hours, whichever occurs later, perform an ultrasonic inspection to determine the distance between the edge of each of the six most outboard fasteners on kingpin riser number 18 and the edge of the riser, in accordance with Appendix A of Hercules Service Bulletin 382–57–74 (82–688), dated January 31, 1994.

(1) If all six of these fasteners are positioned 0.31 inch or more from the kingpin riser edge: No further action is required by this AD.–

(2) If any of the six most outboard fasteners is positioned less than 0.31 inch from the edge of the kingpin riser: Prior to the applicable threshold specified in Table 1 of Hercules Service Bulletin 382–57–74 (82–688), or prior to further flight if that threshold has been exceeded as of the effective date of this AD, perform an ultrasonic inspection to detect cracks in the kingpin riser, in accordance with Inspection Procedure SP–265 (Appendix B) of the service bulletin.

Note 2: For airplanes on which an outer wing replacement is installed, the total flight hours threshold is counted from the time of outer wing replacement.

(i) If no crack is found, repeat this inspection, thereafter, at intervals not to exceed 7,400 flight hours.

(ii) If any cracked kingpin riser is found, prior to further flight, repair in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Repeat this inspection, thereafter, at intervals not to exceed 7,400 flight hours.–

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta ACO, FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.–

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.–

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished. –

(d) The inspections shall be done in accordance with Hercules Service Bulletin 382–57–74 (82–688), dated January 31, 1994 (includes Attachment 1, and Appendices A and B). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Lockheed Aeronautical Systems Support Company, Field Support Department, Department 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.–

(e) This amendment becomes effective on February 3, 1995.

Issued in Renton, Washington, on December 21, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–48 Filed 1–3–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–108–AD; Amendment 39–9109; AD 94–26–14]

Airworthiness Directives; British Aerospace Model Viscount 744, 745D, and 810 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model Viscount 744, 745D, and 810 series airplanes, that requires inspections to detect cracks in the chassis side bracing structure and in the chassis top strut support intercostals inside the wings, and replacement of discrepant parts with new parts. This proposal would also require inspection of the intercostals to determine the specification of the material, if necessary, and replacement of discrepant parts with new parts. This amendment is prompted by a report of cracking in the chassis top strut support intercostal in the side bracing structure inside the wing due to the effects of metal fatigue. The actions specified by this AD are intended to prevent such fatigue-related cracking, which could lead to the failure of the chassis side bracing structure inside the wings and consequent reduced structural integrity of the chassis support structure.

DATES: Effective on February 3, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 3, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft Ltd., Engineering Support Manager, Military Business Unit, Chadderton Works, Greengate, Middleton, Manchester M24 1SA, England. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all British Aerospace Model Viscount 744, 745D, and 810 series airplanes was published in the **Federal Register** on September 9, 1994 (59 FR 46596). That action proposed to require repetitive detailed visual inspections to detect cracks in the chassis side bracing structure and in the chassis top strut support intercostals of the inner wings, and replacement of discrepant parts with new parts. That action also proposed to require an eddy current inspection to determine the specification of the material of the intercostals, if necessary, and replacement of discrepant parts with new parts.

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

The commenter supports the proposed rule.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been added to this final rule to clarify this requirement.

The FAA has recently reviewed the figures it has used over the past several years in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $55 per work hour to $60 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

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

The FAA estimates that 25 Model Viscount 744 and 745D series airplanes of U.S. registry will be affected by this AD, that it will take approximately 15 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $22,500, or $900 per airplane, per inspection cycle.

The FAA estimates that 4 Model Viscount 810 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 15 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $3,600, or $900 per airplane, per inspection cycle.

Based on the above figures, the total cost impact of the actions proposed by this AD on U.S. operators is estimated to be $26,100, or $900 per airplane, per inspection cycle.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–26–14 British Aerospace Regional Aircraft Limited (Formerly British Aerospace Commercial Aircraft Limited, Vickers-Armstrongs Aircraft Limited): Amendment 39–9109. Docket 94–NM–108–AD.

Applicability: All Model Viscount 744, 745D, and 810 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the chassis, accomplish the following:

(a) Within 6 months after the effective date of this AD, perform a detailed visual inspection to detect cracks in the chassis side bracing structure and in the chassis top strut support intercostals inside the wings between stations 81 and 96, in accordance with British Aerospace Viscount Preliminary Technical Leaflet (PTL) 332, Issue 1, Disc 11 Doc.4, dated December 2, 1991 (for Model Viscount 744 and 745D series airplanes); or British Aerospace Viscount PTL 203, Issue 1, Disc 11 Doc.2, dated December 2, 1991 (for Model Viscount 810 series airplanes); as applicable.

(1) If no cracking is detected in the chassis side bracing structure, repeat the inspection thereafter at intervals not to exceed 1,500 flight hours or 14 months, whichever occurs first.

(2) If any cracking is detected in the chassis side bracing structure, prior to further flight, replace the cracked side of the bracing structure with a new structure, in accordance with the applicable PTL.

(3) If no cracking is detected in the chassis top strut support intercostal, prior to further flight, perform an eddy current inspection to determine the specification of the material (either L72 or L73) of the intercostals, in accordance with the applicable PTL.

(i) If the material is manufactured from L72, prior to further flight, replace the chassis top strut support intercostal with a new chassis top strut support intercostal, in accordance with the applicable PTL.

(ii) If the material is manufactured from L73, no further action is required by paragraph (a)(3) of this AD.

(4) If cracking is detected in the chassis top strut support intercostal, prior to further flight, replace it with a new chassis top strut support intercostal, in accordance with the applicable PTL.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspections and replacements shall be done in accordance with British Aerospace Viscount Preliminary Technical Leaflet (PTL) 332, Issue 1, Disc 11 Doc.4, dated December 2, 1991 (for Model Viscount 744 and 745D series airplanes); or British Aerospace Viscount PTL 203, Issue 1, Disc 11 Doc.2, dated December 2, 1991 (for Model Viscount 810 series airplanes); as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Regional Aircraft Ltd., Engineering Support Manager, Military Business Unit, Chadderton Works, Greengate, Middleton, Manchester M24 1SA, England. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on February 3, 1995.

Issued in Renton, Washington, on December 21, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–49 Filed 1–3–95; 8:45 am]

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14 CFR Part 39

[Docket No. 94–NM–137–AD; Amendment 39–9107; AD 94–26–12]

Airworthiness Directives; Raytheon Corporate Jets Model Hawker 800 and 1000 and Model DH/BH/HS/BAe 125 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Raytheon Corporate Jets Model Hawker 800 and 1000 and Model DH/BH/HS/BAe 125 series airplanes, that requires inspections to detect cracking of the sidestay jack pivots of the main landing gear, and replacement of the sidestay jack pivot assemblies with new assemblies. This amendment is prompted by a report of fracturing of a jack pivot, which resulted in the inability of the main landing gear to deploy. The actions specified by this AD are intended to prevent a wheels-up landing.

DATES: Effective February 3, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 3, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Raytheon Corporate Jets, Inc., 3 Bishops Square Street, Albans Road West, Hatfield, Hertfordshire, AL109NE, United Kingdom. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal

Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Raytheon Corporate Jets Model Hawker 800 and 1000 and Model DH/BH/HS/BAe 125 series airplanes was published in the **Federal Register** on September 27, 1994 (49 FR 49217). That action proposed to require inspections to detect cracking of the sidestay jack pivots of the main landing gear, and replacement of the sidestay jack pivot assemblies with new assemblies.

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

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been added to this final rule to clarify this requirement.

In addition, the FAA has recently reviewed the figures it has used over the past several years in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $55 per work hour to $60 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

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

The FAA estimates that 550 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. The FAA has been advised that the manufacturer plans to provide the required parts at no cost to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $198,000, or $360 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–26–12 Raytheon Corporate Jets, Inc. (Formerly De Havilland; Hawker Siddeley; British Aerospace, plc): Amendment 39–9107. Docket 94–NM–137–AD.

Applicability: Model Hawker 800 and 1000 series airplanes and Model DH/BH/HS/BAe 125–1A through -1000A series airplanes; equipped with main landing gear (MLG) sidestay assemblies on which Post-Mod 252091 steel jack pivots have been installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (f) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent the inability of the MLG to deploy and a consequent wheels-up landing, accomplish the following:

(a) Perform a detailed visual inspection, using a 10X magnifier, to detect cracking of the sidestay assembly jack pivot of the left and right MLG, in accordance with Raytheon Corporate Jets Service Bulletin SB 32–233, dated June 24, 1994, at the latest of the times specified in paragraphs (a)(1), (a)(2), or (a)(3) of this AD.

(1) Within 28 days after the effective date of this AD; or

(2) Prior to the accumulation of 3,000 total landings on the sidestay assembly since new; or

(3) Prior to the accumulation of 1,000 total landings since overhaul of the sidestay assembly.

(b) If no cracks are found and the sidestay assembly has been overhauled prior to the accomplishment of the inspection specified in paragraph (a) of this AD: Accomplish the requirements of paragraphs (b)(1) and (b)(2) of this AD in accordance with Raytheon Corporate Jets Service Bulletin SB 32–233, dated June 24, 1994.

(1) Repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 1,000 landings.

(2) Prior to the accumulation of 4,000 total landings on the jack pivot assembly since the sidestay assembly was last overhauled, or within 300 landings after the effective date of this AD, whichever occurs later: Replace the jack pivot assembly with a new assembly.

Thereafter, prior to the accumulation of 4,000 landings, remove the jack pivot assembly and replace it with a new assembly in accordance with the service bulletin.

(c) If no cracks are found and the sidestay assembly has not been overhauled prior to accomplishment of the inspection required by paragraph (a) of this AD: Prior to the accumulation of 4,000 total landings on the jack pivot assembly, or within 300 landings after the effective date of this AD, whichever occurs later, replace the jack pivot assembly with a new assembly in accordance with Raytheon Corporate Jets Service Bulletin SB 32–233, dated June 24, 1994. Thereafter, prior to the accumulation of 4,000 landings on the jack pivot assembly, replace it with a new assembly in accordance with the service bulletin.

(d) If any crack is found that does not exceed the limits specified in Raytheon Corporate Jets Service Bulletin SB 32–233, dated June 24, 1994, accomplish the requirements of paragraphs (d)(1), (d)(2), or (d)(3) of this AD, as applicable, in accordance with the service bulletin.

(1) For sidestay assemblies that have accumulated 4,000 or more total landings since new that have been overhauled prior to accomplishment of the inspection specified in paragraph (a) of this AD: Accomplish paragraphs (d)(1)(i) and (d)(1)(ii) of this AD.

(i) Repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 100 landings.

(ii) Prior to the accumulation of 4,000 total landings on the jack pivot assembly since the sidestay assembly was last overhauled, or within 300 landings after the effective date of this AD, whichever occurs later: Replace the jack pivot assembly with a new assembly. Thereafter, prior to the accumulation of 4,000 landings on the jack pivot assembly, replace it with a new assembly in accordance with the service bulletin.

(2) For any sidestay assemblies that have accumulated 4,000 or more total landings since new that have not been overhauled: Accomplish paragraphs (d)(2)(i) and (d)(2)(ii) of this AD.

(i) Repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 100 landings.

(ii) Within 300 landings after the effective date of this AD, replace the jack pivot assembly with a new assembly. Thereafter, prior to the accumulation of 4,000 landings on the jack pivot assembly, replace it with a new assembly in accordance with the service bulletin.

(3) For sidestay assemblies that have accumulated less than 4,000 total landings since new: Accomplish paragraphs (d)(3)(i) and (d)(3)(ii) of this AD.

(i) Repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 100 landings.

(ii) Prior to the accumulation of 4,000 total landings on the jack pivot assembly, or within 300 landings after the effective date of this AD, whichever occurs later, replace the jack pivot assembly with a new assembly. Thereafter, prior to the accumulation of 4,000 landings on the jack pivot assembly, replace it with a new assembly in accordance with the service bulletin.

(e) If, during any inspection required by this AD, any crack is found that exceeds the limits specified in paragraph 2.B.(6)(c) of the Accomplishment Instructions of Raytheon Corporate Jets Service Bulletin SB 32–233, dated June 24, 1994: Prior to further flight, replace the cracked pivot assembly with a new assembly in accordance with the service bulletin. Thereafter, prior to the accumulation of 4,000 landings on the jack pivot assembly, replace it with a new assembly in accordance with the service bulletin.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) The inspections and replacements shall be done in accordance with Raytheon Corporate Jets Service Bulletin SB 32–233, dated June 24, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Raytheon Corporate Jets, Inc., 3 Bishops Square Street, Albans Road West, Hatfield, Hertfordshire, AL109NE, United Kingdom. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on February 3, 1995.

Issued in Renton, Washington, on December 21, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–50 Filed 1–3–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 93–NM–229–AD; Amendment 39–9103; AD 94–26–08]

Airworthiness Directives; Fokker Model F27 Series Airplanes (Excluding Mark 050 Series Airplanes)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F27 series airplanes, that requires accomplishment of certain structural modifications. This amendment is prompted by reports of incidents involving fatigue cracking and corrosion in transport category airplanes that are approaching or have exceeded their economic design goal. These incidents have jeopardized the airworthiness of the affected airplanes. The actions specified by this AD are intended to prevent degradation in the structural capabilities of the affected airplanes. This action also reflects the FAA's decision that long term continued operational safety should be assured by actual modification of the airframe rather than repetitive inspections.

DATES: Effective February 3, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 3, 1995.

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

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F27 series airplanes was published in the **Federal Register** on March 14, 1994 (59 FR 11737). That action proposed to require certain structural modifications of certain Fokker Model F27 series airplanes prior to their economic design goal. –

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

One commenter supports the proposed rule. –

One commenter requests a revision to the applicability statement to specify the series of Fokker Model F27 airplanes

affected by the proposal. The commenter states that listing the series of the affected airplane model in the proposal would avoid confusion. The commenter notes that attempting to list all exclusions, as in the proposal, would require listing all future series and derivatives of future models, which would be impossible. The FAA concurs. The final rule has been revised to specify that the rule is applicable to Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 airplanes.–

This commenter also requests that the proposal be revised to specify the service bulletins referenced in Fokker Report Number SE–278, ''F27 Aging Aircraft Project—Final Document,'' Issue 3, dated February 1, 1993 (hereinafter referred to as the ''Fokker Report''), rather than merely referencing Part II of the Fokker Report, as was done in the proposal. The commenter requests this change because Fokker Service Bulletin F27/57–68, which was referenced in Part II of the Fokker Report, has been revised since issuance of the Fokker Report. Thus, this commenter contends that referring to the Fokker Report will not reflect this latest revision to that service bulletin. One commenter notes that the Rijksluchtvaartdienst (RLD), which is the airworthiness authority of the Netherlands, has issued a correction to Netherlands Airworthiness Directive (BLA) 91–058/5 (A), dated July 16, 1993, to reference Revision 1 of Fokker Service Bulletin F27/57–58, dated May 17, 1993.

The FAA concurs in part. Fokker Service Bulletin F27/57–68, Revision 1, dated May 17, 1993, was revised to correct the reference to the Netherlands airworthiness directive number, to add further explanatory information in the Description section of the service bulletin, and to make minor editorial changes to the Accomplishment Instructions. The FAA finds that none of these changes are substantive in nature; therefore, these changes do not warrant a revision to the specific service information referenced in the final rule. However, the FAA recognizes that operators may choose to comply with Revision 1 of that service bulletin. For those operators, a new NOTE 2 has been added to paragraph (a) of the final rule stating that compliance with Revision 1 of that service bulletin would constitute compliance with the requirements of Fokker Service Bulletin F27/57–68, dated July 17, 1992, which is referenced in the Fokker Report. Further, when the Fokker Report is revised to incorporate substantive revisions of service bulletins referenced in it, the FAA may consider further rulemaking to incorporate those changes. –

Several commenters request that the proposal be revised to include the modification of certain lower stringers in the outer wing of the airplane described in Fokker Service Bulletin F27/57–70. These commenters contend that the threshold, resource requirements, and modification procedures specified in Fokker Service Bulletin 57–70 are identical to those described in Fokker Service Bulletin 57–68; the only difference is that Fokker Service Bulletin 57–68 specifies modification of certain upper stringers in the outer wing of the airplane. Fokker Service Bulletin 57–68 is referenced in the Fokker Report. These commenters assert that the modifications specified in both of these service bulletins should be included in the requirements of the proposed rule. Further, these commenters note that the RLD has classified Fokker Service Bulletin F27/57–70 as mandatory and has issued Netherlands Airworthiness Directive (BLA) 93–094 in order to ensure that the modification is accomplished on airplanes in the Netherlands. –

The FAA does not concur that a revision to the rule to include a requirement for the additional modification should be made at this time. To do so would necessitate, under the provisions of the Administrative Procedure Act, reissuing the notice, reopening the period for public comment, considering additional comments received, and eventually issuing a final rule. The FAA does not consider it appropriate to delay issuance of this final rule further in order to undertake those procedures. However, the FAA may consider further rulemaking action to require modification of the lower stringers in which cracking was detected coincidentally while accomplishing the modification described in Fokker Service Bulletin F27/57–68.–

Several commenters request an extension of the proposed compliance date of January 1, 1995, to accomplish the modification described in Fokker Service Bulletin F27/57–68, which is one of the service bulletins referenced in the Fokker Report. For airplanes that have accumulated more than 30,000 total landings, that Fokker service bulletin recommends accomplishment of the modification of certain upper stringers of the outer wing prior to January 1, 1995. These commenters state that such a compliance time would impose a tremendous economic burden, since a majority of the airplanes in their fleet have already accumulated more than 30,000 total landings; therefore, some of these commenters suggest a compliance date of January 1, 1996, instead. One of these commenters requests that the compliance time be revised to an interval that coincides with the operator's regularly scheduled maintenance.–

The FAA concurs that the compliance time for accomplishing the modification described in Fokker Service Bulletin F27/57–68, Revision 1, dated May 17, 1993, may be extended to January 1, 1996, for airplanes that have accumulated more than 30,000 total landings. However, the FAA finds that in order to ensure safety in the interim, an additional x-ray inspection must be performed until such time that the airplane is modified, or prior to January 1, 1996. This extension to the compliance time should allow operators to accomplish the modification coincidentally with regularly scheduled maintenance. Accordingly, the final rule has been revised to add a new paragraph (b) to specify this provision. –

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been added to this final rule to clarify this requirement. –

Additionally, the FAA has recently reviewed the figures it has used over the past several years in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $55 per work hour to $60 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.–

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden

on any operator nor increase the scope of the AD.–

The FAA estimates that 58 airplanes of U.S. registry will be affected by this AD, within the initial threshold. Since not all affected airplanes will be required to accomplish every modification referenced in each of the service bulletins, the cost impact of the modifications required by this AD is estimated in the following table. This cost includes the price of modification kits, and the estimated labor rate is $60 per work hour. It does not include the cost of downtime, planning, set up, familiarization, or tool acquisition.

Service bulletin number	No. of affected airplanes	No. of work hours	Cost of parts per airplane	Cost per airplane	Total cost for affected airplanes
55–33 (B–77)	5	40	$314	$2,714.00	$13,570.00
55–12 (B–67)	5	20	121	1,321.00	6,605.00
55–12 (Part II)	5	30	168	1,968.00	9,840.00
55–61 Revision 2	13	45	2,235	4,935.00–	64,155.00
57–68 Revision 1	58	556	1,279	34,639.00	2,009,062.00
53–19 (B–45) Issue 3	5	22	0	1,320.00	6,600.00
53–58 (B–149)	5	16	0	960.00	4,800.00
53–76 (B–211)	13	0.25	0	15.00	195.00
57–7 Issue 1	5	32	400	2,320.00	11,600.00–

Based on the above figures, the total cost impact of the proposed AD on U.S. operators is estimated to be 2,126,427.–

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. –

The FAA recognizes that the modifications will require a large number of work hours to accomplish. However, the threshold specified in each of the service bulletins referenced by the Fokker Report should allow ample time for the accomplishment of the modifications coincidentally with scheduled major airplane inspection and maintenance activities, thereby minimizing the costs associated with special airplane scheduling.–

The FAA recognizes that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. Because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining safe aircraft, most prudent operators would accomplish the required actions even if they were not required to do so by the AD. –

A full cost-benefit analysis has not been accomplished for this AD. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-beneficial. When the FAA, as in this AD, makes a finding of an unsafe condition, this means that the original cost-beneficial level of safety is no longer being achieved and that the required actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost-beneficial, a full cost-benefit analysis for this AD would be redundant and unnecessary.–

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39–

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

Adoption of the Amendment –

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

PART 39—AIRWORTHINESS DIRECTIVES–

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

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

§ 39.13 [Amended]–

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–26–08 Fokker: Amendment 39–9103. Docket 93–NM–229–AD.

Applicability: Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 airplanes, as listed in Fokker Report Number SE–278, ''F27 Aging Aircraft Project—Final Document,'' Issue 3, dated February 1, 1993; certificated in any category.–

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the

effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD. –

Compliance: Required as indicated, unless accomplished previously. –

To prevent structural failure, accomplish the following: –

(a) Except as provided for by paragraph (b) of this AD, prior to reaching the incorporation thresholds listed in Part II of Fokker Report Number SE–278, ''F27 Aging Aircraft Project—Final Document,'' Issue 3, dated February 1, 1993 (hereinafter referred to as the ''Fokker Report''), accomplish the structural modifications listed in Part II of the Fokker Report.

Note 2: Compliance in accordance with Fokker Service Bulletin F27/57–68, Revision 1, dated May 17, 1993, constitutes compliance with Fokker Service Bulletin F27/57–68, dated July 17, 1992, which is referenced in the Fokker Report.–

Note 3: The modifications required by this paragraph do not terminate the inspection requirements of any other AD unless that AD specifies that any such modification constitutes terminating action for that inspection requirement.

(b) For airplanes that have accumulated 30,000 total landings or more as of the threshold specified in Fokker Service Bulletin F27/57–68, Revision 1, dated May 17, 1993, referenced in the Fokker Report: The incorporation threshold for accomplishing the structural modification may be extended to January 1, 1996, if an x-ray inspection of the stringers at stations 11260, 12660, and 13460 is performed in accordance with Part 2 of Fokker Service Bulletin F27/57–68, Revision 1, dated May 17, 1993, at the time specified in either paragraph (b)(1) or (b)(2) of this AD, as applicable. If cracking is detected, prior to further flight, repair in accordance with paragraph 1.D.(1)(c) of the service bulletin.–

(1) For airplanes on which the inspections of the top skin of stringers 4 through 7 are currently being performed in accordance with Part 2 of Fokker Service Bulletin F27/57–68, Revision 1, dated May 17, 1993: Within 4,000 landings from the immediately preceding inspection.–

(2) For airplanes on which the inspections of the top skin of stringers 4 through 7 are not currently being performed in accordance with Part 2 of Fokker Service Bulletin F27/57–68, Revision 1, dated May 17, 1993: Within 2 months after the effective date of this AD, –

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

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished. –

(e) The structural modifications shall be done in accordance with Fokker Report Number SE–278, ''F27 Aging Aircraft Project—Final Document,'' Issue 3, dated February 1, 1993, which contains the following list of effective pages:–

Page number–	Revision level shown on page–	Date shown on page
1–3, II.3	3	February 1, 1993.
4–7, I.2–I.14	2	February 1, 1993.
I.1, I.15, I.16, II.1, II.2, II.4, III.1, III.2	1	May 3, 1991.
APPENDIX A		
APP. A–1	2	February 1, 1993.
APPENDIX B		
1–13	2	February 1, 1993.
APPENDIX C		
1	Original (These pages are not dated)	September 27, 1990.
2–5–		
APPENDIX D		
1–5–	Original	February 1, 1993.
APPENDIX E		
''Structural Maintenance Program Guidelines. . .''		May 22, 1991.–
''Structural Maintenance Program Task. . .''		May 22, 1991.
Table of Contents		May 22, 1991.
1–17	Original	May 22, 1991.

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

(f) This amendment becomes effective on February 3, 1995.

Issued in Renton, Washington, on December 19, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–51 Filed 1–3–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–17–AD; Amendment 39–9104; AD 94–26–09]

Airworthiness Directives; Lockheed Model L–1011–385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Lockheed Model L–1011–385 series airplanes, that requires an initial servicing or overhaul of the ram air turbine (RAT), and incorporating repetitive overhaul actions into the FAA-approved maintenance program. This amendment is prompted by reports indicating that, during routine maintenance of the RAT, the turbine blade assembly separated during spin tests. The actions specified by this AD are intended to prevent separation of the turbine blade assembly, which could damage the airplane structure and systems, and, under certain circumstances, could lead to reduced controllability of the airplane.

DATES: Effective February 3, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 3, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Lockheed Aeronautical Systems Support Company, Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, Flight Test Branch, ACE–160A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7367; fax (404) 305–7348.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Lockheed Model L–1011–385 series airplanes was published in the **Federal Register** on April 25, 1994 (59 FR 19683). That action proposed to require an initial servicing or overhaul of the ram air turbine (RAT), and incorporating repetitive overhaul actions into the FAA-approved maintenance program.

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

One commenter supports the proposal.

The Air Transport Association (ATA) of America, on behalf of some of its member operators, suggests that the proposal be withdrawn because it is ''an inappropriate use of the airworthiness directive.'' This commenter states that AD's are not the proper vehicle for addressing maintenance problems. The commenter points out that the AD is based on failures that have been reported, not during service, but during routine maintenance of the RAT. Further, the commenter states that the FAA's analysis identifies the problem area as the turbine blade assembly, and the maintenance deficiency as lack of lubrication; yet the FAA's proposed corrective action is a complete overhaul of the unit. The commenter questions whether the FAA considered a ''simpler remedy,'' such as a periodic lubrication requirement or increased frequency of functional checks. The commenter requests that the FAA examine vehicles other than the AD to ensure that appropriate maintenance is performed.

The FAA does not concur with the commenter's request to withdraw the AD, nor does it concur with the commenter's implication that the AD is not the proper vehicle for addressing the unsafe condition. According to section 39.1 of the Federal Aviation Regulations (FAR) (14 CFR 39.1), the issuance of an AD is based on the finding that an unsafe condition is likely to exist or develop in aircraft of a particular type design. The responsibilities placed on the FAA by the Federal Aviation Act do not limit it from making any unsafe condition—whether resulting from maintenance, design defect, or otherwise—the proper subject of an AD. Therefore, regardless of the cause or the source of an unsafe condition, the FAA has the authority to issue an AD when it is found that an unsafe condition is likely to exist or develop on other products of the same type design.

Further, it is within the FAA's authority to issue AD's to require actions to address unsafe conditions that are not otherwise being addressed (or addressed adequately) by normal maintenance procedures. The FAA may address such unsafe conditions by requiring revisions to maintenance programs as a condition under which airplanes may continue to be operated. While the subject of this AD relates to a problem with the RAT assembly that was identified during regular maintenance procedures, the FAA points out that reports of this problem came from several different operators. From the data garnered from these reports, the FAA has identified the existence of an unsafe condition. Although the unsafe condition is one that, feasibly, *could* have been addressed by the operators' maintenance programs, it is obvious that the current maintenance programs are inadequate in addressing it. In light of this, the unsafe condition is likely to exist or develop in the affected airplanes. As a result, the FAA is issuing this AD to eliminate the unsafe condition by revising the maintenance programs accordingly. The AD is the appropriate vehicle for mandating such actions.

The FAA acknowledges that some operators currently may have better maintenance programs that address an unsafe condition. If a program is adequate, an operator would already be in compliance with the AD, or would be in a position to obtain an approval for an alternative method of compliance with the AD (i.e., to follow the operator's current program rather than revise it to comply with the AD). The obligation of the FAA to issue the AD and address an unsafe condition remains, however, and the rule must apply to everyone to ensure that all affected airplanes are covered, regardless of who operates them.

In developing this AD action, the FAA did consider optional actions to address strictly the bearing lubrication problem. However, in reviewing the available data, the FAA found that there were no mandatory replacement or refurbishment times for the RAT in the majority of affected operators' maintenance programs. Under normal maintenance procedures, the RAT's are functionally tested on the an average of every 48 months or 4,000 flights (at a ''D'' check). In cases where operators had replaced or refurbished the RAT's, those actions were accomplished ''on condition'' only, that is, after the RAT's had failed certain functional (spin-up) testing. In the reported incidents, the RAT's had not been serviced, nor had functional testing indicated that they needed servicing, since new. It is likely that RAT's have been installed on many other affected airplanes, and have had

no servicing whatsoever since delivery that would ensure adequate lubrication of the turbine bearing. In light of this, the FAA has clearly identified an unsafe condition that must be addressed by the actions specified by this AD to be incorporated in the operators' maintenance programs.

Further, the FAA points out that the normal means for air carriers to comply with AD's such as this is to incorporate the repetitive requirements into their approved maintenance program. Therefore, the FAA could accomplish this same result by enumerating the specific overhaul/servicing actions identified by the maintenance program revision. However, from an administrative point of view, there is a distinct advantage in requiring a maintenance program revision. By imposing the overhaul/servicing requirements, compliance with the AD with respect to each action would have to be recorded in the operator's maintenance records; whereas, in the case of this AD, the only required recording of the compliance relates to the one-time changes in the maintenance program required by paragraph (b) of the rule.

One commenter requests that the proposal be revised to require only a one-time inspection and servicing of the RAT. Data gathered from the results of the inspection could then be evaluated to determine the condition of the fleet and if additional actions are warranted. This commenter believes that the reported bearing failures were isolated incidents, and that issuance of the proposed AD is an ''overreaction'' to these reports. The FAA does not concur. From data already obtained, the FAA has determined that a sufficient number of failures have occurred which clearly indicate that the RAT installed in the Model L–1011–385 is likely to develop problems in the turbine bearing unless measures are implemented to periodically lubricate the bearing. Issuance of this AD is the result of that determination.

One commenter supports the intent of the proposed rule, but requests that proposed paragraph (b) be revised to delete the requirement for a complete overhaul of the RAT every eight years. The commenter considers this to be excessive. The commenter states that the turbine separation problems, like those that have occurred, should be correctable by periodically performing only the servicing procedures in accordance with Lockheed TriStar L–1011 Service Bulletin 093–29–098, dated December 6, 1993 (reference Dowty Service Bulletin RAT16C10–29–168). The FAA concurs that the servicing procedures are acceptable in ensuring that the addressed problems associated with the turbine blade assembly are monitored and corrected in a timely manner. Accordingly, the FAA has revised paragraph (b) to provide operators with the option of accomplishing either the complete overhaul of the RAT or the servicing procedures, at eight-year intervals.

Another commenter requests that the proposal be revised to allow RAT's that have been overhauled previously in accordance with Dowty Overhaul Manual 29–21–01 to be considered in compliance with the AD, even though the overhaul manual does not call for the replacement of the roller bearing, part number RA56341. The commenter states that the lubrication problem addressed by the proposed AD occurs mainly in the turbine ball bearing (part number 601017118), not the roller bearing. The Dowty Overhaul Manual does not call for replacement of the roller bearing if it is still serviceable; however, Lockheed TriStar L–1011 Service Bulletin 093–29–098, dated December 6, 1993, which was cited in the proposed rule, calls for the replacement of the roller bearing, regardless of its condition. The FAA does not concur with the commenter's request. The replacement of the roller bearing, as called for in the referenced service bulletin, is necessary because of corrosion damage problems that can occur in the roller bearing. This corrosion damage may be difficult to detect by visual inspection alone; thus, initial replacement of the bearing (during overhaul) is all the more important. However, this corrosion problem will be monitored and corrected, if necessary, during the regular repetitive servicing or overhaul (every eight years) required by this AD. In light of this, inspection and reinstallation of both the roller and ball bearings, if serviceable, would be acceptable at the recurrent actions required by the AD. A note has been added to the final rule to clarify that replacement of the roller bearing is necessary when initially overhauling the RAT.

The FAA has recently reviewed the figures it has used over the past several years in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $55 per work hour to $60 per work hour. The cost estimate information, below has been revised to reflect this increase in the specified hourly labor rate.

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

Cost Estimate

There are approximately 236 Lockheed Model L–1011–385 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 117 airplanes of U.S. registry will be affected by this AD.

For operators electing to service the RAT, it will take approximately 48 work hours per RAT to accomplish those actions, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of the servicing actions on U.S. operators is estimated to be $2,880 per RAT.

For operators electing to overhaul the RAT, it will take approximately 170 work hours per RAT to accomplish those actions, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of the overhaul actions on U.S. operators is estimated to be $10,200 per RAT.

The number of work hours that will be required to perform either the servicing or overhaul of the RAT, as indicated above, is presented as if those actions were to be accomplished as ''stand alone'' actions. However, in actual practice, these actions for the most part could be accomplished coincidentally or in combination with normally scheduled airplane inspections and other maintenance program tasks. Therefore, the actual number of any necessary additional work hours will be minimal in many instances. Additionally, any costs associated with special airplane scheduling will be minimal.

Incorporation of the requirements of this AD into the FAA-approved maintenance program will require approximately 40 work hours per operator to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of incorporation of the maintenance program change on U.S. operators is estimated to be $2,400 per operator.

The FAA recognizes that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. Because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators.

However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining safe aircraft, most prudent operators would accomplish the required actions even if they were not required to do so by the AD.

A full cost-benefit analysis has not been accomplished for this AD. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-beneficial. When the FAA, as in this AD, makes a finding of an unsafe condition, this means that the original cost-beneficial level of safety is no longer being achieved and that the required actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost-beneficial, a full cost-benefit analysis for this AD would be redundant and unnecessary.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–26–09 Lockhead: Amendment 39–9104. Docket 94–NM–17–AD.

Applicability: Model L–1011–385 series airplanes having serial numbers 193A through 193Y inclusive, 293A through 293F inclusive, and 1002 through 1250 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of the turbine blade assembly, which could damage the airplane structure and systems, and, under certain circumstances, lead to reduced controllability of the airplane, accomplish the following:

(a) Remove, disassemble, inspect, test, and service the ram air turbine (RAT) in accordance with Lockheed TriStar L–1011 Service Bulletin 093–29–098, dated December 6, 1993; or completely overhaul the RAT in accordance with Chapter 29–21–01 of Dowty Aerospace Hydraulics—Cheltenham Overhaul Manual; at the applicable time specified in either paragraph (a)(1) or (a)(2) of this AD:

Note 1: Overhaul of the RAT in accordance with this paragraph includes replacement of the roller bearing (part number RA56341).

(1) For airplanes on which the RAT has not been serviced or overhauled within 6 years prior to the effective date of this AD: Accomplish the procedures within 2 years after the effective date of this AD.

(2) For airplanes on which the RAT has been serviced or overhauled within 6 years prior to the effective date of this AD in accordance with a method that is equivalent to the procedures described in Dowty Aerospace Hydraulics—Cheltenham Service Bulletin RAT16C10–29–168, dated December 1, 1993: Accomplish the procedures within 8 years after the date of the immediately preceding servicing of the RAT.

(b) Within 24 months after the effective date of this AD, revise the FAA-approved maintenance program to incorporate procedures for servicing of the RAT in accordance with Lockheed TriStar L–1011 Service Bulletin 093–29–098, dated December 6, 1993; or complete overhaul of the RAT in accordance with Chapter 29–21–01 of Dowty Aerospace Hydraulics—Cheltenham Overhaul Manual. One or the other of these actions must be accomplished at intervals not to exceed 8 years.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The servicing actions shall be done in accordance with Lockheed TriStar L–1011 Service Bulletin 093–29–098, dated December 6, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Lockheed Aeronautical Systems Support Company, Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on February 3, 1995.

Issued in Renton, Washington, on December 19, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–52 Filed 1–3–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 94–AGL–24]

Alteration of VOR Federal Airway V–216

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the airspace designation for Federal Airway V–216 by realigning the airway from the Peck, MI, Very High Frequency

Omnidirectional Range/Tactical Air Navigation (VORTAC) facility to the Toronto, ON, Canada, VORTAC via the Waterloo, ON, Canada, Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME). This action is necessary to realign the airway from the United States into Canadian airspace.

EFFECTIVE DATE: 0901 UTC, February 2, 1995.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the airspace designation for VOR Federal Airway V–216 from the Peck, MI, 084° and the United States/Canadian border to Toronto, ON, Canada, via Waterloo, ON, Canada. Canada has completed restructuring their internal airspace system that affected several Federal airways within the United States. This action is necessary to realign the airway from the United States into Canadian airspace. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary, because this action is a minor technical amendment in which the public is not particularly interested. Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The airway listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–216 [Revised]

From Lamar, CO; Hill City, KS; Mankato, KS; Pawnee City, NE; Lamoni, IA; Ottumwa, IA; Iowa City, IA; INT Iowa City 062° and Janesville, WI, 240° radials; Janesville; INT Janesville 076° and Muskegon, MI, 252° radials; Muskegon; Saginaw, MI; Peck, MI; INT Peck 084° and Waterloo, ON, Canada, 262° radials; Waterloo; INT Waterloo 057° and Toronto, ON, Canada, 278° radials; to Toronto. The airspace within Canada is excluded.

* * * * *

Issued in Washington, DC, on December 21, 1994.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–75 Filed 1–3–95, 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 2

[Docket No. RM93–23–000]

Project Decommissioning at Relicensing; Policy Statement

Issued December 14, 1994.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Policy statement.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is adopting a policy statement that addresses its authority to issue or deny new hydropower licenses at the time of relicensing, and its authority over the decommissioning of a licensed project when no new license is sought or a new license is rejected or denied, as well as pre-retirement planning and funding. The Commission stated that it has the authority to deny new licenses to hydroelectric projects when existing licenses expire. Such action would occur if the Commission concluded that the project, no matter how conditioned, could no longer meet the comprehensive development standard of the Federal Power Act. In the great majority of cases, decommissioning is likely to result from a license holder's desire to abandon an uneconomical facility rather than the Commission deciding it should be closed. The Commission also concluded that its authority over decommissioning extends to determining what project features, beyond the turbines and generators, should be removed, if the project is decommissioned. In issuing future licenses, the Commission may require that funding for decommissioning be provided in certain circumstances.

EFFECTIVE DATE: February 3, 1995.

FOR FURTHER INFORMATION CONTACT: Joanne Leveque, Office of the General Counsel, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, (202) 208–0961.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, 1200 or 300bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS for 60 days from the date of issuance in ASCII and WordPerfect 5.1 format. After 60 days the document will be archived, but still

accessible. The complete text on diskette in Wordperfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

I. Introduction and Summary

The Federal Energy Regulatory Commission (Commission) is adopting a policy statement that addresses issues related to relicensing and decommissioning [1] raised in its September 15, 1993 Notice of Inquiry (NOI) in the above-captioned proceeding. [2] In that Notice, the Commission invited comment on a series of fifteen questions dealing with the relicensing and decommissioning of licensed hydropower projects after the original license has expired. The individual questions, as well as a summary of the commenters' responses, are set forth in Appendix A to this Policy Statement.

There are three major areas of inquiry encompassed in the ensuing analysis and discussion. The first involves relicensing of a project. The second addresses what happens when no new license goes into effect for the project at the time of relicensing, and the project in question must be decommissioned. Finally, the discussion addresses pre-retirement funding of retirement costs that will be incurred upon decommissioning.

Regarding the first issue, generally, when the license for a project expires, the Commission issues a new license to the existing licensee. However, that is not the only option available. After examining the legislative history and the relevant statutory provisions, the Commission concludes that it has the legal authority to deny a new license at the time of relicensing if it determines that, even with ample use of its conditioning authority, no license can be fashioned that will comport with the statutory standard under section 10(a) of the Federal Power Act (the Act) and other applicable law. The Commission anticipates that, where existing projects are involved, license denial would rarely occur.

At the time a license expires, the Commission will review any application for a new license in terms of current conditions and public interest considerations. There may be instances where a new license can be fashioned, but the terms will not be acceptable to the licensee, and so the license will be rejected. This is most likely to occur where the licensee of an already marginal project is confronted with additional costs at relicensing that render the project uneconomic. The Commission concludes that this possibility will not preclude it from imposing the environmental (and other) conditions it deems appropriate to carrying out its responsibilities under the Act.

In those instances where it has been determined that a project will no longer be licensed, because the licensee either decides not to seek a new license, rejects the license issued, or is denied a new license, the project must be decommissioned. The second subject involves the extent of the Commission's authority over decommissioning and the process to be applied when a project is to be decommissioned. The statutory language does not expressly address, in any comprehensive manner, the Commission's authority over decommissioning and the process to be applied in carrying it out. In such a situation, the Commission has the authority to fill in gaps left by the statute and to ensure that a project is decommissioned in a manner that is consistent with the public interest. The Commission will take a very flexible approach to the carrying out of this process.

Possible forms of decommissioning extend from simply shutting down the power operations to tearing out all parts of the project, including the dam, and restoring the site to its pre-project condition. Multiple concerns must be considered in determining which alternative is appropriate, and the solutions necessarily will vary from one situation to another. Judging from the Commission's experience with project license surrenders, interested parties should generally be able to negotiate the proper approach to decommissioning. The Commission strongly encourages all the interested parties to work together to accomplish a mutually acceptable resolution in each case.

The Commission, however, rejects the notion that it is without statutory power to act where negotiated solutions cannot be arranged. The Commission has concluded that it has the power to take steps necessary to assure that the public interest is suitably protected, including, in the rare case, requiring removal of the project dam. Assuring protection of the public interest may involve the need to coordinate with other government bodies that will succeed to regulatory responsibility over certain aspects of the formerly-licensed projects.

The Commission will not generically impose decommissioning funding requirements on licensees. However, in certain situations, where supported by the record, the Commission may impose license conditions to assure that funds are available to do the job when the time for decommissioning arrives. The Commission will determine whether to impose funding requirements on a case-by-case basis, at the time of relicensing.

Further, even in situations in which the Commission does not impose a funding requirement at the time a project is relicensed, the licensee will ultimately be responsible for meeting a reasonable level of decommissioning costs if and when the project is decommissioned. The licensee should plan accordingly, and the Commission will not accept the lack of adequate preparation as justification for not decommissioning a project. Some provision for mid-course funding may become appropriate for a variety of reasons. The Commission encourages affected parties to develop creative solutions to pre-retirement funding in such situations.

The Commission will be receptive to proposals, concerning pre-planning and pre-funding of decommissioning costs, reached by mutual agreement during the course of individual licensing proceedings or during the term of a license.

Where the Commission includes a decommissioning funding provision in a license it issues, if the licensee is a public utility subject to the Commission's wholesale ratemaking jurisdiction, it may file to include an appropriate share of those costs in its rates. In situations where the Commission has not required pre-retirement funding in a license, and it is subsequently determined that decommissioning is necessary, a licensee that is a public utility may file to recover an appropriate share of decommissioning costs through wholesale rates, on a prospective basis.

Finally, the Commission is by separate order rescinding the reserved authority over decommissioning matters that routinely has been included in recent relicensing orders because of the pendency of this proceeding. The records in those cases demonstrate no current need to plan for, or expect,

[1] In this document, the term decommissioning is used broadly. Possible forms of decommissioning extend from simply shutting down the power operations to tearing out all parts of the project, including the dam, and restoring the site to its pre-project condition.

[2] Project Decommissioning at Relicensing; Notice of Inquiry, 58 FR 48991 (Sept. 21, 1993), IV Stats. & Regs. ¶ 35,526 (1993).

project retirement based on current conditions.

II. The Commission's Options at Relicensing

A. *The Original Legislation*

When the Federal Water Power Act (FWPA)[3] was enacted in 1920 after several years of consideration and debate, sections 14 and 15 were key parts of the legislation. There was a keen interest by some members of Congress in providing the opportunity for eventual Federal takeover of Commission-licensed power projects, and that became reflected in section 14. This section was designed as a vehicle that would permit the Federal government to own, maintain, and operate valuable water-power projects under terms which could make such takeover practical when the circumstances warranted.[4]

Congress further provided in section 15 of the FWPA that if Congress did not elect the first option of taking over and operating the project when a license expired, then the Commission was authorized to issue a new license either to the original licensee or to a new licensee. Because of concern about what would happen to service, and to the industries and communities dependent upon the project for service,[5] if Congress and the Commission had not acted by the time the license expired, Congress included a provision for annual licenses until the takeover/licensing issue had been resolved.

The focus during this period was plainly on the three options: Federal takeover and continued operation; a new license to a new licensee and continued operation; and a new license to the old licensee, who would also continue operation.[6] In the first two cases, the entity taking over the operation would have to pay the existing licensee for the project, according to the formula established in section 14.

This did not, however, necessarily mean continuation of business as usual. The statute provided for license terms of up to 50 years on original licenses.[7] As has been recognized:[8]

> By so limiting the duration for which these licenses could be granted, Congress intended to preserve for the Nation the opportunity of reevaluating the use to which each project site should be put in light of changing conditions and national goals.

During the license period, as reflected in sections 6 and 28 of the FWPA, licensees enjoyed considerable security. At the end of that period, the Commission would reexamine the statutory standard and make a new determination. Under section 10 of the FWPA, new licenses (except the interim annual licenses) could be issued only on the condition:[9]

> That the project adopted * * * shall be such as in the judgment of the commission will be best adapted to a comprehensive scheme of improvement and utilization for the purposes of navigation, of water-power development, and of other beneficial uses; and if necessary in order to secure such scheme the commission shall have the authority to require the modification of any project and of the plans and specifications of the project works before approval.

Any new license that the Commission issued would be pursuant to the terms of the then-prevailing laws and regulations and carry such further reasonable terms and conditions as the Commission then deemed appropriate to implement the statutory standard.[10] Each license was to be conditioned on acceptance of those terms,[11] and if the licensee did not accept the license, as conditioned, its rights to an annual license would end, as well.[12]

There was no mention in the legislation of the possibility of denying a license, which would put the project out of business. At the same time, there was no discussion of what was to occur if, at relicensing, the Commission could not make the requisite finding under the comprehensive development standard. That is, there was no direction concerning how the Commission was to reconcile the potentially conflicting terms of sections 10 and 15.

B. The Current Statutory Scheme

Section 14 remains on the books, although the Federal Government has never taken over a licensed project under its terms, nor has the Commission ever recommended that it do so. Section 15 likewise remains on the books. As the first licenses were about to expire, 50 years after initial passage of the FWPA, a term was added to section 15 of what was now the Federal Power Act,[13] authorizing the Commission to issue nonpower licenses.[14] No such license has been issued, either. In nearly every instance, existing licensees have applied for, and received, new power licenses when their old ones expired.

All of these decisions have been made in the context of the Commission's implementation of the comprehensive development standard of section 10(a) of the Act. At the same time, section 10(a) has evolved since 1920.[15] It no longer has the almost exclusively pro-development focus of the 1918–20 period, when the original legislation was propelled by the largely undeveloped status of the country's water-power resources and the power shortages that had existed during World War I.[16]

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[3] Pub. L. 66–280, 41 Stat. 1063 (June 10, 1920).

[4] That was before the period of the large-scale construction of hydropower projects by the Federal Government that would mark future decades. At that point, proponents of Federal ownership faced considerable resistance to the concept (*e.g.*, 53 Cong. Rec. 3416 (1916) [remarks of Sen. Shields]; 53 Cong. Rec. 3356 [remarks of Sen. Works]; 56 Cong. Rec. 9121 (1918) [remarks of Rep. McArthur]; Water Power—Hearings before the House Committee on Water Power, 65th Cong., 2d Sess. 235–36 (1918) (hereinafter cited as ''1918 House Hearings'') [remarks of Rep. Sims]). Nonetheless, they wanted to leave future possibilities open via takeover. *See, e.g.*, 53 Cong. Rec. 3297 (1916) [remarks of Rep. Husting]; 53 Cong. Rec. 3228 [remarks of Sen. Walsh]; 1918 House Hearings at 447–53 [testimony of Secretary of the Interior Lane].

[5] *See, e.g.*, 54 Cong. Rec. 1008 (1917) [remarks of Sen. Shields]; 59 Cong. Rec. 1048, 1442–43, 1474 (1920) [remarks of Sen. Walsh]; 59 Cong. Rec. 1043, 1045 [remarks of Sen. Fletcher], 59 Cong. Rec. 1049 [remarks of Sen. Myers].

[6] *See, e.g.*, Water Power Bill to Provide for the Development of Water Power and the Use of Public Lands in Relation Thereto, and for other Purposes, Hearings on H.R. 14893 before the House Committee on the Public Lands, 63d Cong., 1st Sess. 477 (hereinafter cited as ''1914 Hearings before House Committee on Public Lands'') [testimony of O.C. Merrill]; 51 Cong. Rec. 13037, 13623–24 (1914) [remarks of Rep. Ferris]; 53 Cong. Rec. 10469 (1916) [remarks of Rep. Adamson]; 1918 House Hearings 855 [letter from Secretary of Agriculture Houston]; *id.* at 451 [testimony of Secretary of the Interior Lane]; *id.* at 674 [testimony of Secretary of War Baker] (the Secretaries of Agriculture, War, and the Interior originally constituted the Commission and were instrumental in drafting the 1920 legislation).

[7] Section 6 of the FWPA.

[8] S. Rep. No. 1338, 90th Cong., 2d Sess. 2–3 (1968).

[9] Section 10(a) of the FWPA. This provision, with some additions, remains today as section 10(a) of the Federal Power Act, and is set forth at *infra* n. 46.

[10] Section 15 of the FWPA.

[11] Section 6 of the FWPA.

[12] 59 Cong. Rec. 6524 (1920) [remarks of Rep. Esch]; 59 Cong. Rec. 7779 [remarks of Sen. Jones].

It is Commission practice to issue annual licenses to permit it to complete certain actions, however. *See* 18 CFR 16.18(b)(1) and (2).

[13] 16 U.S.C. § 791a, *et seq.*

[14] Section 3 of Pub. L. 90–451, 82 Stat. 617 (Aug. 3, 1968).

[15] Section 10(a) now reads:

> That the project adopted . . . shall be such as in the judgment of the Commission will be best adapted to a comprehensive scheme for improving and developing a waterway or waterways for the use and benefit of interstate or foreign commerce, for the improvement and utilization of water power development, for the adequate protection, mitigation, and enhancement of fish and wildlife (including related spawning grounds and habitat), and for other beneficial public uses, including irrigation, flood control, water supply, and recreational and other purposes referred to in section 4(e) . . . .

Section 4(e) is set forth *infra*.

[16] *See, e.g.*, H.R. Rep. No. 715, 65th Cong., 2d Sess. 15, 29 (1918); H.R. Rep. No. 61, 66th Cong.,

Continued

Environmental considerations evoked virtually no comment in the debates and reports immediately preceding adoption of the FWPA.[17] However, these considerations have become important factors since the 1950s, as experience with the effects of water-power project operation has grown. This has resulted in new license conditions that have generally increased the costs associated with running hydropower projects.

The first steps in this direction were taken by the Commission in various individual licensing orders it issued.[18] Then, as States began to challenge Commission environmental actions, and seek concurrent jurisdiction, the courts put their imprimatur on the matter. They generally upheld the Commission's preemptive authority in this area, [19] but underscored further the Commission's responsibilities for environmental protection.[20]

Finally, in 1986 changes were made to the Act which codified and extended the earlier actions. [21] This is reflected principally in sections 10(a) and 10(j). Section 10(a) was expanded to refer explicitly to fish and wildlife concerns. A new section 10(j) was added to require expressly that, in every license it issues, the Commission establish conditions for the adequate and equitable protection of, mitigation of damages to, and enhancement of fish and wildlife.

The 1986 legislation directed the Commission, when establishing license conditions, to reach an appropriate balance between power and other developmental interests and the protection of nondevelopment resources, such as fish and wildlife. It must consider, but need not give controlling weight to, the recommendations of various Federal and State resource agencies. There are however two long-standing provisions which authorize other federal agencies to promulgate license conditions. The Secretaries of the Interior and Commerce have their own power under section 18 to require construction, maintenance, and operation of fishways. In many instances fishways were not required at the time of initial licensing, but are being mandated at the time of relicensing. Similarly, where the project is built in a National Forest or other Federal reservation, under section 4(e) of the Act the Secretary of the department responsible for supervision of the reservation is empowered to establish, at the time of licensing, conditions he or she believes to be necessary for the adequate protection and utilization of the reservation. These conditions may also be revisited at relicensing.

More recently, most States have been given implementation authority under the Clean Water Act.[22] If the State denies water quality certification for a hydropower project, the Commission cannot issue a license for the project. The States have broad authority under the Clean Water Act to impose terms and conditions on operation of the project; the Commission must include lawful terms and conditions they impose in any license it issues.[23] This responsibility permits the States on some occasions to establish conditions independent of the Commission that may alter the economic viability of a project.

C. Discussion

As the Commission interprets the terms of the Act, the statutory scheme contemplates that normally the balancing between power and environmental interests can and will be accommodated through license conditions. If the licensee's proposal does not satisfy the comprehensive development standard of section 10(a), then the Commission will add terms that will bring it into compliance.[24]

To date, the Commission has not been confronted with any relicensing situation where its conditioning authority has been inadequate to do the job, *i.e.*, where there was unacceptable environmental damage that proved irremediable. Nonetheless, if such a situation were to occur, the Commission does not read the Act as requiring it to issue a license. Such an approach would compel it to ignore the strictures of section 10(a), which the courts have long recognized rests at the core of the Commission's licensing responsibilities.[25]

The principal support for perpetual licenses in 1920, which was before the advent of serious environmental concerns, rested on the idea that if the project had to close down, it could be a catastrophe to the community dependent on that power. Electricity was essentially local in nature, since it could generally be transmitted no more than 200–300 miles.[26] This tended to result in reliance on a single source that had been developed to serve its surrounding area.

Over the ensuing decades, this specter has been transformed by technological change. Today, power can be, and is, transported considerable distances, as communities are linked by an electric grid that crosses vast areas of the country. At the same time, rather than emphasizing retention of existing projects, as in 1920, the current regulatory focus is on fostering greater efficiency by expanding the opportunities to shop for power from distant projects.

Actually, by the time the first licenses began to expire, the concept of the inevitability of power operation from a particular project was eroding. In 1968, the statute was amended to provide for nonpower licenses. Section 15(f) of the Act states (emphasis added):

> In issuing any licenses under this section except an annual license, the Commission, on its own motion or upon application of any licensee, person, State, municipality, or State commission, after notice to each State commission and licensee affected, and after opportunity for hearing, *whenever it finds that in conformity with a comprehensive plan for improving or developing a waterway or waterways for beneficial public uses all or part of any licensed project should no longer be used or adapted for use for power purposes,* may license all or part of the project works for nonpower use.

The underscored language shadows that of section 10(a), and recognizes that there can be situations where the standard embodied therein cannot be met and the Commission decides that a project should no longer be used for power purposes.

Later, in language added to section 4(e) of the Act in 1986, Congress further stated (emphasis added):

> In deciding *whether to issue any license under this Part for any project,* the Commission, in addition to the power and

1st Sess. 4 (1919); 1918 House Hearings 5–15, 458–59; 56 Cong. Rec. 8929, 9120–22, 9614 (1918); 58 Cong. Rec. 1932 (1919).

[17] As discussed later, there were two provisions included in the 1920 legislation, involving fishways and Federal reservations, which have environmental overtones. However, both were carry-overs from predecessor legislation (requiring permits for projects on Federal lands or in navigable waters), and were not the subject of any significant attention at that time.

[18] The first time such considerations were reflected in the Commission's Standard Terms and Conditions for licenses was in 1964. *See, e.g.*, 31 FPC 286, 530; 32 FPC 73, 841, 1116 (1964). However, such terms began to appear with increasing frequency in licenses issued during the 1950s.

[19] FPC v. Oregon, 349 U.S. 435 (1955).

[20] Udall v. FPC, 387 U.S. 428 (1967).

[21] Pub. L. 99–495, 100 Stat. 1243 (Oct. 16, 1986).

[22] 33 U.S.C. § 1341(a)(1).

[23] *See* PUD No. 1 of Jefferson County v. Washington Department of Ecology, U.S., 114 S.Ct. 1900 (1994).

[24] *See* language quoted *supra* at p. 7.

[25] FPC v. Union Electric Co., 381 U.S. 90, 98 (1965); First Iowa Hydro-Electric Cooperative v. FPC, 328 U.S. 152, 180–81 (1946).

[26] 51 Cong. Rec. 12753 (1914) [remarks of Rep. Sherley], 53 Cong. Rec. 546 (1916) [remarks of Rep. Ferris], 59 Cong. Rec. 243 (1919) [remarks of Sen. Jones].

development purposes for which licenses are issued, shall give equal consideration to the purposes of energy conservation, the protection, mitigation of damage to, and enhancement of, fish and wildlife (including related spawning grounds and habitat), the protection of recreational opportunities, and the preservation of other aspects of environmental quality.

Similarly, among other recent environmental legislation, the water certification requirements under the Clean Water Act could sometimes effectively quash an application for a new license.

Given this history, it is the Commission's view that, in those cases where, even with ample use of its conditioning authority, a license still cannot be fashioned that will comport with the statutory standard under section 10(a), the Commission has the power to deny a license.

The Commission rejects any suggestion that, rather than denying a new license, the United States would have to take over the property under section 14. It is abundantly clear from the legislative history of the FWPA that section 14 was designed to permit the Federal Government to take over and operate the property, not close it down.[27] Under such circumstances, the Government would get the output, which it could either sell or use for its own purposes, obviating the need to acquire power from other sources.[28]

As already noted, the FWPA was not drafted and passed with environmental concerns in mind.[29] There is nothing in that legislation that contemplates the prospect of requiring the Government to routinely bail out projects that can no longer pass muster under section 10(a) because of serious and irremediable adverse public impacts. In individual cases, where the facts and circumstances indicate that in fairness the burden should fall on Federal taxpayers, rather than on the licensee, the language of section 14 is broad enough to permit the Commission to pursue that course. However, there is no reason to interpret section 14 as mandating that outcome.

To this point, the discussion has focussed on license denial, which is expected to be highly unusual. The more likely scenario is one in which the Commission is required to condition a new power license with environmental mitigation measures, and the licensee is unwilling to accept the license tendered. The licensee may prefer to take the project out of business, because the costs of doing business have become too high.[30] There is no merit to the suggestion by some industry commenters that a condition in a power license is *per se* unreasonable if, as a result of imposing the condition, the project is no longer economically viable. The statute calls for a balancing of various development and nondevelopment interests, and those commenters' position would elevate power and other development interests far above the environmental concerns. It would mean that severe environmental damage would have to be accepted in order to protect even a very marginal hydropower project. The Commission does not read the Federal Power Act to compel such a result. As the Court of Appeals for the Seventh Circuit recently observed:[31]

> [T]here can be no guarantee of profitability of water power projects under the Federal Power Act; profitability is at risk from a number of variable factors, and values other than profitability require appropriate consideration.

The Commission's approach to the conditions it establishes will be realistic and pragmatic. In assessing whether the terms it is considering are reasonable, the Commission looks at the costs to the licensee in complying with the terms of the license, as well as the environmental benefits from imposing them. Within those parameters, however, it must be recognized that meeting reasonable environmental costs is a part of today's cost of doing business.[32]

There may be some occasions where the obligation to pay increased environmental costs at relicensing will force a hydropower project to close down. With the increasing emphasis on competition in the electric power industry today, the prospect of shutting down certain power projects may increase. However, this is not unique to hydroelectric projects.

The possibility that a project may have to shut down is not a legitimate basis for the Commission to ignore its obligations to impose necessary environmental conditions. However, the Commission is required to balance a number of different factors under sections 4(e) and 10(a) of the Act in its licensing decisions. Should it be demonstrated that the environmental costs would be excessive or that loss of power supplied by the project would be significant, that evidence can be considered in assessing the power and development aspects to be weighed under section 10(a)'s comprehensive development standard, as can the renewable nature of water-power resources. Similarly, hydropower may carry significant environmental benefits over some of the alternate power sources that would be used instead, and that is a factor to be considered in weighing the nondevelopmental aspects of the equation.

As the foregoing discussion indicates, there are no definitive standards as to how the varying accommodations reflected in the statute are to be applied by the Commission in fashioning its license conditions. Environmental considerations are important, but so are developmental needs. Optimally, many of the conflicting concerns can be worked out through processes of consultation and negotiation during the licensing proceeding.[33] Experience has shown that this approach in fact usually does yield an acceptable result.

III. The Decommissioning Process

A. Experience with Project Retirement

As discussed earlier, the emphasis in 1920 was on the continuation of licensed projects. Nonetheless, over the years various projects have in fact stopped producing power and closed down. Generally, the reasons have been grounded in economics—for one reason or another, it would simply be too

[27] *See, e.g.,* 51 Cong. Rec. 13623 (1914) [remarks of Rep. Ferris]; 54 Cong. Rec. 1008 (1917) [remarks of Sen. Shields]; 1918 House Hearings 235–36 [remarks of Rep. Sims]; *id.* at 25–26 [remarks of O.C. Merrill, instrumental in drafting the bill]. *See also* the statutory language of sections 14(a) and 15(a)(1).

[28] The suggestion of municipal licensees that Congress has barred denial of municipal licenses is wide of the mark. The 1953 legislation to which they refer precluded the Federal takeover of such projects under section 14. It also expressly stated that no provision of the Act was repealed or affected except as was specifically referred to in the 1953 legislation. *See* 16 U.S.C. §§ 828b-828c. This term was included at the Commission's request to ensure that such key provisions as sections 4, 10, and 18 were not affected. *See* S. Rep. No. 599, 83d Cong., 1st Sess. 5–6 (1953).

While the 1953 legislation prevented takeover under section 14, the Federal Government's paramount right to take over by condemnation remained. *Id.* at 3–5. *See* also H.R. Rep. No. 985, 83d Cong., 1st Sess. 2, 5 (1953).

[29] However, Congress did exhibit its concern with public safety (*see* Section 10(c)). There is nothing to suggest that the Commission could not deny a license on these grounds (see South Carolina Public Service Authority v. FERC, 850 F.2d 788, 793 (D.C. Cir. 1988)), but would instead have to buy out the dangerous properties in order to close them down.

[30] As discussed in a later section, any decision to close down a project will generally involve decommissioning costs. That element would also be factored into the equation in determining whether the licensee elects to continue in operation or close down.

[31] Wisconsin Public Service Corp. v. FERC, 32 F.3d 1165, 1168 (7th Cir. 1994).

[32] H.R. Rep. No. 934, 99th Cong., 2d Sess. 22 (1986).

Hydropower projects, of course, do not stand alone in this regard. Other sources of electric generation must also meet costs of environmental compliance. For example, coal burning facilities must meet Clean Air Act standards (42 U.S.C. § 7651, et seq.) and nuclear facilities must incur the costs of disposing of spent nuclear fuel and project decommissioning (*e.g.,* 10 CFR 50.75).

[33] *See, e.g.,* sections 10(a) and 10(j) of the Act.

expensive to continue operating the project.

Rather late in the legislative process leading to the FWPA, Congress added to the other terms of section 6 a brief reference to surrender of licenses, without explanation or comment.[34] Shortly after passage, the Commission issued a regulation that parallelled the statute in providing that it was not simply the licensee's decision to surrender a license during the term, but that the Commission had to approve the surrender, as well. Furthermore, the regulation went on, if any project works had been constructed, the surrender had to be ''upon such conditions with respect to the disposition of such works as may be determined by the Commission.''[35]

Since those days, surrenders have been successfully worked out on many occasions. There are a myriad of considerations involved in determining what form the decommissioning will take. There was an occasional reference in the pre-FWPA debates to the fact that if a licensee decided not to continue with a project and instead rejected a new license, it would have to tear out the project.[36] This sort of remark, however, illustrates that no significant consideration was being given at the time to the intricacies of decommissioning a power project.

For example, there can be very great environmental consequences to tearing out a dam that is part of a licensed hydropower project. Over the life of the project huge amounts of silt may accumulate, and if the dam is removed, that silt may sweep downstream, causing major damage to other properties or resources.[37] The situation is even more serious where PCBs or other hazardous materials are embedded in the sediment. Equally significant, even if the project is no longer to produce power, the dam and related project works may serve other, nonpower functions worth preserving.

In some instances, power production is a very secondary element. The primary function of a project may be to supply water for irrigation or domestic needs, but power production facilities were included to help with the costs of the project. Certainly, under those circumstances, tearing out a dam would be unwarranted. Another example of significant nonpower functions associated with a project occurs when property owners have built homes around the project's reservoir.

A review of prior Commission surrender cases would reveal examples of all of these situations. Commonly dams are retained,[38] but it is not unusual that they be breached or removed.[39] The determining circumstances vary with each case.

There is one factor which has consistently been reflected in the Commission's orders. If the dam is to remain in place or there are other aspects of the project left which may significantly affect public resources, the Commission generally wants to be satisfied that there is another authority to take over regulatory supervision. While this seems to be a matter of sound public policy, it is further buttressed by the terms of section 15(f) regarding what happens when the Commission issues a nonpower license:

> Whenever, in the judgment of the Commission, a State, municipality, interstate agency, or another Federal agency is authorized and willing to assume regulatory supervision of the lands and facilities included under the nonpower license and does so, the Commission shall thereupon terminate the license.

In other words, Congress anticipated a continuing system of supervision over public aspects of those project works that would remain.

B. The Commission's Role in Decommissioning

Sections 6 and 15(f) deal expressly with only two situations—surrenders during a license term and situations where the Commission has issued a nonpower license at the end of a license term. However, there is no evidence to suggest that Congress determined or intended that the Commission was to be left powerless to deal with other, analogous situations. As the Court of Appeals for the District of Columbia Circuit has recognized:[40]

> The Act is not to be given a tight reading wherein every action of the Commission is justified only if referable to express statutory authorization. On the contrary, the Act is one that entrusts a broad subject-matter to administration by the Commission, subject to Congressional oversight, in the light of new and evolving problems and doctrines.

Likewise, the Supreme Court has observed:[41]

> The power of an administrative agency to administer a congressionally created * * * program necessarily requires the formulation of policy and the making of rules to fill any gap left, implicitly or explicitly, by Congress.

The Commission is of the opinion that implicit in the section 6 surrender provision is the view that a licensee ought not to be able simply to walk away from a Commission-licensed project without any Commission consideration of the various public interests that might be implicated by that step. Rather, the Commission should be able to take appropriate steps that will satisfactorily protect the public interests involved.[42] Section 15(f) takes the approach one step further by suggesting that wherever nonpower activities are to continue, there should be another regulatory authority prepared to step in. Those principles have validity well beyond the particular contexts in which they are specifically referenced in the Act.[43]

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[34] The relevant sentence reads: Licenses may be revoked only for the reasons and in the manner prescribed under the provisions of this Act, and may be altered or surrendered only upon mutual agreement between the licensee and the Commission after * * * public notice.

The words ''or surrendered'' were the late addition.

[35] FPC Order No. 9, Regulation 10(5), issued Feb. 26, 1921. *See also* 18 CFR 6.2; FPC Order No. 175 (Attachment p. 28) (1954); FPC, General Rules and Regulations in Force Jan. 1, 1948, § 6.2 (1948).

[36] 59 Cong. Rec. 1046, 1443, 1474–75 (1920) [remarks of Sen. Lenroot].

[37] Niagara Mohawk Power Corp., 49 FPC 1352 (1973), 4 FERC ¶ 61,209 (1978).

[38] *See, e.g.,* Porcupine Reservoir Co., 62 FERC ¶ 62,074 (1993); Kimberly-Clark Corp., 55 FERC ¶ 62,018 (1991); Red Bluff Water Power Control District, 7 FERC ¶ 61,295 (1979); Pennsylvania Electric Co., 58 FPC 1749 (1977); Central Vermont Public Service Corp., 56 FPC 2532 (1976).

[39] Consumers Power Company, 68 FERC ¶ 61,080 at 61,438–40 (1994); American Hydro Power Co., 60 FERC ¶ 61,237 (1992); 64 FERC ¶ 62,097 (1993) [safety concerns]; Watervliet Paper Co., 35 FERC ¶ 61,030 (1986); Duke Power Co., 43 FPC 265 (1970). The licensee itself, of course, may prefer this approach, rather than to continue to pay for maintenance and repairs on a project which is no longer generating any power revenues.

[40] Niagara Mohawk Power Corp. v. FPC, 379 F.2d 153, 158 (D.C. Cir. 1967). *See also* Northern States Power Co. v. FPC, 118 F.2d 141, 143 (7th Cir. 1941).

[41] Chevron v. Natural Resources Defense Council, Inc., 467 U.S. 837, 843 (1984), *quoting from* Morton v. Ruiz, 415 U.S. 199, 231 (1974). *See also* section 309, empowering the Commission to ''perform any and all acts, and to prescribe * * * such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this Act.''

[42] The Commission has extended the concept in section 6 to provide for annual licenses, during which the Commission takes appropriate action to properly close out its jurisdiction. *See* 18 CFR 16.18(b)(1)–(2).

On the other hand, the Commission rejects the suggestion of some industry commenters that section 6 gives the licensee a veto over what the terms of surrender are to be. Under section 6, it would be the licensee that sought an intra-term surrender, in order to be relieved of the obligations under the license. The Commission would be in the position to deny the surrender unless its terms were met.

[43] This policy statement focuses only on decommissioning at the time of relicensing. Licensees have occasionally raised concern that the Commission might unilaterally decide to decommission a project before the end of a license term. However, the terms of section 6 of the Act apply to that situation. The licensee can explicitly or implicitly (by its actions) apply for license surrender, and the Commission can agree to the surrender. The Commission can order surrender where the licensee has accepted a license whose terms expressly permit the Commission to order decommissioning within the license term. Finally,

Some commenters in this docket have nonetheless suggested that the Commission should stay out of the picture when a license ends. They implicitly concede that the end of licensing, and of power production, does not necessarily mean the end of impacts on public resources and values. However, they contend, where Federal interests are involved, as with Federal lands and threats to navigation, other Federal authorities can simply take over. Otherwise, they contend, the States can do so.

As the system presently operates, the Commission staff and the licensees work with all of these groups to arrange a comprehensive resolution, and, until this is done, the Commission retains jurisdiction by issuing annual licenses. Overall Commission supervision of the process makes much more sense than a piecemeal approach that raises the chance of both overlaps and gaps in coverage.

The Commission consequently contemplates continuation of the existing procedure. Experience suggests that in nearly all instances the interested parties should be able to reach a resolution of the decommissioning approach among themselves. Where this is not possible, the Commission will impose reasonable terms appropriate to the situation, but this is not the approach the Commission favors.

C. The Role of Other Federal Agencies

Where project works at issue are located on Federal lands, the Commission's surrender regulations have for decades required the licensee to restore the lands to the satisfaction of the responsible agency when the licensee surrenders its license.[44] Most commonly those agencies are the U.S. Forest Service and the Bureau of Land Management, and both apply analogous principles in permits they grant for use of Federal lands.[45]

Absent specific authority by the Federal agency involved for continued use of Federal lands at the termination of Commission licensing, it is eminently reasonable that the licensee must restore the lands to that agency's satisfaction, at the licensee's expense.[46] No commenter presents a persuasive case to the contrary.

The Army Corps of Engineers presumably would sometimes become involved where there are navigable waters. To the extent that new construction in navigable waters is proposed, as where dam removal or modification is in issue, permits are needed from the Corps under the River and Harbor Act.[47] Moreover, were project works to actually pose a serious threat to navigation, it can be assumed that the Corps would step in to protect that interest.

However, commenters have offered no comprehensive legal analysis of the Corps of Engineers' responsibility outside those relatively narrow contexts. Absent that, or a clear indication from the Corps that it intends to take a leading role in assuming broad responsibility for safety and other aspects of projects previously regulated by the Commission and believes that it has the authority to do so, there is little basis for the Commission to count on the Corps of Engineers' assuming significant additional responsibility.

D. The Role of States and Municipalities

There remains a relatively large gap in coverage left by Commission withdrawal. However, many States (though not all) have fairly comprehensive programs in effect governing dams and similar structures in their waters, especially in the areas of dam safety and the environment. It is thus important that the responsible State agencies be partners in any arrangement that is worked out at the time when Federal licensing ends.

The attitudes of States (and municipalities) towards the prospect of taking over regulation may vary, depending on the circumstances. Where a project has multiple uses, State or municipal authorities may be willing to assume responsibility in order to keep major nonpower elements of the project in operation. Where this is the case, the Commission will entertain the request that it simply require the shut-down of power operations without further actions that could affect those other functions. It is unlikely that a dam or reservoir serving key municipal water needs, for example, is going to be shut down.

There could be other situations, however, where a State (or municipality) would be reticent to have responsibility for a project licensed by the Federal Government now transferred to it. This might include cases where there are presently serious problems associated with the project, and/or the project serves no useful function other than power production (which will be unauthorized once Commission licensing ends). Where a State makes a persuasive case as to why it ought not to have to bear the burden of future regulation, the Commission will consider the appropriateness of requiring the affected project works to be removed, thereby eliminating the need for future oversight.

Many factors would enter into such a decision, of course, including (but not limited to) the costs of removal,[48] the burdens on the State of continued supervision, what alternative approaches are available, and the environmental consequences of removal. The Commission will also look to whether it authorized the original construction (and thus was directly responsible for the project being there) or simply issued the original license on an existing project.

Where dams or other project works are left in place, the State may effectively be compelled to assume supervisory responsibility over remaining project works, however unwillingly, because the public interest demands that protection. Some State agencies have complained about any approach that leaves the States with the financial burden of dealing with no-longer-useful or abandoned power projects.

It is not clear that the specific examples cited in the comments are in fact under Commission regulation. Rather, it appears that in most, if not all, of these instances, the projects had never been federally licensed. Nonetheless, where the facts indicate that there may be a significant problem in terms of potential financial threat to State finances, it is a matter for the Commission to consider in deciding how far it will take its own

the Commission can initiate a revocation proceeding under sections 26 and 31 of the Act. In other instances, the licensee has security against mid-term surrenders.

[44] *See* FPC Order No. 175 (Attachment A p. 28) (1954). *See also* 18 CFR 6.2.

[45] *See* 36 CFR 251.60(j) and 43 CFR 2803.4–1.

[46] While the Commission's regulation does not expressly state that it will be at the licensee's expense, this is implicit. The Commission has no authority to subsidize the project by itself paying or requiring the other agency to do so. It might be noted that the BLM and Forest Service rules (cited in the previous footnote) specifically state that:

If the holder fails to remove all such structures or improvements within a reasonable period, as determined by the authorized officer, they shall become the property of the United States, but the holder shall remain liable for the cost of removal of the structures and improvements and for restoration of the site.

[47] *See* 33 U.S.C. §§ 401, 403.

[48] In the past, the dam removal projects that have been carried out have generally involved relatively modest expenditures. However, that would not invariably be the case. For example, the projected costs of removing the Glines/Elwha dams and restoring the site and the resources impacted by the projects have ranged up to $300 million, depending on the scope of the work undertaken and other factors. Dam removal costs alone are estimated at about a quarter of that total. Department of the Interior, *et al.*, The Elwha Report; Restoration of the Elwha River Ecosystem & Native Anadromous Fisheries: A Report Submitted Pursuant to Public Law 102–495, Executive Summary 13 (January 1994).

responsibility to deal with the decommissioning process for a particular project, especially with respect to assuring adequate resources for future maintenance of project works that are to be left in place.[49]

Several commenters noted also that a licensee might seek to transfer an increasingly marginal project to a new licensee that lacked the financial resources to maintain it or close it down in an appropriate manner. Through that process, the former owner relieves itself of the responsibility, which then may fall to State authorities or, at least when Federal lands are involved, on other Federal agencies. While the Commission is aware of no widespread problems on this score, it agrees that transfer applications should be scrutinized to foreclose this sort of situation, and where warranted, other authorities should be consulted before transfers are approved.

E. The Project After Decommissioning

When a project will no longer be licensed, the Commission's jurisdiction is going to end. The future operation of any remaining works is then the responsibility of whoever next assumes regulatory authority. The Commission does not believe that, at that point, it has the authority to require the existing licensee to install new facilities, such as fish ladders. Basically, the Commission issues a license for a particular period, subject to certain conditions. The licensee may have an opportunity to obtain a new license at the end of that term, subject to new conditions; but, if it elects not to do so, the Commission cannot go forward and require the same future steps to be taken anyway, as part of the decommissioning process.[50] That new facility is a step for any successor agency to take.

Similarly, while the Commission may require licensees to provide certain recreational opportunities in association with licensed activities, that obligation ends when the project is no longer licensed. If these opportunities are to continue at all, it will have to be as a result of the former licensee's voluntary action or the requirements of the new regulatory regime that follows.

On that score, once the Commission's jurisdiction has concluded, the preemption which earlier displaced any State laws would be at an end. The State would then be at liberty to impose its own licensing or other regulatory regime, free from any restrictions imposed earlier by operation of the Federal Power Act. That is, projects left in place would have to meet State-imposed requirements. Where the owner could not do so, presumably it would have to remove the project or take other appropriate remedial action authorized or required under State law.

The Commission's goal is that generally matters of this type can and will be resolved to the satisfaction of the successor agency as part of the Commission's decommissioning process, obviating the need for any later other action. There could then be a smooth transition to the new regime with a minimum of interruption.

IV. Funding Decommissioning Costs

There may be some situations, as noted earlier, where the Commission decides to recommend Federal takeover, which could involve taxpayer funding of project retirement costs. There may also be situations where the level of costs involved is so large that some sort of cost sharing arrangement must be worked out if the retirement plan is to be effectuated.[51] Normally, however, the Commission anticipates that the licensee will be responsible for paying the costs (up to a reasonable level) of the steps needed to decommission the project, since the licensee created the project and benefitted from its operations.

A major focus of the NOI was on possible plans for funding of decommissioning costs over the life of the project. This step would help assure that the funds are available to do the job when the time for decommissioning arrives, thereby avoiding the possibility that State or Federal taxpayers might, by default, be compelled to pay them because the licensee lacks the resources. On the other hand, to require such prior funding in all cases could mean unnecessarily tying up substantial amounts of the capital of financially sound licensees in less than optimum investments for extensive periods.

In any event, there are several impediments to effectively carrying out such a funding program. First, there is the question of determining the proper period for accumulating the funds. Some would argue that the license term is the proper period. However, it may be possible to anticipate that there is a substantial likelihood that a project will close down before the end of a license period. Poor physical condition, marginal economics, and similar factors may mark this potential situation. On the other hand, the prospect of a project closing down at the end of the license term cannot be assumed to reflect the general pattern, since physically, a hydropower project, with proper maintenance and replacement, may last far beyond the new term.

Secondly, there is the problem of measuring how much funding should be provided. This will depend, *inter alia*, on the scope of the decommissioning that is to occur. As discussed earlier, there are different possible decommissioning scenarios, for which the costs may vary markedly. Only at the time of decommissioning will the costs of that program actually be known.

The Commission's primary concern is that the licensee have the money available to carry out whatever decommissioning steps the Commission decides are appropriate if the project ceases to be licensed. In light of the practical problems involved in trying to deal with events far in the future, and because in many cases the time horizon and general financial strength of the licensee may be such that there is no substantial need for a pre-retirement funding program, the Commission will not act generically to impose such programs on all licensees. Accordingly, where the Commission has not required pre-retirement funding in a license, the licensee has no ongoing obligation to create a decommissioning fund as a contingency for the event that the project is required to be decommissioned at a later date.

There may be particular facts on the record in individual cases, however, that will justify license conditions requiring the establishment of decommissioning cost trust funds in order to assure the availability of funding when decommissioning occurs. The Commission would consider, for example, whether there are factors suggesting that the life of the project may end within the next 30 years, and would also look at the financial viability of the licensee for indications that it would be unable to meet likely levels of expenditure without some form of advance planning.

In other cases, licensees and others may wish to reach an agreement in the context of individual licensing cases concerning procedures for pre-retirement planning and funding. The

[49] The Commission contemplates that its role would end with seeing that the resources are made available at the time of decommissioning. The State would then be responsible for supervision of the future oversight and administration.

[50] On the other hand, during decommissioning negotiations, it might be mutually agreed that, rather than restoring fish passage by tearing down the existing facilities, a new fishway would be built instead.

[51] This may be because the costs reach a level which the Commission considers unreasonable. However, there is a very practical aspect as well. As the costs of decommissioning rise, they may reach a point where it is more economical for the licensee to continue to produce power in order to fund future decommissioning. Where others would like to see the project closed, this provides an impetus for them to share the costs.

Commission encourages creative solutions in this regard.[52]

Without advance planning, the financing of decommissioning costs may well cause problems at the time of decommissioning. Licensees have argued that the Commission should impose no funding requirements in its licenses. While the Commission has decided not to adopt any generic funding requirements, licensees should not view the Commission's decision as an impediment to ordering whatever decommissioning steps it deems appropriate when the time for decommissioning a particular project arrives.[53] The licensee has the responsibility for project retirement. In those situations where a licensee has not been required to undertake pre-retirement funding, and it determines on its own that decommissioning is probable and the costs can reasonably be estimated, a public utility licensee can file to recover such costs in rates.

If funding requirements have been established in a license issued by the Commission, licensees subject to the Commission's ratemaking jurisdiction can recover an appropriate share of funding amounts in subsequent wholesale rate filings.[54] In situations where the Commission has not required pre-retirement funding in a license, and it is subsequently determined that decommissioning is necessary, a licensee that is a public utility may file to recover an appropriate share of decommissioning costs through wholesale rates, on a prospective basis.

The foregoing discussion is directed to project-specific funding. The NOI also raised the possibility of establishing some type of industry-wide fund, financed by annual charges imposed by the Commission. In this instance, the licensee would not be pre-funding its own decommissioning costs but rather would be helping underwrite the costs of other licensees (presumably those lacking the resources to meet their own obligations). The Commission has concluded at the present time that such a fund is inappropriate. There is little specific evidence concerning the need for such a fund,[55] while the practical problems of implementing the program fairly and administering it soundly would be formidable. Should later experience with decommissioning demonstrate a stronger need, the Commission can reassess the issue at that time.

List of Subjects in 18 CFR Part 2

Administrative practice and procedure, Electric Power, Natural gas, Pipelines, Reporting and recordkeeping requirements.

By the Commission.

Commissioner Bailey dissented with a separate statement attached.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, the Commission amends Part 2, Chapter I, Title 18 of the Code of Federal Regulations as set forth below.

PART 2—GENERAL POLICY AND INTERPRETATIONS

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

Authority: 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 792–825y, 2601–2645; 42 U.S.C. 4321–4361, 7101–7352.

2. Part 2 is amended by adding § 2.24, to read as follows:

§ 2.24 Project Decommissioning at Relicensing.

The Commission issued a statement of policy on project decommissioning at relicensing in Docket No. RM93–23–000 on December 14, 1994.

Note: This Appendix will not be published in the Code of Federal Regulations.

Appendix A—Comment Summary

In response to the NOPR, the Commission received comments and reply comments from a great many commenters, including municipal and non-municipal licensees; federal, state, and local governmental organizations; national, regional, and local environmental, trade, or other organizations and associations; and private citizens. The more substantial comments are identified at the end of this comment summary, grouped by category and showing the shortened names or acronyms used in this summary. In addition, there was a large volume of comments in the nature of one to three-page letters. Many were from individuals (including operators of small hydro projects) and many were from local or regional organizations or local branches of national organizations.

In general, the commenters fall into two distinct groups of roughly equal size. One group takes what might be loosely characterized as a ''strict construction'' approach to the legal issues, contending that the Commission's organic statutes do not authorize it to compel the decommissioning of a project except under narrowly prescribed procedures that entail reimbursement of the licensee. The advocates of this position include the licensees and their organizations.

The second group might be loosely characterized as taking a broader approach to statutory interpretation, contending that the Commission has considerable inherent authority to decline to relicense a project whose license has expired, and to compel the licensee to decommission the project (including, if appropriate, removal of a dam or other project facilities) at the licensee's expense. The advocates of this position include a broad array of national, regional, and local environmental groups, as well as federal and state agencies.

Many commenters addressed the specific questions posed in the NOPR. Other commenters expressed more general views. Some commenters expressed their legal analysis in broad terms, with their answers to the questions being framed as cross-references to their broader discussion.[56] Many commenters endorsed the more extensive comments of an association to which they belong, adding supplemental views or emphasizing particular points. Many of the shorter letters referred to the views expressed by organizations that filed lengthier comments. A limited number of commenters filed reply comments.

This summary discusses first the comments on the broader issues and then the comments in response to the specific questions posed by the NOPR.

[52] *See* Consumers Power Company, 68 FERC ¶ 61,077 at pp. 61,380–83 (1994).

[53] By the same token, the establishment of a fund does not necessarily mean that a project will ultimately be decommissioned. Likewise, any planning and funding that does occur will not control the scope of the ultimate decommissioning, should that prove necessary. If funds prove inadequate, more will have to be supplied. There may also be more funds than are ultimately needed.

[54] If it turns out that costs actually incurred for decommissioning are greater than the funding amounts, the licensee may seek to recover the additional costs through rates. However, if it turns out that the costs actually incurred at the time of decommissioning are *less* than the funding amounts, the licensee and its shareholders may not keep those amounts; rather, the licensee will be required to refund them to ratepayers.

[55] For example, the main support seems to come from those government authorities who otherwise fear they might have to absorb costs associated with abandoned projects owned by those without significant financial resources. However, those authorities have not shown that they have broadly implemented such a program for permittees within their jurisdictions, as might be expected if major problems had developed on this score.

[56] EEI, for instance, discussed the issues in one broad narrative; APPA divided its comments into separate responses to the specific questions; and NHA commented broadly in the first half of its submission and then responded to specific questions in the second half. Reform and Kennebec also split their comments between a general discussion and specific responses to questions.

A. Broader Issues

As a preliminary matter, a number of commenters note the range of activities potentially includable within the scope of the word ''decommissioning.'' Depending on the circumstances, it could mean simply ceasing to operate a project, without physically removing any project facilities. At the opposite end of the spectrum would be removing a dam and dredging out the accumulated silt in the reservoir, a potentially complex and costly process that could involve serious environmental impacts of its own. Environmental commenters find legal authority for the Commission to mandate physical removal of project works.[57] Licensees, on the other hand, contend that once a project's license ends and the project ceases to generate electrical power (and, perhaps, the generator is disconnected and removed), the Commission lacks jurisdiction to mandate anything further.[58]

Licensees suggest that hydroelectric projects, if properly maintained, may be physically and economically viable ''indefinitely,'' such that decommissioning would be a rare occurrence.[59] These commenters stress the formidable structural integrity of dams, designed to last for ''thousands'' of years.[60] Environmental commenters, on the other hand, analogizing to mines, forests, nuclear plants, and landfills, etc., suggest that all hydropower projects have a finite ''life-cycle''; that they all silt up in the end; and that plans for their decommissioning should be routinely considered from the outset of their operation.[61] Commenters of all persuasions agree that project facilities that become unsafe should be removed (if they can't be repaired) to alleviate the hazard.[62] Some licensees suggest that when projects become uneconomic the licensee will itself take the initiative of proposing decommissioning and surrender of the license.

Commenters who believe that the decommissioning of a hydropower project will be a comparatively rare event urge case-by-case analysis of the issues as they may arise, in the peculiar factual context presented by the case at hand.[63] Commenters who believe that decommissioning is part of the inevitable life cycle of all hydropower projects prefer a more generic approach to determining the Commission's policy and practice.[64] These commenters advocate advance planning for decommissioning, contending that, absent a decommissioning policy by the Commission, the inevitable costs of decommissioning will be borne by taxpayers.[65]

As a preliminary matter, a number of commenters draw a distinction between shutting down project operations and removing project facilities, and, along with this, a distinction between the power to cause a project to cease operating and the power to cause someone (*i.e.*, the licensee) to incur the expense of removing its project's facilities. Licensees concede the Commission's authority to terminate a project at relicensing as long as the licensee is compensated for its investment. The compensation could come from either a government or a private purchaser.[66]

In this regard, several commenters suggest (but without legal discussion or citation) that an involuntary decommissioning of a project would constitute a taking of property without due process of law in violation of the U.S. Constitution.[67] Other commenters dispute that assertion, with extended discussion of legal precedent in support of their position. In general, they contend that a license is not a property right, and that the termination of a license does not constitute a taking of property even if the termination results in an economic loss.[68] They go on to contend that the FPA also does not provide an absolute right to compensation.[69]

Citing extensively to the legislative history of the FPA, including its amendments and precursors, licensees argue that Congress sought to encourage investment in hydro power projects by assuring investors that they would be able to recover the value of their project at the expiration of the license.[70] Also citing to that legislative history, environmental groups and government agencies respond that Congress sought to protect the investors' financial interests in the event that the project was taken over and operated by the government, or by another group of investors, after the license expired, but did not intend to reimburse the investors if the project was decommissioned at the expiration of the license term; at that point, the investors would already have fully recovered their investment.[71]

The crux of the licensees' position[72] is that sections 14 and 15 of the FPA give the Commission four choices at relicensing, and *only* four choices.[73] EEI expresses it as follows:[74]

> In a relicensing proceeding, FERC has authority to:
> - issue a new license to the existing licensee or a new licensee;
> - recommend a federal takeover in accordance with the provision of the FPA applicable to such action;
> - issue a nonpower license to an applicant for such a license, or
> - issue annual licenses to the existing licensee until a final decision is made.
>
> A unilateral order of surrender to be followed by decommissioning or project removal at the licensee's expense are not options available to FERC under the FPA.

A corollary argument to this view is that the FPA section 15 authority to issue an annual license is mandatory and not discretionary. Thus, the Commission is compelled to issue annual licenses (in perpetuity if necessary) until such time as it either issues a new license or a nonpower license or recommends federal takeover; the FPA does not afford the Commission the option of issuing no license at all.[75]

Environmental groups and government agencies characterize this result as ''absurd.''[76] Discussing the standards in sections 4 and 10 of the

[57] *See* discussion and citations below; a variety of legal theories was advanced.

[58] *See, e.g.*, EEI at 12; APPA reply comments at 4–7.

[59] EEI reply comments at 13.

[60] *Id.* at 5.

[61] *See, e.g.*, Reform at 5–6, 11–13.

[62] *See, e.g.*, NHA at 28; APPA at 9.

[63] *See, e.g.*, NHA at 5; EEI at 4; PG&E reply comments. (Reply comments are specifically identified as such; all other citations are to initial comments.) *See also* New England at 4–5.

[64] *See, e.g.*, Reform at 5–6, 11–13.

[65] Reform at 13–14.

[66] *See* discussion and citation below.

[67] *See e.g.*, Pacificorp at 3.

[68] Kennebec at 12–18; Walton at 7–8.

[69] Kennebec at 18–20.

[70] NHA at 11–16; EEI at 18, 20–33; Duke at 9–13; Mt. Hope at 4–5.

[71] *See, e.g.*, Wisconsin Department at 3–13; Washington Department at 1–2.

[72] *See, e.g.*, EEI at 16–20.

[73] Section 14 of the FPA, 16 USC 807, authorizes federal takeover of hydropower projects at the expiration of the license, pursuant to prescribed procedures, and provided that the United States pays the licensee its ''net investment'' in the project, not to exceed its ''fair value.'' Section 15, 16 USC 808, prescribes the relicensing procedures in the event that there is no federal takeover under section 14. These procedures include issuance of a new license (to either the existing licensee or a new licensee), an annual license, or a nonpower license.

The compensation to be paid by the new owner to the prior owner is defined in section 14 to be ''the net investment of the licensee in the project or projects taken, not to exceed the fair value of the property taken, plus such reasonable damages, if any, to property of the licensee valuable, serviceable, and dependent as above set forth but not taken, as may be caused by the severance therefrom of property taken.''

[74] EEI at 3–4. *See also* NHA at 7–8. EEI further contends (at 13–14) that nonpower licenses can only be used as the transitional authority pending assumption of jurisdiction by another agency, and cannot be used as a vehicle to implant an involuntary decommissioning.

[75] *See e.g.*, EEI at 25, 29; Chelan at 15–16.

[76] *See, e.g.*, Kennebec at 30–34; Kennebec reply comments at 6–7; Michigan at 8.

FPA,[77] as amended by the Electric Consumers Protection Act of 1986 (ECPA), they note that the Commission is required to conduct an extensive inquiry into the alternative, non-power uses of the water, and to consider those uses in deciding whether to issue a new license. They argue from this that Congress surely intended for the Commission to have the authority to conclude that issuance of any form of license (whether new, annual, or nonpower) would be inconsistent with the public interest, and to implement that conclusion by not issuing *any* license.[78] Citing the legislative history of the FPA and its predecessor, the Federal Water Power Act, these commenters contend that Congress intended licenses to be for a finite term with a definite end, implying that they need not be renewed or reissued.[79] They construe the provision for annual licenses as applying solely during the pendency of the relicense proceedings; if those proceedings conclude with a determination to not issue a license, then there is no further obligation to issue annual licenses.[80]

Reform points out that licensees are required to obtain a water quality certification under section 401(a) of the Clean Water Act[81] as a prerequisite to receiving a new license. Reform contends that it would be absurd to construe the FPA as requiring issuance of an annual license in perpetuity in the event that the water quality certification was denied.[82]

Commerce contends that the authority to withhold permission is basic to and inherent in the concept of a license. Commerce construes the FPA, as amended, and its legislative history, as reserving ''paramount rights'' in the United States over navigable waters, and refers to ''the generic powers and authority of the Commission set forth in section 4(e) to exercise discretion in determining whether or not to issue a licensee.''[83] Commerce construes the nonissuance of a license as the ''no action'' alternative under the National Environmental Policy Act (NEPA), and seems to construe NEPA itself as supporting adoption of a decommissioning alternative.[84]

Licensees also contend that section 6 of the FPA[85] requires mutual agreement between the licensee and the Commission as a prerequisite to any Commission order requiring removal of project facilities.[86] Other commenters respond that section 6 applies only during the term of the license, and does not preclude unilateral Commission action to compel removal of facilities after the license has expired.[87]

Municipal licensees also emphasize the Act of August 15, 1953,[88] which made certain provisions of the FPA inapplicable to states and municipalities, including the section 14 authorization of federal takeover upon payment of the ''net investment'' in the project. Municipal licensees emphasize that the purpose of the 1953 legislation was ''to provide greater certainty to state and municipal licensees that the public uses and benefits conferred by such projects will not be disrupted,''[89] and to assist state and municipal agencies in financing their projects through the sale of revenue bonds with amortization schedules beyond the term of the license. These commenters contend that Congress deliberately eliminated the possibility of federal takeover of municipal projects so as to encourage investment in them, and that requiring decommissioning at the end of the license term would be inconsistent with the purpose of the 1953 legislation.[90]

Environmental groups and government agencies suggest a variety of sources of legal authority to compel licensees to remove project facilities at the expiration of a license if a new license isn't issued. Some commenters suggest that the Rivers and Harbors Act of 1899 provides a source of authority with respect to the removal of project works on navigable waters.[91] Some commenters cite section 23(b) of the FPA,[92] which requires a Commission license as a prerequisite to construction, operation, or maintenance of hydropower facilities; they contend that the power to order removal of existing unauthorized facilities is inherent in the power to decline to authorize those facilities.[93] Some commenters cite sections 4(g), 10(c), and 309 of the FPA.[94] Others point to historical precedent.[95] Kennebec suggests that the Commission can compel removal of facilities either by a direct order under FPA section 23(b) or by a ''forced surrender.''[96]

Licensees contend that their construction of the FPA is consistent with court and Commission decisions.[97] Environmental groups and government agencies cite judicial precedents supporting their more expansive interpretation of the statutory scheme.[98]

Licensees refer to the enactment by Congress in 1992 of the Elwha River Ecosystem and Fisheries Act,[99] which provides a scheme for compensation in the event of the decommissioning of projects on the Elwha River in Washington. Licensees contend that this legislation further confirms that the overall intent of Congress, and the overall scheme of hydro legislation, is that decommissioning and dam removal is a federal responsibility to be implemented through federal takeover with full reimbursement of the licensee.[100] Environmental groups respond that the Elwha River legislation is unique to the peculiar facts and circumstances of that river and its projects and has no dispositive or precedential value with respect to the rest of the legislative scheme.

Licensees stress that hydropower projects provide clean, renewable energy, and contend that the FPA was enacted to foster development of those resources. Licensees also emphasize the environmental and recreational benefits of their projects. Environmental groups, emphasizing the more recent amendments to the FPA that require consideration of fish and wildlife resources and other alternative uses of water, contend that hydropower projects inevitably alter the physical environment to its detriment, by blocking rivers and flooding land, etc.

[77] 16 USC 797 and 803.

[78] *See, e.g.,* Reform at 20–24; Kennebec at 8–12; Kennebec reply comments at 5–8; Interior at 3–4; S'Klallam at 3–4.

[79] *See, e.g.,* Kennebec at 5–7; Interior at 3.

[80] *See, e.g.,* Reform at 24–25.

[81] 33 USC 1341(a).

[82] Reform reply comments at 15–16.

[83] Commerce at 1–3.

[84] *Id.* at 4.

[85] 16 USC 799. Section 6 provides that licenses ''may be altered only upon mutual agreement between the licensee and the Commission * * *''

[86] EEI at 33–38; NHA at 21–22; APPA at 5.

[87] *See, e.g.,* Interior at 6; Reform reply comments at 12.

[88] Pub. L. 83–278, 67 Stat. 587, codified at 16 USC 828–828b.

[89] Water at 9.

[90] Chelan at 7–10; Centralia at 4–5; Grant at 2–3.

[91] *See, e.g.,* Reform at 27.

[92] 16 USC 817.

[93] Kennebec at 21–25, 27; Reform at 25–27; Walton at 11. Licensees disagree. NHA reply comments at 5–6; EEI reply comments at 26; Duke reply comments at 3.

[94] Interior at 1; Reform at 16, 25–27; Kennebec at 22–23, 25–26. Section 4(g) of the FPA, 16 USC 797(g), authorizes the Commission to conduct investigations. Section 10(c) of the FPA, 16 USC 803(c), requires the licensee to maintain and repair the project. Section 309 of the FPA, 16 USC 825h, confers general authority on the Commission to implement the FPA. Licensees disagree. APPA reply comments at 2; EEI reply comments at 12.

[95] *See, e.g.,* Kennebec at 20–21.

[96] *Id.* at 27–28.

[97] *See, e.g.,* NHA at 9–11, 16; EEI at 39–43.

[98] *See, e.g.,* Reform at 16–19, 22–24; Interior at 2. Licensees disagree. *See, e.g.,* EEI reply comments at 30–31.

[99] Pub. L. No. 102–495.

[100] NHA at 18–20; EEI at 43–48; APPA at 14–15; James at 5–7.

B. Specific Questions

The NOPR posed 15 specific questions. For convenience each question is reprinted here, followed by a summary of the comments received on it.

1. Does the Commission have the authority to determine that no project should be operated or maintained at the site of a project whose original license has expired? May the Commission decline to issue a new license for the project without issuing an annual license or a nonpower license or recommending federal takeover?

The comments on these issues were summarized above. With respect to the first sentence, licensees contend that the Commission's authority is limited to recommending federal takeover with full compensation to the original licensee. Environmental groups and government agencies disagree, finding implicit authority to decline to issue any license at all, neither a new license, nor a nonpower license, nor an annual license. Licensees contend that if the Commission does not issue a new license it must issue either an annual license or a nonpower license or recommend federal takeover. Environmental groups contend that once the relicense proceeding has ended there is no further requirement to issue annual licenses (or anything else in lieu thereof).

2. Does the Commission have the authority to require the holder of an annual license to file an application to surrender it? Assuming no new application has been filed, can the Commission require the holder of an annual license to decommission the project and cease operating it?

NHA contends that FPA section 6 precludes involuntary decommissioning unless no application for a new license has been filed or the original licensee refuses to accept the terms of the new license tendered to it.[101] NHA believes the Commission could construe a refusal to accept a ''reasonable'' new license, or a cessation of project operations, as constituting an implied surrender, but with substantial legal restraints on the Commission's ability to compel particular actions (*e.g.*, removal of facilities) after surrender has occurred.[102]

In addition to other statutory provisions discussed above, Reform contends that the Commission could issue a nonpower license, ''on its own motion'' under FPA section 15(f), that compelled a licensee to decommission its project, remove project facilities, and restore the project site.[103] Kennebec finds such authority inherent in FPA section 309, and would use an annual license as the vehicle to compel decommissioning and site restoration.[104] Interior suggests that the Commission can use either a nonpower license or an annual license as a vehicle for mandating decommissioning.[105]

Commerce believes that the Commission can reasonably conclude that Congress left a gap in the statutory scheme, and that the Commission can utilize its ''policymaking authority and expertise'' to fill that gap by construing the FPA to authorize the Commission ''to order the surrender of an expired license and require the decommissioning of the project by the license holder.'' Commerce ''encourages the Commission to take further regulatory or interpretive action to provide a better foundation'' for this position.[106]

3. Should the licensee's conduct and/or the particular circumstances of the case affect in any way the Commission's authority regarding decommissioning? For example, should it make any difference if the licensee requests or consents to project decommissioning? Should it make any difference if the decommissioning issue affects only part of a project (such as a reservoir, dam, or some other project facility)?

Interior and Commerce regard these factors as irrelevant to the Commission's authority to mandate decommissioning.[107] Kennebec suggests that the Commission's analysis under FPA sections 4 and 10 could result in a determination to omit authority at relicensing for some previously-licensed project facilities.[108] APPA agrees, provided that the new license as a whole is ''reasonable.''[109] Reform suggests use of FPA section 23(b) to remove those portions of a project that are located in navigable waters.[110]

4. Does question No. 1 pose an implicit choice between licensee responsibility and federal takeover, *i.e.*, an implicit choice as to who is responsible for removing project works and who should bear that cost? If the Commission required the holder of an annual license to file an application to surrender it, would the Commission be required to ensure that the annual licensee received its ''net investment'' in the project and reasonable severance damages?

NHA contends that the choice is explicit, and is determined by the FPA.[111] APPA distinguishes the federal takeover process under FPA section 14 from a voluntary ''surrender'' within the mutual agreement parameters of FPA section 6; notes that municipal license projects ''are not subject to recapture or relicensing at the Section 14 price''; and contends that FPA section 15 requires issuance of annual licenses ''until it receives the compensation to which it would be entitled in a federal takeover, paid either by the United States or a new licensee, or until it is offered a new license on reasonable terms'' defined as ''terms which yield a license that would be valued at no less than the takeover compensation.''[112]

Reform distinguishes between the transfer of a project and the decommissioning of a project, contending that under FPA sections 14 and 15 the licensee is entitled to recover its net investment and reasonable severance costs only in the event of a federal takeover, third party takeover, or grant of a nonpower license, all of which involve a transfer of ownership of a project. In Reform's view, in the event of decommissioning of the project—either voluntary or involuntary—there is no change of ownership and, therefore, the ''licensee does not qualify for the return of its net investment.''[113]

Kennebec contends that the Commission has the legal authority to determine, in effect, who should most appropriately bear the cost of decommissioning: the ''taxpayer'' through federal takeover or the licensee. Kennebec believes those costs are most efficiently and appropriately borne by the licensee.[114]

Interior and Commerce agree that compensation of the licensee's net investment is required if the project is taken over, but not if it is decommissioned.[115]

5. Barring federal takeover or issuance of a non-power license or of a new license to a third party applicant, must an existing licensee be given a new license with whatever conditions are necessary for mitigation, enhancement, and protection of natural resources regardless of the effect of the conditions on the economic viability of the project? If such a new license were issued and the applicant declined the license, refused to comply with its terms, or indicated an intent to abandon the project, could the Commission construe the applicant/existing licensee's position as a *de facto* application to surrender the license? Could the Commission then order the decommissioning of part or all of the project (with or without removal of project facilities)?

[101] NHA at 22–25.

[102] *Id.* at 25–27.

[103] Reform at 25–28. EEI, at 26–27, disagrees.

[104] Kennebec at 38.

[105] Interior at 1.

[106] Commerce at 5–7.

[107] Interior at 6; Commerce at 8.

[108] Kennebec at 40.

[109] APPA at 6–7.

[110] Reform at 29.

[111] NHA at 30.

[112] APPA at 7–9.

[113] Reform at 30–31; *see also* Kennebec at 42.

[114] Kennebec at 41.

[115] Interior at 6; Commerce at 8–9.

NHA contends that FPA section 15 requires that new licenses must be issued ''upon reasonable terms,'' and that this precludes issuance of a new license containing environmental mitigation measures whose costs render the project uneconomic.[116] NHA would also regard such a result as an impermissible balancing of developmental and nondevelopmental values under the ECPA amendments to the FPA.[117]

APPA contends that if the Commission does not recommend federal takeover, issue a nonpower license, or issue a new license ''on reasonable terms,'' then it must continue issuing annual licenses; it cannot terminate the proceeding and stop issuing annual licenses if a licensee rejects an ''unreasonable'' new license. APPA then goes on to explore the potential applicability of the Rivers and Harbors Act, and sections 4(g) and 23(b) of the FPA, with respect to removal of facilities after a license has expired, and also explores the related ramifications of sections 26 and 31 of the FPA.[118]

Reform suggests a variety of legal authority to which the Commission might resort if a licensee declines to accept a new license, or accepts it but declines to implement the mitigatory measures that render it uneconomic.[119] Kennebec contends that sections 10 and 15 of the FPA provide adequate authority to impose reasonable environmental conditions on a new license even if those conditions render the project uneconomic. Kennebec further contends that the Commission has authority to compel the licensee to ''remove the project'' if the licensee declines to accept a new license so conditioned.[120]

Interior contends that the Commission must deny the relicense application if continued operation of the project is not in the national interest. Under the circumstances posited in the latter part of the question, Interior would have the Commission pursue the matter as a *de facto* license surrender or as an enforcement case under section 31 of the FPA.[121] Commerce, New York, and Michigan, would treat it as a *de facto* surrender.[122]

[116] NHA at 31.

[117] NHA at 31–33.

[118] APPA at 9–12. Sections 26 and 31 of the FPA, 16 U.S.C. 820 and 823b, generally pertain to violation of the terms of a license and Commission remedies in response thereto. *See* also EEI at 27.

[119] Reform at 32.

[120] Kennebec at 44–46.

[121] Interior at 7.

[122] Commerce at 9–10; New York at 2; Michigan at 9.

6. If the Commission has the authority to require the holder of an annual license to file an application to surrender it, and if the Commission requires that the project be decommissioned, may the Commission require an existing licensee to install new project facilities to protect the environment, such as fish screens or fish passage facilities, as part of the decommissioning process? May the Commission require the existing licensee to remove any project facilities as part of the decommissioning process or, alternatively, to maintain certain project facilities in perpetuity as part of that process? In particular, does the Commission have the legal authority to require removal of a dam as part of the relicensing process? Would the answers to any of the above be different if only part of the project were decommissioned?

NHA contends that, in a surrender or decommissioning situation, the Commission's jurisdiction terminates and passes on to relevant federal or state authorities once the license has been surrendered and the project has ceased generating electricity.[123] APPA notes that many licensees lease their dams but do not own them, and that the leases are not likely to permit removal of the dam.[124] APPA contends that the Commission's statutory responsibility is to regulate functioning hydropower projects, and that ''ecosystem restoration'' after decommissioning is the province of other governmental agencies.[125] Montana Power contends that the licensee's obligations are limited to making certain that the project is no longer capable of generating electricity and ensuring that the dam is left in a safe condition.[126]

Reform contends that the Commission has inherent authority to attach environmental mitigatory conditions at any stage, including decommissioning. Reform suggests that, in the long run, removal of a dam would be less costly than ''perpetual'' maintenance and rebuilding of it.[127]

Citing section 23(b) of the FPA, Kennebec also finds inherent authority to mandate environmental mitigation at decommissioning. Kennebec construes such measures as less costly than removal of the project, and therefore inherent in the authority it perceives for the Commission to mandate project removal.[128] Kennebec also contends that the Commission has authority to compel a licensee to remove its dam at the expiration of its license.[129]

[123] NHA at 34; *see also* Central Maine at 4.

[124] APPA at 13.

[125] *Id.* at 15.

[126] Montana Power at 10.

[127] Reform at 33–34.

[128] Kennebec at 45–46.

[129] Kennebec reply comments at 8–11.

Interior and Commerce believe that the Commission has inherent authority to mandate either partial or total decommissioning, with or without environmental mitigatory measures.[130] Commerce contends that the Commission should require installation of new fish passage facilities as part of a surrender or decommissioning process if the Commission deems such fishways necessary or if such facilities are prescribed by the Secretary of Commerce or the Secretary of Interior pursuant to section 18 of the FPA.[131]

7. May the Commission issue a new license to an existing licensee that prefers to continue operating a project that is no longer economical, rather that incur the one-time cost of decommissioning the project?

NHA points out that the cost of decommissioning a project must be factored into the determination of which alternative is the most economical. In other words, it may be less costly to operate the project than to shut it down or remove it. NHA encourages the Commission to defer to market forces to determine the future economic viability of existing, operating projects.[132]

Reform contends that since all projects have a finite life, the one-time cost of decommissioning is inevitable and does not justify operation of an otherwise uneconomic project.[133] Several commenters point out that a project may have beneficial flood control or recreational purposes that justify continuation of its operations even if its electric generating functions are not, by themselves, economic.[134]

The Western Urban Water Coalition stresses the importance of not decommissioning hydropower projects that serve municipal water supply purposes, which is often a vital primary or secondary purpose of projects that also generate electricity. In this regard, it refers to FPA section 15(f) as providing a mechanism for municipal licensees, through the use of nonpower licenses, to temporarily ensure the continued operation of projects that are needed for water supply purposes.[135] It also recommends preparation of an environmental impact statement that analyzes the impact, of any proposed decommissioning of a project, on water supply and existing water supply

[130] Interior at 7–8; Commerce at 11.

[131] Commerce at 10. Section 18 of the FPA, 16 USC 811, requires the Commission to include the Secretaries' fishway prescriptions in any license it issues.

[132] NHA at 35–37.

[133] Reform at 34–35.

[134] Kennebec at 47; Nebraska at 3–4; New York at 2; Brazos.

[135] Water at 3–5, 10.

facilities and the feasibility and costs of alternative water supply facilities.[136]

Mines urges the Commission to consider the socioeconomic impact of decommissioning hydropower projects, pointing out that electricity can account for as much as one third of the cost of smelting aluminum. Thus, the loss of a source of affordable electricity could lead to a loss of jobs and social dislocation.

New York suggests that if a decision is made to continue operation of an uneconomic project because of its other benefits, then long-term maintenance costs could be shared by government agencies or financed out of a decommissioning trust fund.[137]

Central Maine states that, because the cost of applying to surrender a license is the same as the cost of applying for a new license, under certain circumstances there is a financial incentive to seek a new license for an uneconomic project.[138]

8. What are the existing licensee's responsibilities with respect to decommissioning, if the existing licensee does not apply for a new license and wants to abandon the project? In such a situation, is a licensee responsible for decommissioning the project, with or without removal of facilities, at the end of the term of the license or of the project's useful life? If so, how should ''useful life'' be defined?

NHA states that there is no means of predicting a project's useful life; it can only be determined after the fact on a case-by-case basis. NHA refers to U.S. projects that have been in operation since the previous century, and dams in India and Ceylon that have stored water for irrigation for over 2000 years. NHA states that projects can be damaged or destroyed by natural events (*e.g.*, earthquakes, landslides, or floods), or can be rendered obsolete by improper or outmoded design or construction, or by improper maintenance or operation. A project's useful life could also be affected by economic circumstances, or by the conditions imposed in a license and their related costs.[139]

Reform states that ''useful life'' has been defined as ''the number of years as a baseload facility plus the number of years as an indeterminate load facility.'' [140] Wisconsin Electric suggests a definition based on ''useful economic life'' measured in terms of the project's capacity, the value of its energy, and its projected future costs.[141] Walton defines ''useful life'' as the length of time during which the project is profitable, but with profitability adjusted to include ''social and environmental costs'' including the costs of dam removal and associated sediment control.[142]

Interior believes that it is reasonable to require the licensee to bear the cost of decommissioning after it has enjoyed the economic benefits of the license.[143] Commerce urges the Commission to require prompt removal of project facilities within a ''reasonable period'' after expiration of the license ''rather than allowing projects to remain abandoned until the end of a 'useful life' threshold.'' [144]

New York notes that the ''useful life'' of a hydropower project could run much longer than that of a nuclear plant, and that the project could be abandoned well before it reaches the end of that useful life. Therefore, New York would require that decommissioning planning take place at the midpoint of the term of the license.[145]

Susquehanna recommends that ''the Commission should commission a comprehensive study to develop guidelines to determine the useful life and projected cost of decommissioning a 'typical' or generic project.'' Susquehanna recommends that licensees submit decommissioning studies 20 years in advance of license expiration; Susquehanna believes this would provide adequate time for planning.[146]

Oregon advises that the Oregon Public Utility Commission has the authority to allow rate recovery for project decommissioning for regulated utilities. Oregon suggests that unregulated project owners could treat decommissioning as a cost of doing business.[147]

Alabama Power points out that if the Commission determines that the public interest mandates relicensing a project after a trust fund has been accumulated to decommission it, then the trust will have increased the operating cost of the project for no useful purpose.[148]

9. Assuming that project facilities removal/decommissioning is the project owner's responsibility, how should the appropriate time to begin recognition of this liability be determined in light of the fact that most projects continue to be economic when the original license expires? Would it be appropriate to impose such a requirement at the time the first new license is issued?

NHA reiterates its view that the useful life of a project cannot be determined in advance, and that licensees cannot be compelled to decommission their projects without their consent. Therefore, it rejects any generic rule on this subject.[149]

APPA points out that decommissioning in the sense of shutting down project operations without removing the dam is relatively inexpensive, and contends that removing a dam is too speculative to warrant collection of funds in advance. APPA would allow licensees flexibility to determine when and how to accumulate funding for decommissioning, noting that project costs are frequently front-loaded in the earlier years of the project.[150]

Interior and Reform advocate inclusion in all licenses of a condition reserving the Commission's right to mandate decommissioning of the project if it ceases to be in the public interest to continue operating it.[151] Commerce would review the propriety of decommissioning at license expiration.[152]

10. Can the Commission condition new licenses (if so requested) to require a reserve or trust fund that could be used to finance the cost of decommissioning and/or the removal of project facilities when the new license expires? If so, under what circumstances should it do so?

NHA contends that, since in its view the Commission lacks statutory authority to compel decommissioning, it also lacks legal authority to mandate a trust fund for that purpose.[153] APPA finds legal authority for a trust fund only with respect to minor licenses when sections 14 and 15 of the FPA are waived.[154]

Reform finds legal authority for mandating trust funds in section 10(c) of the FPA, and would have the Commission issue regulations requiring the creation of trust funds. Reform would also require licensees to submit decommissioning plans.[155]

Referring to regulations governing the decommissioning of nuclear facilities, Susquehanna believes that a decommissioning trust fund requirement would fall within the scope of the Commission's authority, but does not elaborate on the source of that legal authority.[156]

[136] *Id.* at 12–13.
[137] New York at 3.
[138] Central Maine at 3.
[139] NHA at 37–40.
[140] Reform at 35–36.
[141] Wisconsin Electric at 8.
[142] Walton at 13.
[143] Interior at 8.
[144] Commerce at 11–12.
[145] New York at 3.
[146] Susquehanna at 1–3.
[147] Oregon at 4.
[148] Alabama Power at 8–9.
[149] NHA at 40–41.
[150] APPA at 17.
[151] Interior at 8–9; Reform at 36–37.
[152] Commerce at 12.
[153] NHA at 42.
[154] APPA at 18–19.
[155] Reform at 38–39.
[156] Susquehanna at 2–3.

Oregon notes that its Energy Facility Siting Council has adopted regulations that require site certificate applicants to demonstrate their ability to pay for decommissioning.[157]

Michigan contends that ''by requiring the establishment of funding mechanisms, FERC will ensure that a marginally-funded prospective licensee is only issued a license if it has the funds to eventually retire the project.'' [158]

Public Pool contends that the Commission cannot mandate involuntary decommissioning, but states that in the event of voluntary surrender or abandonment the licensee would be responsible for ensuring public health and safety, including removal of facilities if necessary, and that a funding mechanism may be appropriate for this purpose.[159]

Consolidated contends that establishing mandated reserve funds for decommissioning places a disproportionate burden on independent non-utility licensees and industrial owners because investor-owned utilities and municipalities can recover the additional cost of decommissioning from their respective ratepayers and taxpayers.[160] Washington Water believes that, as an investor-owned utility, it would be required to pay income taxes on the revenues collected for such a fund, and would therefore have to charge its customers more than the direct cost of the fund.[161]

Wisconsin Electric suggests that the revenues allocated to a trust fund for decommissioning might otherwise be used to finance ''upgrades, replacement, repair and redevelopment'' of a project, suggesting that the requirement for a trust fund would shorten the useful life of the project by reducing its level of maintenance. Wisconsin Electric further suggests that, if the Commission mandates a trust fund, it should reduce its maintenance standards commensurately.[162]

11. There are licensees over which the Commission does not have ratemaking jurisdiction. Should the Commission establish accounting or other requirements and undertake to audit these entities to ensure the availability of funds for decommissioning?

NHA contends that, since in NHA's view the Commission lacks authority to mandate decommissioning, it also lacks authority to establish accounting requirements to implement decommissioning.[163] Several commenters state that under the Act of August 15, 1953, 16 USC 828b, states and municipalities cannot be required to comply with the Commission's records and accounting procedures.[164] Reform would find legal authority under section 10(c) of the FPA to impose accounting requirements regardless of the status of the licensee, and would have the Commission impose such requirements.[165] Walton distinguishes between ratemaking regulatory functions, on the one hand, and accounting requirements that implement trust fund or other license requirements that are designed to protect ''the public's interest in health, safety, navigability, and environmental quality.'' [166]

12. Can and should the Commission include, in either a new or an original license, a requirement that the licensee accumulate a fund or reserve that can be used to retire or decommission the project, including removal of project facilities, at the termination of the license? Would the propriety of such a condition depend either (1) on whether there is some particular threshold of evidence in the present record indicating that project decommissioning may or would be appropriate in the future, or (2) on the agreement of the license applicant to accept such a condition in a new license?

APPA would impose a trust fund requirement only on minor licensees whose licenses require removal of the dam at the expiration of the license.[167] Reform would impose a trust fund requirement in all licenses, with the cost of the project's decommissioning to be determined in the environmental assessment or environmental impact statement at the time of licensing.[168]

EPA states that decommissioning is a reasonable alternative that should be explored in the environmental analysis associated with the relicensing process. This exploration should include the potential impact of decommissioning on water quality because the release of stored sediments could adversely affect aquatic resources.[169]

Michigan contends that if there is evidence in the record that decommissioning is likely to occur within 50 years it would be ''arbitrary and capricious'' for the Commission not to require a decommissioning fund.[170]

13. What alternatives would there be to requiring individual licensees to contribute to a project-specific fund? Would it be feasible and appropriate to have a program-wide fund, funded through a collection of charges for that purpose from all licensees?

APPA contends that there is no legal authority for compelling licensees to contribute to a program-wide fund, and that such a fund would be quite impractical to establish. APPA contends that such a fund would inevitably be inequitable, penalizing either small or large projects, and raising a host of complex accounting questions, some of which APPA poses back to the Commission.[171]

Reform proposes a two-tiered system under which each licensee would be responsible for its own decommissioning costs but would also make modest contributions to a program-wide ''insurance fund'' to finance decommissioning of projects whose licensees lack the necessary funds.[172]

Kentucky suggests that the Commission consider ''the need for a national decommissioning fund, supported by annual fees paid by licensees, to address abandoned projects.'' It believes that these costs should be borne by ''those who build the dam and reap the benefits of it.'' [173]

EPA suggests that ''the Commission consider the approaches to site restoration responsibility in mining operations as possible models for developer funding of dam removal and site restoration.'' [174]

Interior encourages the Commission to explore the bonding formulae used by the mining and nuclear energy industries to calculate and administer decommissioning and site restoration funds. Interior recommends that the Commission ''consider pooling funds within certain geographical units, perhaps by watershed or geographical regions. A reserve or trust fund supported by a single project or a group of projects in a river basin could receive annual monies based on a percentage of construction or removal costs, profit margins, generating capacity, or other project features.'' [175]

Commerce suggests consideration of a program-wide fund administered by either the Commission or an independent authority analogous to a

[157] Oregon at 8–9.
[158] Michigan at 12.
[159] Public Pool at 8–9.
[160] Consolidated at 6.
[161] Washington Water at 10–11.
[162] Wisconsin Electric at 9–10.
[163] NHA at 43.
[164] APPA at 20; Chelan at 10, 20–21; Centralia at 6–7. Centralia goes on to contend that the lack of legal authority to prescribe accounting requirements means that the Commission also lacks legal authority to audit municipal licensees' books.
[165] Reform at 39–40.
[166] Walton at 15.
[167] APPA at 20–21.
[168] Reform at 41–42.
[169] EPA at 2.
[170] Michigan at 12.
[171] APPA at 21–23.
[172] Reform at 43.
[173] Kentucky at 1.
[174] EPA at 2.
[175] Interior at 9.

public utility commission, but believes project-specific funds would be preferable.[176]

New York suggests that new projects be required to establish a trust fund, but that existing projects contribute to a statewide or regional pool of funds. New York expresses concern that a nationwide pool of funds might lead to inequitable use of the funds by different regions.[177]

Oregon notes that a program-wide fund would finance decommissioning of ''orphaned'' projects, but believes the problems inherent in administering it would outweigh the benefits in that it would likely be contentious, burdensome, and inequitable. Oregon also suggests that part of a fund could be used ''as an endowment'' to help finance maintenance. Oregon states that it might ''be willing to assume responsibility for some projects that no longer generate power.'' [178]

Walton proposes a ''multi-faceted approach'' that includes project-specific funds, regional funds, watershed funds, and multi-project single owner funds, as appropriate.[179] S'Klallam suggests individual performance bonds backed up by an industry-wide fund.[180] Seattle suggests a national decommissioning insurance fund financed through fees assessed on all licensees.[181]

14. With respect to both a project-specific fund and a program-wide fund, what mechanisms would be used for collecting and administering the money? Would such a fund be administered by the licensees (jointly or severally), by State government agencies, or by the Commission? Who would determine how much money to collect, and pursuant to what guidelines? Who would determine how and when to allow monies from the fund to be dispersed, and what findings would be needed to make those determinations? What accounting standards would be utilized?

APPA suggests that there are no good answers to these questions, and that a program-wide fund would be inconsistent with sound regulatory policy.[182]

Reform would require each licensee to establish a segregated fund for each of its projects, administered by a corporate trustee appointed by the licensee, and subject to periodic audit by the Commission. The Commission would determine the amount of money to be collected in the fund, based on its environmental analysis at relicensing of the cost of restoring preproject conditions at the project site. The money would be accumulated either through prepayment and appreciation or through periodic payments into an external sinking fund. The Commission would oversee the fund's investment strategy through promulgation of regulations. The Commission would determine when to decommission the project, and would require periodic financial accounting.[183]

Vermont contends that ''[l]icensees should be required to project the cost of decommissioning and create a decommissioning fund through an annual set aside that would enable decommissioning by the end of the license term.'' [184] The estimated cost could be based on either dam retention or dam removal, with due consideration to any flood control purposes served by the dam. Vermont would also include a national fund to cover license surrenders by project owners who can't afford decommissioning costs. Vermont suggests use of a standard license article to implement whatever policies are adopted.

Commerce suggests that project-specific trust funds could be administered by the licensee under strict guidelines established by the Commission, either in the license or generically, including minimum funding requirements and restrictions on investment interests, with Commission monitoring during the course of the license.[185]

New York prefers that decommissioning funds ''be controlled at the state level. FERC could ultimately determine the amount of money to collect, based on the recommendations of consulting agencies and based on estimates provided as part of decommissioning plans submitted by the licensee''.[186]

Michigan believes that the licensees should administer project-specific trust funds, and that the states, ''on behalf of the ratepayers, as appropriate, and as guardians of the public trust, as well as their citizens' health, welfare, and safety, should be the beneficiaries.''[187] Washington Department advocates control of the fund by the Commission, to best assure that the money will be available when needed.[188]

New England suggests a case-by-case approach, fine tuning the trust fund mechanism to the peculiar facts and circumstances of each project.[189] PG&E also emphasizes the project-specific nature of decommissioning procedures and costs, ranging from removal of generating equipment to removal of a dam.[190]

Northern proposes, as an alternative to trust funds, that licensees incorporate estimated dam removal costs into depreciation for each specific project, so that the project owner would ''carry a negative value for each project.'' Northern also suggests use of an internal account similar to an amortization reserve. A further alternative would be allowing the licensee to demonstrate that ''the current net worth of all company assets'' is large enough to cover any estimated project removal costs. All of these alternatives would be subject to verification through periodic Commission audit.[191]

Peninsula suggests that some licensees might want to cooperate on a funding pool for a trust fund, perhaps with an insurance company, while others may prefer to self-finance through project-specific funds.[192]

15. Would it be appropriate for the Commission to propose new regulations, license articles, or a policy statement that address any of the above matters? If so, what new regulations, license articles, or policy clarification should the Commission consider?

As noted above, licensees and their associations generally favor a case-by-case approach to decommissioning issues as they arise. APPA proposes elimination of certain existing regulations that it believes to be inconsistent with the FPA.[193] A number of commenters recommend that the Commission establish a decommissioning policy through the adoption of new regulations and standard license articles.[194] Interior suggests that the articles set forth the Commission's policy on decommissioning including requirements for advance planning and for funding mechanisms.[195]

Commerce urges the Commission to promulgate decommissioning standards in a policy statement, with implementing regulations to clarify that the Commission will mandate decommissioning when it finds that it would best serve the public interest. Commerce also suggests adding license

[176] Commerce at 13–15.

[177] New York at 3.

[178] Oregon at 5–6.

[179] Walton at 17.

[180] S'Klallam at 16.

[181] Seattle reply comments.

[182] APPA at 23.

[183] Reform at 43–47; *see also* Walton at 17–19.

[184] Vermont at 1–2.

[185] Commerce at 14; *see also* Walton at 17–19.

[186] New York at 4.

[187] Michigan at 13.

[188] Washington Department at 2.

[189] New England at 7–9.

[190] PG&E at 7.

[191] Northern at 4–5.

[192] Peninsula at 13.

[193] APPA at 24.

[194] Reform at 48; Interior at 10; Michigan at 13–14; Washington Department at 3; New York at 4; *see also* Walton at 19–20.

[195] Interior at 10.

articles to establish a decommissioning reserve fund.[196]

Kennebec recommends issuance of a policy statement clarifying the Commission's authority to mandate decommissioning, removal of project works, and ''returning the site to its natural state.'' Kennebec also suggests the possibility of new regulations, or of new license articles, but in such a manner as to avoid restricting the Commission's flexibility to mandate decommissioning even absent such articles in the license.[197]

The U.S. Forest Service supports adoption of regulations on decommissioning, but believes that new legislation may be needed to clarify the Commission's legal authority. In particular, the Forest Service seeks clarification as to its own responsibilities, and that of other federal land management agencies, in the event that a licensee ''abandons'' a project but can't afford to remove project facilities. The Forest Service suggests that the Commission ascertain, during the licensing process, what it will cost to decommission such projects; require a trust fund for that purpose; and clarify these procedures and requirements in new regulations.

Commenters

Federal Agencies

National Marine Fisheries Service (NMFS)
U.S. Department of the Interior (Interior)
U.S. Department of the Interior, Bureau of Mines, Western Field Operations Center (Mines)
U.S. Environmental Protection Agency (EPA)
U.S. Forest Service

State Agencies

Kentucky Department for Environmental Protection (Kentucky)
Michigan Department of Natural Resources (Michigan)
New York Department of Environmental Conservation (New York)
State of Oregon (Oregon)
State of Vermont (Vermont)
Washington Department of Wildlife (Washington Department)
Wisconsin Department of Natural Resources (Wisconsin Department)

Associations

American Forest and Paper Association (Paper)
American Public Power Association and Certain Public Systems (APPA)[198]
American Whitewater Affiliation (Whitewater)
Appalachian Mountain Club (Appalachian)
Edison Electric Institute (EEI)[143]
Elwha S'Klallam Tribe (S'Klallam)
Friends of the Earth (Earth)
Hydropower Reform Coalition (Reform)[143]
Industrial Licensee Group (Industrial)
Izaak Walton League (Walton)
Kennebec Coalition (Kennebec)
Natural Hydropower Association (NHA)[143]
Northwest Hydroelectric Association (Northwest)
Pacific Rivers Council (Pacific)
Public Generating Pool (Public Pool)
Public Power Council (Public Power)
Trout Unlimited (Trout)
Western Urban Water Coalition (Water)

Municipal Licensees

Brazos River Authority (Brazos)
City of Centralia, Washington (Centralia)
City of New Martinsville, West Virginia (New Martinsville)
City of Saint Cloud, Minnesota (Saint Cloud)
City of Seattle, Washington (Seattle)[143]
Nebraska Public Power District (Nebraska)
Ketchikan Public Utilities (Ketchikan)
Oroville-Wyandotte Irrigation District, Friant Power Authority, and Tri-Dam Project (Oroville-Wyandotte)
Public Utility District No. 1 of Chelan County, Washington (Chelan)
Public Utility District No. 2 of Grant County, Washington (Grant)

Non-Municipal Licensees

Alabama Power Company and Georgia Power Company (Alabama Power)[143]
Allegheny Power System (Allegheny)
Bangor Hydroelectric Company (Bangor)
Central Maine Power Company (Central Maine)
Consolidated Hydro, Inc. (Consolidated)
Duke Power Company (Duke)[143]
Idaho Power Company (Idaho Power)
James River Corporation (James)[143]
Montana Power Company (Montana Power)
Mt. Hope Hydro Inc., United Energy Corporation, and Liberty Power Corporation (Mt. Hope)
New England Power Company (New England)
Northern States Power Company (Northern)
Pacific Gas and Electric Company (PG&E)[143]
Pacificorp
Pennsylvania Electric Company and York Haven Power Company (Penelec)
Public Service Company of Colorado (Colorado Company)
Puget Sound Power & Light Company (Puget)
Simpson Paper (Vermont) Company (Simpson)
Southern California Edison Company (California Edison)
Susquehanna Electric Company (Susquehanna)
Union Electric Company (Union)
Upper Peninsula Power Company (Peninsula)
Washington Water Power Company (Washington Water)
Wisconsin Electric Company (Wisconsin Electric)
Wisconsin Valley Improvement Company, Wisconsin Public Service Corporation, Weyerhaeuser Company, Consolidated Water Power Company, Neekosa Papers Inc., and Wisconsin River Power Company (Wisconsin Companies)

Other Organizations and Individuals

A great number of local organizations and private citizens, including many local and regional environmental groups and many licensees of small hydropower projects, submitted comments in letter form of one to several pages in length.

BAILEY, Commissioner, *dissenting*

I respectfully dissent from the views expressed in this policy statement. I will admit that as a regulator, both here and formerly as a State Commissioner, I am sympathetic to the analysis that an agency that has been vested with the authority to implement a particular statute must, of necessity, fill in certain specifics as changing circumstances warrant. In this case, an argument can be made that inherent in the authority to grant a relicense application is the ability to deny that application and to oversee the process of decommissioning the project.

But I pull away from the majority after a review of the record in this proceeding. I cannot concur in the decision that the Federal Power Act authorizes this Commission to require the decommissioning of a hydroelectric project. While someone drafting the Federal Power Act today may very well write it differently, the provisions of the statute as they currently stand, read together with the legislative history, do not support, in my view, the conclusion that the Commission has the authority to order dam removal.

The whole tone of the legislative history is the encouragement of development. And in order to encourage development, the drafters strove to give investors certain assurances that their investments would be secure. Thus, they set out the specific scenario that would occur at the time of license renewal.

That scenario is reflected today in sections 14 and 15 of the Federal Power Act: the Commission may issue a new license, either to the original licensee or a third party, issue a license for the nonpower use of the project, or recommend Federal takeover. The extensive legal analysis supporting this conclusion is articulated in detail in numerous comments filed in response to the Notice of Inquiry, and I will not begin to repeat those arguments here.

In addition, I find the passage of Public Law No. 83–278 in 1953 to be a strong indicator that, even 30 years after passage of the Federal Water Power Act, no one envisioned dam decommissioning as being part of the Commission's authority. By enacting that law, Congress exempted municipal licensees from the possibility of Federal takeover at the end of the license term. This legislation was intended to facilitate the financing of project expansions through the sale of revenue bonds with amortization schedules extending well beyond the term of the initial license.

Clearly, the legislation anticipated that these municipally-owned projects would continue to operate and provide sufficient revenue to meet debt service obligations. The threat that a municipal licensee might not only lose its license at the end of the term, but also have to fund the project's decommissioning or removal, would

[196] Commerce at 15.

[197] Kennebec at 48–49.

[198] All of the commenters filed initial comments. Commenters identified by this footnote also filed reply comments.

obviously be a much larger obstacle to financing than the Federal takeover possibility that Congress eliminated in 1953. Thus, as argued in the comments, the imposition of a decommissioning requirement would directly undermine and be contrary to the specific intent of Public Law No. 83–278.

Although the policy statement indicates that the Commission rarely expects to mandate project decommissioning, the decision to imply such authority has significant consequences. While this Commission may exercise that authority narrowly, parties and intervenors will continue to call for its broad application, including the imposition of trust funds at each project, as well as contributions to regional funds. Indeed, the policy statement concludes that, should later experience with decommissioning demonstrate a stronger need, the Commission can reassess the issue of establishing some type of industry-wide fund.

I question whether the Federal Power Act contemplates such a scheme. In addition, there will be social and economic consequences that flow from such decisions. Decommissioning funds, should they be required, are traditionally included in rates. The likely increase in electric rates for consumers in potentially large regions of the country and the possible negative impact on the financial viability of certain projects are issues not addressed by the policy statement.

In sum, there are major social consequences, in the broadest sense, that derive from the decision to imply authority here, and I am unwilling to assume lightly that authority. Sections 14 and 15 of the Federal Power Act outline the relicensing process to be implemented by the Commission. Many of the issues raised by the decommissioning debate are not solely FERC's to decide and I believe should be addressed in a broader forum.

Vicky A. Bailey,

Commissioner.

[FR Doc. 95–63 Filed 1–3–95; 8:45 am]

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18 CFR Part 347

(Docket No. RM94–2–001)

Cost-of-Service Reporting and Filing Requirements for Oil Pipelines; Order on Rehearing and Clarification

Issued December 28, 1994.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; Order on rehearing and clarification.

SUMMARY: The Federal Energy Regulatory Commission in ruling on a request for rehearing is making a minor change to its regulations that provide revised filing requirements for oil pipelines seeking to establish new or changed depreciation rates, and clarifying Order No. 571, issued October 26, 1994. The change is to ensure that the information provided is in a format that will protect individual shippers.

EFFECTIVE DATE: The amendment to the regulations is effective January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Harris S. Wood, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–0224.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, 1200 or 300 bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS for 60 days from the date of issuance in ASCII and WordPerfect 5.1 format. After 60 days the document will be archived, but still accessible. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

Order on Rehearing and Clarification

Issued December 28, 1994.

On October 28, 1994, the Federal Energy Regulatory Commission (Commission) issued Order No. 571, in which it established filing requirements for cost-of-service rate filings for oil pipelines; filing requirements for oil pipelines seeking to establish new or changed depreciation rates; and new and revised pages of FERC Form No. 6, Annual Report for Oil Pipelines.[1] On November 28, 1994, the Association of Oil Pipe Lines (AOPL) filed a request for rehearing and clarification of Order No. 571. As discussed below, the Commission clarifies Order No. 571, and grants in part and denies in part AOPL's request for rehearing.

Discussion

A. AOPL argues that the Commission cannot prescribe initial filing requirements for cost-of-service rates in excess of requirements specified in Section 6 of the Interstate Commerce Act (ICA).[2] Section 6(3) provides that a carrier must file a notice of rate change ''which shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rates * * * will go into effect; and the proposed changes shall be shown by printing new schedules * * *'' These requirements of Section 6(3) are preserved intact in sections 346.1 (a) and (b) of the regulations adopted by the Commission in Order No. 571.[3] Thus, AOPL's dispute is with section 346.1(c), which requires that an oil pipeline file statements and supporting workpapers to make an Opinion No. 154–B cost-of-service showing as set forth in section 346.2, on the basis that these requirements go beyond the limiting provisions of section 6(3).

As the Commission explained in Order No. 571, the requirement that a pipeline file these statements and workpapers is justified, not by the filing of information as a part of a notice of rate change, but by the requirement of Order No. 561[4] that the oil pipeline meet the threshold test of demonstrating a substantial divergence between rates at the indexed ceiling level and the pipeline's cost of service. Rather than a ''filing requirement'' for a notice of rate change, the statements and workpapers must be filed to demonstrate that the pipeline is entitled to change rates on a cost-of-service basis as an exception to changing rates under the indexing methodology.

The Commission relied on section 12 of the ICA as the statutory authority for requiring a pipeline to demonstrate that it meets the threshold test specified in Order No. 561.[5] AOPL argues, however,

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[1] Cost-of-Service Reporting and Filing Requirements for Oil Pipelines, Order No. 571, 59 FR 59137 (November 16, 1994), III Stats. & Regs. ¶ 31,006 (1994).

[2] 49 App. U.S.C. 1 (1988).

[3] See 18 CFR 342.1 (a) and (b), to be effective January 1, 1995.

[4] Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act, Order No. 561, 58 FR 58785 November 4, 1993), III FERC Stats. & Regs. ¶ 30,985 (1993), order on reh'g and clarification, Order No. 561–A, 59 FR 40243 August 8, 1994), III FERC Stats. & Regs. ¶ 31,000 (1994). These orders are jointly referred to as ''Order No. 561,'' unless the text clearly specifies otherwise.

[5] Section 12 provides, in material part, that ''The Commission may obtain from such carriers * * * such information as the Commission deems necessary to carry out the provisions of this chapter

that section 6 establishes initial filing requirements for a rate change and thus bars the Commission from requiring the threshold filings at issue here. The Commission disagrees.

Contrary to AOPL's contention, section 6(3) of the ICA is not a limitation on the Commission's authority to establish initial filing requirements but is rather no more than a specification of the form that a notice of a proposed change in rates must take. Thus, the Commission's requirements in section 346.1(c) are not contrary to the ICA. Moreover, the Commission here affirms its view that section 12(1) confers on the Commission broad powers to regulate the transportation of oil by pipeline, including those that AOPL claims are precluded by section 6(3), and thus authorizes the Commission to establish reasonable filing requirements for a cost-of-service rate change proposal.[6]

Rehearing on this first specification error is therefore denied.

B. AOPL's second specification of error, that the Commission imposed unduly burdensome initial filing requirements for cost-of-service-based rates, is likewise without merit. AOPL claims that the Commission, by imposing any filing requirements, ignored its comments regarding the resulting burden that pipelines would have to bear. AOPL's position, however, is based on the premise, already rejected, that section 6(3) bars any initial filing requirements. Thus, the thrust of AOPL's argument is that any initial filing requirement other than a mere notice of the rate change proposed, regardless of what it might be, is too burdensome for pipelines to bear. The Commission disagrees.

The Commission recognizes that there is a filing burden for pipelines that seek to opt out of indexing. However, because indexing is the Commission's prescribed, generally applicable ratemaking methodology, the Commission has concluded that a pipeline must as a threshold matter justify an exception to that methodology when it files for cost-of-service rates. As described earlier, it is well within the Commission's broad regulatory powers to determine how an oil pipeline is to secure permission to charge rates based on a method that deviates from the generally applicable method.

Contrary to AOPL's claims, the Commission has required only that data necessary for a pipeline to show whether there is a substantial divergence between its cost of service and revenues at the index ceiling rate and thus whether it warrants an exception to indexing. In fact, the Commission chose not to require certain other additional data. For example, it did not require a filing of individual point-to-point cost-of-service calculations in the initial filing of notices of rate change, recognizing that the burden of such a requirement would not be justified, particularly since the initial filing need only show that there is a substantial divergence between the costs of the pipeline, as reflected in Statement A, and the revenues that would be produced by the indexed ceiling rates, as reflected in Statement G.[7] Thus, the Commission was not arbitrary in its assessment of minimum filing needs but rather carefully balanced the need for threshold information against the burden that filing requirements could impose on pipelines.

Rehearing on this second specification of error is therefore denied.

C. AOPL's third specification of error, that the Commission erred in determining that new Page 700 of Form No. 6 would impose only a minimal burden on oil pipelines, is denied. In Order No. 571, the Commission explained in detail why it believed page 700 of Form No. 6 is necessary for carrying out its regulatory responsibilities under the ICA and the Energy Policy Act of 1992.[8] It described the benefits to the shippers of having this information available as an initial ''substantial divergence'' screen for pipeline rate filings, and as a means of testing the performance of the index when compared to individual indexed rates.[9] Nothing in AOPL's request for rehearing persuades the Commission to modify its requirements for page 700.

It is correct that if viewed in isolation, the inclusion of Page 700 in the Form No. 6 would increase the reporting burden on oil pipelines. However, viewed as a whole, Order No. 571 will reduce the overall individual oil pipeline reporting burden, since it reduces or eliminates many of the other reporting requirements formerly in the Form No. 6.[10] Further, with the overall reduction in regulatory burden to be accomplished by the use of the indexing methodology, the addition of Page 700 as a safeguard should cause minimal additional burden.[11]

While the initial computation for some of the companies which have not performed the Opinion No. 154–B calculation may be somewhat lengthy and may result in an initial, one-time burden for these companies because of the need to bring the data forward from 1984 to the current year, any initial burden on making the calculations is outweighed by the benefits of having the information available to the Commission to carry out its regulatory responsibilities. In addition, for each year subsequent to the initial computation, it would only be necessary for a company to update the schedules for the most current year. Thus, the minimal burden imposed in preparing and filing new page 700 is entirely justified when compared to the benefits to shippers and the Commission of having the information called for by this new page.

D. The Commission grants rehearing as to AOPL's allegation that the Commission erred in retaining depreciation study requirements that could result in the disclosure of confidential shipper information in contravention of the ICA. In Order No. 571, the Commission required that an oil pipeline that desires to establish initial depreciation rates or to change its existing depreciation rates file certain information supporting such a rate. The Commission, in response to comments on the Notice of Proposed Rulemaking (NOPR) in this docket, recognized that certain information which had been proposed in the NOPR might lead to such disclosure, and therefore modified the information originally proposed, providing that the information required by section 347.1(e)(vi) of the regulations should be provided in a format that would prevent disclosure of information which would violate the ICA. It left to

* * *. The Commission is authorized and required to execute the provisions of this chapter * * *''.

[6] Section 12(1) of the ICA as it existed on October 1, 1977, governs the authority and duties of the Commission. See also 49 U.S.C. 10321(a) which by Public Law 95–473, Oct. 17, 1978, 92 Stat. 1337, codified and restated in comprehensive form, without substantive change, the material part of section 12(1). Section 10321(a) provides:

The Interstate Commerce Commission shall carry out this subtitle. Enumeration of a power of the Commission in this subtitle does not exclude another power the Commission may have in carrying out this subtitle. The Commission may prescribe regulations in carrying out this subtitle.

[7] Order No. 571, mimeo at 11.

[8] 42 U.S.C. 7172 note (West Supp. 1993).

[9] Order No. 571, mimeo at 16–24.

[10] The Commission found, in Order No. 571, that ''The final rule will reduce the existing reporting burden associated with Form No. 6 by an estimated 1,628 hours annually, or an average of 11 hours per response based on an estimated 148 responses. This estimate includes the addition of two new schedules, the elimination of several schedules, and increasing the reporting thresholds for which oil pipelines must analyze and report certain data.'' Order No. 571, mimeo at 4.

[11] According to AOPL's own numbers, contained in Attachment A to AOPL's comments filed in this proceeding on September 8, 1994, the burden of producing page 700 shown by some companies is as small as four hours per year.

the pipeline the specifics of the format to be used to provide such information.[12] Moreover, the Commission also suggested that the pipeline could request confidential treatment of the information it provides.[13]

It was the Commission's intent that the caveats expressed not be limited to section 347.1(e)(vi), but rather apply to all the Part 347 information that would be provided by pipelines. Therefore, the regulations will be modified to reflect that information required by Part 347 of the regulations, release of which would violate Section 15(13) of the ICA, must be provided in a format that will protect any individual shipper. Moreover, the general statement in Order No. 571 that the information provided will be publicly available unless specific confidential treatment is sought by the carrier is still applicable.[14]

E. Finally, AOPL seeks clarification regarding the use of new Page 700 of Form No. 6, in particular the significance of the statement that this schedule would ''permit a shipper to compare the change in a shipper's individual rate with the change in the pipeline's average company-wide barrel-mile rate.'' [15] AOPL claims such a comparison appears to tell a shipper nothing concerning the justness and reasonableness of an individual rate.

The information reported on Page 700 will show how a pipeline's average barrel-mile rate changes from one year to the next. A shipper can then compare the yearly percentage change in the average barrel-mile rate with the yearly percentage change in the rate it is charged to determine whether there is a substantial divergence between the rate of change in the two figures such as to warrant a challenge to an indexed rate. Thus, the Page 700 information alone is not intended to show what a just and reasonable rate should be.

The Commission Orders

The request for rehearing and clarification is granted in part and denied in part, as reflected in the body of this order.

List of Subjects in 18 CFR part 347

Pipelines, Reporting and recordkeeping requirements.

By the Commission.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, Part 347, Chapter I, Title 18, Code of Federal Regulations, is amended, as set forth below.

PART 347—OIL PIPELINE DEPRECIATION STUDIES

1. The authority citation for Part 347 continues to read as follows:

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

2. In § 347.1, paragraph (e) introductory text and paragraph (e)(5)(vi) are revised to read as follows:

§ 347.1 Material to support request for newly established or changed property account depreciation studies.

* * * * *

(e) *Information to be provided.* The information in paragraphs (e)(1) through (5) of this section must be provided as justification for depreciation changes. Modifications, additions, and deletions to these data elements should be made to reflect the individual circumstances of the carrier's properties and operations. Any information in paragraphs (e)(1) through (5) of this section, the release of which would violate Section 15(13) of the Interstate Commerce Act, must be provided in a format that will protect individual shippers.

* * * * *

(5) * * *

(vi) A list of shipments and their associated receipt points, delivery points, and volumes (in barrels) by type of product (where applicable) for the most current year.

* * * * *

[FR Doc. 95–117 Filed 1–3–95; 8:45 am]

BILLING CODE 6717–01–P

[12] Order No. 571, mimeo at 34.

[13] Id.

[14] Order No. 571, mimeo at 34.

[15] Order No. 571, mimeo at 17.

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18 CFR Part 348

[Docket No. RM94–1–001; Order No. 572–A]

Market-Based Ratemaking for Oil Pipelines

Issued December 28, 1994.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; Order denying rehearing.

SUMMARY: The Federal Energy Regulatory Commission is issuing an order denying the request for rehearing of Order No. 572, the final rule adopting filing requirements and procedures with respect to an application by an oil pipeline for a determination that it lacks significant market power in the markets in which it proposes to charge market-based rates. The final rule adopted procedural rules in order to implement the Commission's Order 561 market-based ratemaking policy.

EFFECTIVE DATE: This final rule is effective January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Jeffrey A. Braunstein, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–2114.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104, 941 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of the formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, 1200 or 300 bps, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this document will be available on CIPS for 60 days from the date of issuance in ASCII and WordPerfect 5.1 format. After 60 days the document will be archived, but still accessible. The complete text on diskette in Wordperfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3104, 941 North Capitol Street NE., Washington, DC 20426.

Order Denying Rehearing

Issued December 28, 1994.

On October 28, 1994, the Federal Energy Regulatory Commission (Commission) issued Order No. 572 in which it adopted procedural rules governing an oil pipeline's application for a Commission finding that the oil pipeline lacks significant market power in the relevant markets.[1] On November 28, 1994, the Association of Oil Pipe Lines (AOPL) filed a request for rehearing of Order No. 572.[2] As discussed below, the Commission denies the AOPL's request for rehearing.

In Order No. 561, the Commission adopted section 342.4(b) of the regulations, which provides that: ''Until

[1] Market-Based Ratemaking for Oil Pipelines, Order No. 572, 59 FR 59148 (November 16, 1994), III Stats. & Regs. ¶ 31,007 (1994).

[2] Sinclair Oil Corporation's motion to file a brief in response to the AOPL's request for rehearing is denied.

the carrier establishes that it lacks market power, these rates will be subject to the applicable ceiling level under § 342.3.'' Order No. 572 built on that requirement by requiring an oil pipeline to file an application for a market power determination rather than a rate filing under the ICA. Only after the Commission concludes that the oil pipeline lacks significant market power in the markets in which it proposes to charge market-based rates may it file market-based rates.

The Commission rejected as collateral attacks on Order No. 561 the argument that it had overstepped its authority under the ICA by precluding an oil pipeline from charging market-based rates until the Commission has determined that the oil pipeline lacks significant market power in the relevant markets.

The AOPL maintains that its objection does not constitute a collateral attack on Order No. 561 because its objection does not fall within the definition of collateral attack as ''an improper challenge to a prior judgement attempted through a proceeding that has an independent purpose.''[3] It avers that it did not object to Order No. 561's framework. Rather, it claims that it raised its objection to an entirely new subject: ''the detailed market power application filing requirements proposed by the NOPR.''[4] It concludes: ''When two proposed rules [Order Nos. 561 and 572], addressing different topics [framework and application], share a fundamental flaw, and a commenting party contests that flaw in each rulemaking, the party's objection in the second rulemaking does not constitute a collateral attack on the first rulemaking.''[5]

The Commission denies the AOPL's request for rehearing on the collateral attack issue. It was in Order No. 561 that the Commission adopted section 342.4(b) of its regulations which prohibits an oil pipeline from charging market-based rates until the Commission determines that it lacks significant market power in the relevant markets. This was not an issue in the present rulemaking proceeding, which adopted procedural requirements relating to that determination. Indeed, the different purpose of the rulemakings is shown by the fact that if there were no Order No. 572, Order No. 561's requirement, codified in section 342.4(b), about the effectiveness of market-based rates would still govern. Nonetheless, the Commission, as in Order No. 572, will address below the AOPL's contentions on the merits.

On the merits, the AOPL maintains that the Commission has mischaracterized Order No. 561 as a permissible waiver procedure when it is an improper attempt to modify the ICA's rate change scheme where the oil pipeline files a new rate pursuant to Section 6(3), which is subject to Commission review under Section 15(7). The AOPL adds that the application constitutes a rate filing because the application is inextricably linked to an oil pipeline's ability to charge market-based rates. The AOPL further maintains that the Commission's inconsistent treatment of cost-based and market-based rates is not justified because shippers are protected by the ICA's refund provisions, oil pipelines might have an expanded period of lost revenues if the application process lasts beyond the statutory seven-month suspension period, and the Commission has offered no reason why shippers need greater protection from presumed market forces than the statutory protection from potentially monopolistic rates.

The Commission denies the AOPL's request for rehearing with respect to the Commission's statutory authority. An oil pipeline has no right to charge market-based rates. Rather, an oil pipeline must present empirical proof that it is not a monopoly so that the Commission can ensure that *presumed* market forces are not the basis of effective rates for the transportation of oil.[6] The Commission has adopted the market-based ratemaking process as the procedure that will enable oil pipelines to prove that they lack significant market power in the relevant markets and are thus entitled to an exception to, that is waiver from, the generally applicable indexing method and the maximum just and reasonable rate allowed thereunder.[7] That the market power determination will affect the oil pipeline's ability to charge market-based rates does not as the AOPL argues, convert the application into a rate filing. It merely can lead to such a filing.[8] Importantly, the Commission has not precluded an oil pipeline from making rate filings to recover its costs under either the indexing method or a cost-of-service filing.

It is appropriate that the Commission has treated cost-based rates and market-based rates in a different manner by allowing an oil pipeline to file for cost-based rates under Section 6(3) of the ICA but requiring an oil pipeline to obtain a market power determination before it can charge market-based rates. It is true that both constitute exceptions to the Commission's generally applicable ratemaking method (that is, indexing) for oil pipelines. However it is within the Commission's authority to determine how an oil pipeline is to secure permission to charge rates based on a method that deviates from the generally applicable method. And the difference between cost-based rates, where the cost-of-service method is a known quantity, and market-based rates where the Commission must make a market power determination, justifies the Commission's approach of ensuring that presumed market forces will not be the basis of effective rates for the transportation of oil when an oil pipeline's application (*i.e.*, its waiver request) is under consideration.[9]

The AOPL maintains further that the Commission erred by adopting rules for market-based rates that do not comport with the Act of 1992's mandate to ''streamline procedures * * * relating to oil pipelines rates in order to avoid unnecessary regulating costs and delays.''[10] It argues that the process

[3] Request for rehearing at 3, *citing, generally,* 1B Moore's Federal Practice ¶¶ 0.441–0.448.

[4] *Id.* at 4.

[5] *Id.* at 4, 5. The AOPL notes that it has challenged Order No. 561 on the legal issue by filing an appeal in the D.C. Circuit. *See* AOPL v. FERC, No. 94–1538 (filed August 5, 1994).

[6] Texaco v. FPC, 417 U.S. 380 (1974); and Farmers Union Central Exchange, Inc. v. FERC, 734 F.2d 1486, 1510 (D.C. Cir. 1984).

[7] In Order No. 572, the Commission referred to the Permian Basin Area Rate Cases, 390 U.S. 747 (1988), as support for the proposition that the Commission may impose a moratorium on filings for market-based rates except under the application process. In Permian, the Supreme Court held ''that the Commission may under §§ 5 and 16 [of the Natural Gas Act] restrict filings under § 4(d) of proposed rates higher than those determined by the Commission to be just and reasonable.'' (at 780) It is true as the AOPL submits that Permian involved a temporary moratorium and the Supreme Court declined to prescribe the limitations of the Commission's authority to proscribe moratoria upon filings in other circumstances. Here, however, the Commission's moratorium is also limited in that once an oil pipeline makes a showing that it lacks significant market power in the relevant markets, it is no longer prevented from charging market-based rates in those markets. In addition, the Supreme Court's main concern was with circumstances of changing costs as opposed to the apparent stability of production costs in Permian. Of course, under Order No. 561, the oil pipelines may file for cost-of-service rates.

[8] The AOPL further submits that, with respect to a rate filing, the Commission does not have the statutory authority to require at the threshold the kind of filing required by Order No. 572. As discussed in Order No. 571–A, issued contemporaneously with this order, the Commission concludes here that it has the authority under Section 12(1) of the ICA to adopt filing requirements at the threshold for rate filings, such as for market-based rates. Of course, here, the Commission has adopted the waiver approach rather than relying on Section 12(1) in connection with a rate filing.

[9] Farmers Union Central Exchange, Inc. v. FERC, 734 F.2d 1486,1510 (D.C. Cir. 1984).

[10] Section 1802(a) of the Act of 1992.

adopted by Order No. 572, requiring a case-in-chief if no protest is filed, cannot be characterized as a streamlining measure.

As discussed in Order No. 572, the Commission has fully complied with the mandate of the Act of 1992 by adopting the indexing methodology. The market-based ratemaking approach is not generally applicable and, in any, event, as stated in Order No. 572, does streamline procedures as to those rates. Therefore, the Commission denies the AOPL's request for rehearing on the Commission's conclusion that it did not violate the Act of 1992.

The Commission Orders

The AOPL's request for rehearing of Order No. 572 is denied. By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 95–116 Filed 1–3–95; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulation No. 16]

RIN 0960–AC96

Supplemental Security Income for the Aged, Blind, and Disabled; Waiver of Parent-to-Child Deeming for Certain Disabled Children

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: This final rule implements section 8010 of the Omnibus Budget Reconciliation Act of 1989 which provides that a disabled child under age 18 who lives with his or her parent(s) will not have parental income or resources deemed to him or her if the child previously received a reduced supplemental security income (SSI) benefit (personal needs allowance) while a resident of a medical facility for which Medicaid paid more than 50 percent of the cost of the individual's care; the child is eligible for medical assistance under a Medicaid State home care plan; and the child would otherwise be ineligible for a Federal SSI benefit because of the deeming of the parents' income or resources. The rule also provides that, although deeming is waived in these circumstances, the in-kind support and maintenance provided by the parents will not be counted. Lastly, when such a child would not be ineligible because of the deeming of his parents' income but would receive a benefit of less than the amount payable under section 8010, the child's benefit will be $30 a month plus any optional State supplementation. Any of the child's own countable income will then be deducted from that amount.

EFFECTIVE DATE: This rule is effective January 4, 1995.

FOR FURTHER INFORMATION CONTACT: Sandy Bond, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1794.

SUPPLEMENTARY INFORMATION: Section 1614(f)(2) of the Social Security Act (the Act), requires that, for purposes of determining eligibility for and the amount of SSI benefits, the income and resources of a child under age 18 be deemed to include the income and resources of a parent (or spouse of a parent) who is living in the same household as the child, except to the extent determined by the Secretary to be inequitable under the circumstances. Regulations at § 416.1160 through § 416.1169 explain how we deem income and when it is inequitable to deem part or all of that income. Regulations at § 416.1202 through § 416.1204a explain how we deem resources.

Section 8010(a) of Pub. L. 101–239 amended section 1614(f)(2) of the Act to provide that parental income and resources shall not be deemed to any child under age 18 who is disabled, received SSI benefits under section 1611(e)(1)(B) while in an institution described in that section, is eligible for medical assistance under a State home care plan approved by the Secretary under the provisions of section 1915(c) of the Act or authorized under section 1902(e)(3), and, except for this waiver of deeming, would not be eligible for a Federal SSI benefit. Section 8010(b) amended section 1611(e)(1)(B) of the Act to include eligible children as described in section 1614(f)(2)(B) of the Act, among those eligible for the SSI personal needs allowance. These provisions became effective June 1, 1990.

The regulation provides that we do not deem parental income and resources to disabled children who:

- Previously received SSI personal needs allowance benefits while residents of a medical facility for which Medicaid paid more than fifty percent of the cost of the individuals' care;
- Are eligible for medical assistance under Medicaid State home care plans approved by the Secretary under the provisions of section 1915(c) of the Act or authorized under section 1902(e)(3); and
- Would otherwise be ineligible for a Federal SSI benefit because of the deeming of their parents' income and/or resources.

The regulation also provides that children for whom the deeming rules are waived may be eligible to receive an SSI benefit up to the personal needs allowance (currently $30 monthly), plus an optional State supplement in certain States. The optional State supplement payable to a child for whom the deeming rules are waived will be determined by the State and, if the supplement is administered by the Federal government, set out in Federal/State agreements.

Further, the regulation states that in-kind support and maintenance provided by a child's parent(s), which we do not count when deeming of parental income applies, also will not count when deeming of parental income is waived under section 1614(f)(2) of the Act. Otherwise, the counting of such in-kind support and maintenance could negate the beneficial effect of section 8010 of Pub. L. 101–239.

Finally, the regulation addresses the situation of children who do not meet the criteria for waiver of deeming only because parental income is not high enough to make them ineligible for SSI benefits but is high enough to result in an SSI payment that is less than the amount that would be payable under section 8010 of Pub. L. 101–239. Under the regulation, such children would receive an SSI benefit up to the personal needs allowance plus any optional State supplement. Any of the child's own countable income would then be deducted from that amount. This change is being made under the Secretary's discretionary deeming authority in section 1614(f)(2)(A) of the Act which allows the Secretary to determine the extent to which deeming of parental income and resources is inequitable under the circumstances. This change is necessary to prevent anomalies from being introduced into parent-to-child deeming.

We published this regulation as a notice of proposed rulemaking (NPRM) on September 22, 1993, (58 FR 49249). The 60-day comment period ended on November 22, 1993. We received no comments and are adopting the regulation as proposed.

Regulatory Procedures

Executive Order No. 12866

We have consulted with the Office of Management and Budget (OMB) and determined that this rule does not meet

the criteria for a significant regulatory action under Executive Order 12866. Thus, it was not subject to OMB review.

Regulatory Flexibility Act

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

Paperwork Reduction Act of 1980

This regulation imposes no additional reporting and recordkeeping requirements necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.807, Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative Practice and Procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI), Reporting and recordkeeping requirements.

Dated: November 10, 1994.

Shirley Chater,

Commissioner of Social Security.

Approved: December 27, 1994.

Donna E. Shalala,

Secretary of Health and Human Services.

Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

PART 416—[AMENDED]

1. The authority citation for Subpart D of Part 416 continues to read as follows.

Authority: Secs. 1102, 1611 (a), (b), (c), and (e), 1612, 1617, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1382 (a), (b), (c), and (e), 1382a, 1382f, and 1383.

2. New § 416.415 is added to read as follows:

§ 416.415 Amount of benefits; eligible individual is disabled child under age 18.

(a) If you are a disabled child under age 18 and meet the conditions in § 416.1165(i) for waiver of deeming, your parents' income will not be deemed to you and your benefit rate will be $30 a month.

(b) If you are a disabled child under age 18 and do not meet the conditions in § 416.1165(i) only because your parents' income is not high enough to make you ineligible for SSI but deeming of your parents' income would result in an SSI benefit less than the amount payable if you received benefits as a child under § 416.1165(i), your benefit will be the amount payable if you received benefits as a child under § 416.1165(i).

3. The authority citation for Subpart K of Part 416 continues to read as follows:

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

4. Section 416.1148 is revised to read as follows:

§ 416.1148 If you have both in-kind support and maintenance and income that is deemed to you.

(a) *The one-third reduction and deeming of income.* If you live in the household of your spouse, parent, essential person, or sponsor whose income can be deemed to you, or the household of a parent whose income is not deemed to you because of the provisions of § 416.1165(i), the one-third reduction does not apply to you. The rules on deeming income are in §§ 416.1160 through 416.1169. However, if you live in another person's household as described in § 416.1131, and someone whose income can be deemed to you lives in the same household, we must apply both the one-third reduction and the deeming rules to you.

(b) *The presumed value rule and deeming of income.* (1) If you live in the same household with someone whose income can be deemed to you (§§ 416.1160 through 416.1169), or with a parent whose income is not deemed to you because of the provisions of § 416.1165(i), any food, clothing, or shelter that person provides is not income to you. However, if you receive any food, clothing, or shelter from another source, it is income and we value it under the presumed value rule (§ 416.1140). We also apply the deeming rules.

(2) If you are a child under age 18 who lives in the same household with an ineligible parent whose income may be deemed to you, and you are temporarily absent from the household to attend school (§ 416.1167(b)), any food, clothing, or shelter you receive at school is income to you unless your parent purchases it. Unless otherwise excluded, we value this income under the presumed value rule (§ 416.1140). We also apply the deeming rules to you (§ 416.1165).

5. In § 416.1165, the introductory text is revised and a new paragraph (i) is added to read as follows:

§ 416.1165 How we deem income to you from your ineligible parents.

If you are a child living with your parents, we apply the deeming rules to you through the month in which you reach age 18. We follow the rules in paragraphs (a) through (e) of this section to determine your eligibility. To determine your benefit amount, we follow the rules in paragraph (f) of this section. The rules in paragraph (g) of this section apply to changes in your family situation. Paragraph (i) of this section discusses the conditions under which we will not deem your ineligible parents' income to you if you are a disabled child living with your parents.

* * * * *

(i) *Disabled child under age 18.*

If you are a disabled child under the age of 18 living with your parents, we will not deem your parents' income to you if—

(1) You previously received a reduced SSI benefit while a resident of a medical facility for which Medicaid paid more than 50 percent of the cost of your care;

(2) You are eligible for medical assistance under a Medicaid State home care plan approved by the Secretary under the provisions of section 1915(c) or authorized under section 1902(e)(3) of the Act; and

(3) You would otherwise be ineligible for a Federal SSI benefit because of the deeming of your parents' income or resources.

6. The authority citation of Subpart L of Part 416 continues to read as follows:

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

7. In § 416.1202, paragraph (b) is revised to read as follows:

§ 416.1202 Deeming of resources.

* * * * *

(b) *Child*—(1) *General.* In the case of a child (as defined in § 416.1856) who is under age 18, such child's resources shall be deemed to include any resources, not otherwise excluded under this subpart, of an ineligible parent of such child (or the ineligible spouse of a parent) who is living in the same household (as defined in § 416.1851) as such child, whether or not available to such child, to the extent that the resources of such parent (or such spouse of a parent) exceed the resource limits described in § 416.1205 except as provided in paragraph (b)(2) of this section. (If the child is living with only one parent, the resource limit for an individual applies. If the child is living with both parents (or one parent and his

or her spouse), the resource limit for an individual and spouse applies.) In addition to the exclusions listed in § 416.1210, pension funds which the ineligible parent or spouse of a parent may have are also excluded. ''Pension funds'' are defined in paragraph (a) of this section. As used in this section, the term ''parent'' means the natural or adoptive parent of a child and ''spouse of a parent'' means the spouse (as defined in § 416.1806) of such natural or adoptive parent.

(2) *Disabled child under age 18.* In the case of a disabled child under age 18 who is living in the same household with his or her parents, the deeming provisions of paragraph (b)(1) of this section shall not apply if such child—

(i) Previously received a reduced SSI benefit while a resident of a medical facility for which Medicaid paid more than 50 percent of the cost of the individual's care;

(ii) Is eligible for medical assistance under a Medicaid State home care plan approved by the Secretary under the provisions of section 1915(c) or authorized under section 1902(e)(3) of the Act; and

(iii) Would otherwise be ineligible because of the deeming of his or her parents' resources or income.

* * * * *

[FR Doc. 95–115 Filed 1–3–95; 8:45 am]

BILLING CODE 4190–29–P

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Lufenuron Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Ciba Animal Health, Ciba-Geigy Corp. The NADA provides for oral administration of lufenuron tablets to dogs for the prevention and control of flea populations.

EFFECTIVE DATE: January 4, 1995.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV–112), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–0614.

SUPPLEMENTARY INFORMATION: Ciba Animal Health, Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419–8300, filed NADA 141–035, which provides for oral administration of Program® tablets containing 45, 90, 204.9, or 409.8 milligrams (mg) of lufenuron per (/) tablet. Once a month, Program® tablets are administered to dogs, 6 weeks of age and older, at a minimum dosage of 10 mg of lufenuron/kilogram (4.5 mg/pound) of body weight for the prevention and control of flea populations. The drug has no deleterious effect on adult fleas, but it prevents most flea eggs from maturing into adults. The NADA is approved as of November 23, 1994, and the regulations are amended in part 520 (21 CFR part 520) by adding new § 520.1288 to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act provides a 5-year period of exclusivity to this original NADA beginning November 23, 1994, because no active ingredient (including any ester or salt of the active ingredient) has been approved in any other application under section 512(b)(1) of the act.

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, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520–ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. New § 520.1288 is added to read as follows:

§ 520.1288 Lufenuron tablets.

(a) *Specifications.* Each tablet contains either 45, 90, 204.9, or 409.8 milligrams of lufenuron.

(b) *Sponsor.* See No. 058198 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* 10 milligrams of lufenuron per kilogram (4.5 milligrams per pound) of body weight.

(2) *Indications for use.* For use in dogs, 6 weeks of age and older, for the prevention and control of flea populations.

(3) *Limitations.* Administer tablet(s) after or in conjunction with a full meal to ensure adequate absorption. Administer tablet(s) once a month, preferably on same date each time. All dogs in a household should be treated to achieve maximum efficacy. Because the drug has no affect on adult fleas, the concurrent use of insecticides that kill adults may be required depending on the severity of the infestation. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: December 23, 1994.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–164 Filed 1–3–95; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Oxytetracycline Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Boehringer Ingelheim Animal Health, Inc. The ANADA provides for the use of oxytetracycline injection in cattle and swine for the treatment of diseases caused by oxytetracycline susceptible organisms.

EFFECTIVE DATE: January 4, 1995.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1643.

SUPPLEMENTARY INFORMATION: Boehringer Ingelheim Animal Health,

Inc., 2621 North Belt Hwy., St. Joseph, MO 64506, has filed ANADA 200–008 which provides for use of oxytetracycline injection as follows: intramuscular or intravenous use in beef and nonlactating dairy cattle for the treatment of pneumonia and shipping fever associated with *Pasteurella* spp. and *Hemophilus* spp.; infectious bovine keratoconjunctivitis (pinkeye) caused by *Moraxella bovis*; foot rot and diphtheria caused by *Fusobacterium necrophorum*; bacterial enteritis (scours) caused by *Escherichia coli*; wooden tongue caused by *Actinobacillus lignieresi*; leptospirosis caused by *Leptospira pomona*; and wound infections and acute metritis caused by strains of staphylococci and streptococci organisms sensitive to oxytetracycline-intramuscular use in swine for treatment of bacterial enteritis (scours, colibacillosis) caused by *E. coli*; pneumonia caused by *P. multocida*; and leptospirosis caused by *L. pomona*-intramuscular use in sows for control of infectious enteritis (baby pig scours, colibacillosis) in suckling pigs caused by *E. coli*.

Boehringer Ingelheim's ANADA 200–008 for oxytetracycline injection (OXY–TET 200/BIO–MYCIN 200) is approved as a generic copy of Pfizer's NADA 113–232 for oxytetracycline injection (Liquamycin LA–200). The ANADA is approved as of November 16, 1994, and the regulations are amended by revising § 522.1660(b) and (c)(2)(iii) (21 CFR 522.1660(b) and (c)(2)(iii)) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

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, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 522.1660 is amended in paragraph (b) by adding the phrase ''000010 and'' before the number ''000069'', and in paragraph (c)(2)(iii) by revising the last sentence to read as follows:

§ 522.1660 Oxytetracycline injection.

* * * * *

(c) * * *

(2) * * *

(iii) * * * Discontinue treatment at least 42 days prior to slaughter when provided by 000010 or 28 days prior to slaughter when provided by 000069.

Dated: December 21, 1994.

Michael J. Blackwell,

Deputy Director, Post-market Surveillance and Compliance, Center for Veterinary Medicine.

[FR Doc. 95–163 Filed 1–3–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. 94–33]

RIN 2125–AD45

National Standards for Traffic Control Devices; Revision of the Manual on Uniform Traffic Control Devices; Temporary Traffic Signals

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Interim final rule with request for comments.

SUMMARY: This document incorporates by reference an amendment to Part VI of the Manual on Uniform Traffic Control Devices (MUTCD). This amendment is intended to revise the section of the MUTCD concerning temporary traffic signals in order to permit the use of certain temporary signalling devices that were inadvertently excluded by an earlier revision to Part VI. The MUTCD is recognized as the national standard for traffic control on all public roads. Public comments are invited on this action.

DATES: This interim final rule is effective January 4, 1995.

Comments must be submitted on or before March 6, 1995.

Incorporation by reference of the publications listed in the regulations is approved by the Director of the Federal Register as of January 4, 1995.

ADDRESSES: Submit written, signed comments to FHWA Docket No. 94–33, Federal Highway Administration, Office of the Chief Counsel, room 4232, HCC–10, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Michael E. Robinson, Office of Highway Safety, (202) 366–0411, or Mr. Wilbert Baccus, Office of Chief Counsel, (202) 366–0780, Federal Highway Administration, 400 Seventh Street, SW., room 3419, Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., except Federal holidays.

SUPPLEMENTARY INFORMATION: The MUTCD is available for inspection and copying as prescribed in 49 CFR Part 7, appendix D. Part VI of the MUTCD may be purchased for $16.00 from the Superintendent of Documents, U. S. Government Printing Office, Washington, DC 20402, Stock No. 050–001–00516–3.

The FHWA both receives and initiates requests for amendments to the MUTCD. Each request is assigned an identification number which indicates, by Roman numeral, the organizational part of the MUTCD affected and, by Arabic numeral, the order in which the request was received (e.g., Request VIII–9).

This amendment contains corrections to Part VI of the MUTCD, Standards and Guides for Traffic Control for Street and Highway Construction, Maintenance, Utility, and Incident Management Operations. Part VI sets forth principles and prescribes standards for temporary traffic control zone operations on streets and highways in the United States. Also, part VI addresses the design, administration, and operation of street and highway temporary traffic control plans and projects. Previous **Federal Register** actions regarding changes to

part VI are contained in FHWA docket number 89–1, Notice No. 7, published at 58 FR 6508 on December 10, 1993.

The text change resulting from this amendment to the MUTCD has been titled ''1988 MUTCD Revision 4, dated November 1, 1994.'' It will be available from the Government Printing Office (GPO), Superintendent of Documents, Washington, D.C. 20402, (202) 783–3238. Everyone currently appearing on the FHWA, Office of Highway Safety, **Federal Register** mailing list will be sent a copy.

Discussion of Amendment

Part VI of the MUTCD was revised on September 3, 1993, and incorporated by reference in 23 CFR part 655 on December 10, 1993 (58 FR 64085). As revised, the last paragraph in section 6F–8c read:

> One-way traffic flow requires an all-red interval of sufficient duration for traffic to clear the portion of the temporary traffic control zone controlled by the traffic signals. To avoid the display of conflicting signals at each end of the temporary traffic control zone, traffic signals shall be either hard-wired or controlled by radio signals.

The FHWA has since learned that the last sentence of the section inadvertently disallowed the use of certain temporary signaling devices now in use. While they employ neither hard-wiring nor radio signals, these devices are considered to be as safe and effective as those devices covered by the September 3, 1993, version of section 6F–8c. In order to allow the use of such devices, the last sentence of the paragraph has been removed and replaced with the following sentence:

> Safeguards shall be incorporated to avoid the display of conflicting signals at each end of the temporary traffic control zone.

As revised, the section imposes a performance standard, and not a design standard, on all such devices. This document incorporates the revised Part VI into 23 CRF part 655. With the current emphasis on repairing the Nation's highways and improving safety in temporary traffic control zone areas, an updated and accurate part VI will better serve the highway community.

Rulemaking Analyses and Notices

The Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, allows agencies engaged in rulemaking to dispense with prior notice and opportunity for comment when the agency for good cause finds that such procedures are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(3)(B).

The FHWA has determined that providing prior notice to the public on this action would be contrary to the public interest. This action will incorporate by reference into 23 CFR part 655 a revised version of Part VI of the MUTCD. The September 3, 1993, version inadvertently excluded the use of certain safe and effective traffic control devices in highway work zones. This was not the intent of the revision and therefore Part VI is being revised again to allow the use of these devices. Any further delay in revising Part VI would cause undue economic harm to those who manufacture and sell the types of traffic control devices excluded by the September 1993 language of Part VI.

Public comment, however, is solicited on this action. Comments received will be carefully considered in evaluating whether any further changes to this amendment are necessary.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this document does not constitute a significant regulatory action within the meaning of Executive Order 12866, nor is it significant within the meaning of Department of Transportation regulatory policies and procedures. Although this action will allow the use of alternative signalling devices not permitted under the September 3, 1993, version of Part VI of the MUTCD, the FHWA anticipates that this action will not affect the total number of signalling devices deployed. By permitting public and private entities to choose from a wider array of signalling devices, these entities may be able to make more cost-effective choices in the future. Accordingly, it is anticipated that the overall economic impact of this rulemaking will be minimal, but positive. For these reasons, the FHWA has determined that a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S. C. 601–612), the FHWA has evaluated the effects of this rule on small entities. This action will allow a few small companies to market signalling devices not allowed under the September 3, 1993, version of Part VI. Based on the evaluation, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. The need to further evaluate economic consequences will be reviewed on the basis of the comments submitted in response to this interim final rule.

Executive Order 12612 (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 this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The MUTCD is incorporated by reference in 23 CFR part 655, subpart F, which requires that changes to the national standards issued by the FHWA shall be adopted by the States or other Federal agencies within two years of issuance. This proposed amendment is in keeping with the Secretary of Transportation's authority under 23 U.S.C. 109(d) and 315 to promulgate uniform guidelines to promote the safe and efficient use of the highway. Therefore, nothing in this document would preempt any State laws, regulations, or requirements.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification 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 23 CFR Part 655

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Signs, Traffic regulations.

The FHWA hereby amends chapter I of title 23, Code of Federal Regulations, part 655, as set forth below.

PART 655—TRAFFIC OPERATIONS

1. The authority citation for part 655 continues to read as follows:

Authority: 23 U.S.C. 101(a), 104, 105, 109(d), 114(a), 135, 217, 307, 315, and 402(a); 23 CFR 1.32 and 1204.4; and 49 CFR 1.48(b).

Subpart F—[Amended]

2. In § 655.601, paragraph (a) is revised to read as follows:

§ 655.601 Purpose.

* * * * *

(a) Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD), FHWA, 1988, including Revision No. 1 dated January 17, 1990, Revision No. 2 dated March 17, 1992, Revision No. 3 dated September 3, 1993, and Revision No. 4 dated November 1, 1994. This publication is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 and is on file at the Office of the Federal Register in Washington, DC. The 1988 MUTCD Stock No. 050–001–00308–2 and ''1988 MUTCD Revision 3,'' dated September 3, 1993 (Stock No. 050–001–00316–3), may be purchased from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, DC 20402. The amendments to the MUTCD, titled ''1988 MUTCD Revision 1,'' dated January 17, 1990, ''1988 MUTCD Revision 2,'' dated March 17, 1992, and ''1988 MUTCD Revision 4, dated November 1, 1994,'' are available from the Federal Highway Administration, Office of Highway Safety, HHS–21, 400 Seventh Street SW., Washington, DC 20590. These documents are available for inspection and copying as prescribed in 49 CFR part 7, appendix D.

* * * * *

Issued on: December 28, 1994.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 95–86 Filed 1–3–95; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF EDUCATION

34 CFR Parts 74 and 80

Education Department General Administrative Regulations; Cost Principles for Educational Institutions

AGENCY: Department of Education.

ACTION: Announcement regarding amendments to certain cost principles.

SUMMARY: The Secretary announces revisions to Office of Management and Budget (OMB) Circular A–21, ''Cost Principles for Educational Institutions,'' which is used by the Department of Education in administering grant programs. The preambles to previously published final rulemaking documents specified Circular A–21 as amended through certain dates as the text of the Circular used for Department of Education programs. The Secretary specifies in this document subsequent OMB amendments to Circular A–21 and adopts those amendments for grant programs administered by the Department.

EFFECTIVE DATE: This notice takes effect on February 3, 1995.

FOR FURTHER INFORMATION CONTACT: Glenn Riley, U.S. Department of Education, 600 Independence Avenue, SW., room 3636, ROB–3, Washington, DC 20202–4700. Telephone: (202) 708–7640. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On July 6, 1994, the Secretary published a revision to Part 74—Administration of Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations (59 FR 34722). Also, on March 11, 1988, the Secretary published a new Part 80—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (53 FR 8071). These documents established OMB Circular A–21 as the cost principles used by the Department of Education for educational institutions (34 CFR 74.27, 80.22). The preamble to the 1988 document specified all OMB amendments to Circular A–21 as amended through December 2, 1986 and the preamble to the 1994 document all amendments made by OMB to Circular A–21 through October 3, 1991. Each of these preambles adopted for Department of Education programs the text of A–21 as amended through the dates specified in those publications.

On July 26, 1993, OMB published amendments to Circular A–21 at 58 FR 39996. This notice adopts for 34 CFR part 80 the changes made by OMB on October 3, 1991 and July 26, 1993, and adopts for 34 CFR part 74 the changes made by OMB on July 26, 1993. The changes adopted in this announcement bind all recipients of Department grants and cooperative agreements to the requirements of Circular A–21 as amended through July 26, 1993. These cost principles apply to educational institutions, except to the extent program regulations or the Department's administrative regulations require a different outcome.

OMB Circular A–21 was originally published in the **Federal Register** on March 6, 1979, at 44 FR 12368. It has been amended several times prior to the amendment made on July 26, 1993, as follows: On August 3, 1982, at 47 FR 33658, on June 9, 1986, at 51 FR 20908, on December 2, 1986, at 51 FR 43487, and on October 3, 1991, at 56 FR 50224. The circular, as amended, is adopted by the Department. It is available by calling the Publications Unit for the Executive Office of the President at (202) 395–7332, or by writing the Executive Office of the President, Publications, room 2200, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503.

Waiver of Notice and Comment

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed actions in accordance with the Administrative Procedure Act (5 U.S.C. 553). However, since an opportunity was previously provided by OMB for public comment on the October 1991 changes to the Circular at 56 FR 22618 on May 15, 1991 and at 56 FR 29530 on June 27, 1991 and, regarding the July 1993 amendments, an opportunity was previously provided by OMB for public comment on that amendment to OMB Circular A–21 (57 FR 58394; December 9, 1992), the Secretary finds that soliciting further public comment with respect to adoption of the revised circular is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

(Catalog of Federal Domestic Assistance Number does not apply.)

Dated: December 1, 1994.

Donald R. Wurtz,

Chief Financial Officer.

[FR Doc. 95–122 Filed 1–3–95; 8:45 am]

BILLING CODE 4000–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

[OAR–94–45; FRL–4921–3]

RIN 2060–AF03

Revisions to the Administrative Requirements and Provisions of the Clean Air Act Section 105 Grant Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule with request for comments.

SUMMARY: The Environmental Protection Agency (EPA) is promulgating an interim final rule revising the current regulations which govern the award of program grants under section 105 of the Clean Air Act (the Act). The revisions ensure consistency with and continue implementation of the Clean Air Act Amendments of 1990 (1990 Amendments). This promulgation revises the regulations to incorporate changes governing maintenance of effort (MOE) and cost-sharing requirements, including provisions allowing a temporary waiver of the cost-sharing amounts, and other miscellaneous changes contained in the 1990 Amendments.

DATES: This interim final rule is effective January 4, 1995.

EPA solicits comments on this interim final rule until February 3, 1995.

ADDRESSES: Supporting information used in the development of this interim final rule and copies of the public documents submitted are contained in Docket No. A–94–45. Comments on this interim final rule should be mailed in duplicate, if possible, to the EPA Air Docket. This docket is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, except legal holidays. The address of the EPA Air Docket is: Air Docket, Environmental Protection Agency, Mailcode 6102, Room M–1500, Waterside Mall, 401 M St., SW., Washington, DC 20460. A reasonable fee may be charged for copying.

Comments and data may also be submitted electronically by any of three different mechanisms: by sending electronic mail (e-mail) to: Docket-OPPTS@epamail.epa.gov; by sending a ''Subscribe'' message to listserver@unixmail.rtpnc.epa.gov and once subcribed, send your comments to RIN–2060–AF03; or through the EPA Electronic Bulletin Board by dialing 202–488–3671, enter selection ''DMAIL,'' user name ''BB—USER'' or 919–541–4642, enter selection ''MAIL,'' user name ''BB—USER.'' Electronic comments must be submitted as an ASCII file avoiding the use of special control characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form should be identified by the docket number A–94–45. Electronic comments on this interim final rule, but not the record, may be viewed or new comments filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in unit V. of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Anthony or Alexander Wolfe, United States Environmental Protection Agency, Office of Air and Radiation, Office of Program Management Operations (Mailcode 6102), 401 M St., SW., Washington, DC 20460 at (202) 260–7415.

SUPPLEMENTARY INFORMATION: This preamble is organized according to the following outline:

I. Background and Purpose
II. Discussion of Regulatory Changes
A. Maintenance of Effort Requirements
1. Definition of Recurrent and Nonrecurrent Expenditures
2. Use of Prior Fiscal Year Data to Determine MOE Levels
3. Accounting Relative to Title V Programs
B. Cost-sharing Requirements
1. Maximum Federal Share
2. Waiver of Cost-sharing Requirement
C. State Allotments and Reserves
III. Summary of Interim Final Rule
IV. Public Docket
V. Regulatory Assessment Requirements
A. Office of Management and Budget Clearances
B. Regulatory Flexibility Act
C. Paperwork Reduction Act
D. Unfunded Mandates

The attached interim final rule revises the regulations at 40 CFR part 35 to ensure a common sense approach to implementing the 1990 Amendments. The 1990 Amendments require our key stakeholders--state and authorized local jurisdictions, to implement new operating permit programs under Title V of the Act. The implementation of the new Title V programs involve the transition of many activities previously covered by Section 105 grant programs to the new Title V permit programs. Many state and local agencies expressed serious concern about being able to meet MOE requirements due to the reduction in activities; and may be unable to provide the required 40 percent cost-share. As discussed in unit II.A.3. of this preamble, EPA has determined that existing regulations permit states to recompute their MOE levels to reflect the transfer of state air quality program activities previously funded through section 105 grants to the Title V permit program. This rule provides state and local stakeholders with the additional regulatory framework necessary to make the transition workable on a common sense scale by allowing state and local government agencies to (1) temporarily waive the cost-share requirement; and, (2) determine recurrent and nonrecurrent expenditure levels with greater flexibility.

The preamble makes frequent use of the term ''state,'' usually meaning the state air pollution control agency authorized to be the recipient agency for the section 105 grant, as defined under section 302 of the Act. The reader should assume that when used here ''state'' also includes air pollution control agencies of the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and local governments where a local agency is a direct-funded recipient of a section 105 air grant.

The preamble is organized to enable a review of the origins of the part 35 changes being promulgated today. The preamble also describes the impact on the MOE requirements due to the transfer of section 105 program activities to the Title V permit program. Although not the subject of this rulemaking, the impact was identified during the workgroup efforts described below and addressed in an opinion from EPA's Office of General Counsel.

Proposed changes to part 35, subpart A affecting the award of air grant assistance to Indian Tribes are the subject of a separate rulemaking, ''Indian Tribes: Air Quality Planning and Management,'' and will not be discussed in this action. *See* 59 FR 43955, August 25, 1994. However, EPA intends that this rulemaking and the final Tribal air assistance regulation will be compatible.

I. Background and Purpose

Section 105 of the Act, 42 U. S. C. 7405, authorizes the award of grants to state, local, interstate, intermunicipal, and tribal air pollution control agencies to support programs for the prevention and control of air pollution. The Federal section 105 grant program has been a major force in helping to establish and expand the air pollution control programs of state and local agencies. Since including the program in the 1963 Clean Air Act, Congress has

appropriated, and EPA has awarded, over $2.0 billion in Federal grant assistance.

Section 105 contains two major administrative requirements to ensure the fiscal commitment and continued eligibility of a recipient agency. The recipient must: (1) contribute a share of the overall costs of its section 105-approved program (cost-share or match); and (2) expend annually an amount equal to or greater than its previous year's commitment (MOE). The amount of funding established under the second requirement is called the recipient's MOE level. These requirements have prompted state, local, and tribal agencies to contribute nearly $3.5 billion of their own funds over the last 30 years in support of their efforts to prevent and control air pollution and implement national ambient air quality standards.

The 1990 Amendments, Public Law 101–549, amended the section 105 provisions on cost-sharing, MOE, and state grant allotments. In addition, Title V of the 1990 Amendments requires all states to establish operating permit programs. The Title V permit programs must include fee provisions to cover the costs of the permit programs. Many activities previously funded through section 105 grants are now required to be included within and funded through the Title V permits and fees.

This rulemaking amends the section 105 program grant regulations at 40 CFR part 35, subpart A to (1) further implement the 1990 Amendments; (2) ensure consistency between the regulations and the Act as amended; and (3) address the fiscal impact of Title V permit fee provisions on section 105 program grant recipients. The rule promulgated here provides increased flexibility to grant recipients in determining and setting expenditure levels and provides the regulatory linkage necessary for reasonable implementation of statutory provisions under both Titles I and V of the Act.

This interim final rule is consistent with Federal and Agency intent to: enhance the fiscal capacity of state and local governments to enable the effective implementation of their air pollution prevention and control responsibilities; reduce, where possible, any unnecessary administrative burdens associated with the receipt of Federal assistance; and help ensure the financial integrity of the air grant and permit fee programs.

The rule is published as an interim final rule (rather than as a proposed rule) in accordance with the Administrative Procedure Act, 5 U.S.C. 553(a), which exempts grant rules from the notice and comment requirements for rulemaking. Nevertheless, EPA solicits public comment on this interim final rule. The rule takes effect today in order to allow for the prompt implementation of the provisions affecting the section 105 grant program, including waivers of the cost-sharing requirement.

II. Discussion of Regulatory Changes

This section provides a more detailed explanation of the regulatory changes EPA intends to make to the existing 40 CFR part 35, subpart A.

A. Maintenance of Effort Requirements

1. *Definition of recurrent and nonrecurrent expenditures.* Section 105 (c)(1) of the Act provides that no agency shall receive a section 105 grant during any fiscal year when its ''recurrent expenditures'' of non-Federal funds for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year. The 1990 Amendments require EPA to revise the current regulations which define applicable recurrent and nonrecurrent expenditures, and in so doing, to ''give due consideration to exempting an agency from the limitations of this paragraph [MOE requirements] and subsection (a) of this section [cost-sharing requirements] due to periodic increases experienced by that agency from time to time in its annual expenditures for purposes acceptable to the Administrator for that fiscal year.'' Section 105(c)(1) of the Act, as amended. This rule revises the definition for recurrent expenditures and adds a new definition for nonrecurrent expenditures for the air grant program. As discussed in unit B.2. of this preamble, the regulations also provide for an exemption from the cost-sharing requirements in certain limited circumstances.

The current regulatory definition of ''recurrent expenditures'' in 40 CFR 35.105 provides that all expenditures, except those for equipment purchases with a unit acquisition cost of $5,000 or more, are considered recurrent unless justified by the applicant as unique and approved by the Regional Administrator in the grant agreement. The revised definition being promulgated for the air grant program removes the $5,000 limitation to recognize price changes due to inflation and changes in the nature and design of air pollution control equipment. Such changes have occurred since the last promulgation and are likely to continue. The revised definition will provide greater flexibility to air pollution control agencies in the MOE requirements by not subjecting them to an artificial dollar ceiling and administratively burdensome justifications for basic purchases. This rule leaves in place the current definition of ''recurrent expenditures'' at 40 CFR 35.105 which will continue to be used in other continuing environmental programs governed by 40 CFR part 35, subpart A.

2. *Use of prior fiscal year data to determine MOE levels.* While the MOE provision requires that each recipient expend annually at least the same or greater amount of its own resources on its section 105 program as it did in the previous year, it often takes several months beyond the end of a fiscal year for EPA to determine the final expenditure amounts for the grants. In order to permit EPA to award the section 105 grants in a timely manner, even when the required fiscal data is not yet available, the 1990 Amendments revised section 105(c)(1) to allow EPA to compare an agency's prospective expenditure level to that of its second preceding fiscal year. When the preceding year's final fiscal data is received, EPA will then provide an official verification that the MOE requirements have been met. Section 35.210(a) has been revised to permit the use of data from the second preceding fiscal year as provided in the 1990 Amendments.

3. *Accounting relative to Title V programs.* States have expressed concern over how the transfer of resources from their section 105 grant program to their Title V program will affect the MOE requirement and their ability to continue to receive a Federal grant.

This concern and other grant and fee program transition issues prompted EPA to initiate, in May 1994, a workgroup to develop clear transition policies and procedures for regions and states to follow. The workgroup effort resulted in the issuance of a June 27, 1994 opinion from the Office of General Counsel on the ability of states to adjust MOE levels once Title V programs are approved. EPA also issued transition guidance on July 21, 1994 and August 28, 1994.

Based on the June 27, 1994 opinion, EPA has determined that a state's MOE level may be reduced to reflect the transfer of activities previously funded through its section 105 program to the Title V program without jeopardizing the state's continued eligibility for a section 105 grant. However, a state must maintain the level of effort associated with recurrent expenditures for activities that continue to be supported with section 105 program grants. This principle applies not only to the year in which the Title V program is initially

approved but in subsequent years as well.

Section 105(c)(1) of the Act provides that ''No agency shall receive any grant under this section during any fiscal year when its expenditures of nonfederal funds for recurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year.'' The MOE regulations implementing this provision state that: ''To receive funds under section 105, an agency must expend annually for recurrent section 105 program expenditures an amount of nonfederal funds at least equal to such expenditures during the preceding fiscal year.'' 40 CFR 35.120.

Because the regulations describe the term ''recurrent expenditures for air pollution control programs,'' as ''recurrent section 105 program expenditures,'' EPA believes a reasonable interpretation of the MOE provisions is that they require states to maintain only their effort associated with activities that are included within the section 105 grant program.

Because many of the activities previously funded through section 105 program grants are now included within the Title V permit fee program and permit program activity costs are no longer allowable costs under the section 105 program, expenditures for permit activities are no longer ''recurrent section 105 program expenditures'' for which the MOE level must be maintained. A new MOE level should be calculated that reflects the expenditures associated with the remaining section 105 activities.

B. Cost-sharing Requirements

1. *Maximum Federal share.* Prior to the 1990 Amendments, EPA was authorized to award Section 105 program grants that, depending upon the purposes of the grants and recipients' identities, provided up to one-half to three-quarters of the approved program costs. Distinctions were made among types of recipients and between cost-sharing requirements for planning, developing, establishing, and improving programs and maintaining programs. The 1990 Amendments eliminated the distinctions between the types of recipients and activities along with the varying Federal funding percentages associated with each. Instead all funded activity is now termed as 'implementation' which is now defined in this rulemaking to encompass virtually every type of program activity.

The Amendments revised section 105(a) to authorize grant awards up to three-fifths (60 percent) of the costs of ''implementing'' the air programs. Section 105 (a)(1)(A) defines ''implementing'' as ''any activity related to the planning, developing, establishing, carrying-out, improving, or maintaining of such programs.''

The 1990 Amendments further provided that air pollution control agencies contributing less than two-fifths (40 percent) of the approved program costs had 3 years from the date of enactment (November 15, 1990) to meet the required nonfederal minimum or face a reduction in their EPA funding. Section 105 (a)(1)(B) of the Act. The change in the cost-share requirement was phased-in to prevent the disruption of affected grantee's current air program operations.

This rulemaking revises the current regulations by deleting the existing regulations at 40 CFR 35.205 and inserting new provisions for a uniform cost-sharing requirement for all program activities and a 3-year phase-in period. The statutory definition of the term ''implementing'' has been included in the new definitions section at 40 CFR 35.201.

2. *Waiver of cost-sharing requirement.* In accordance with section 105(c)(1) EPA has determined that an exemption from the cost-sharing requirement is appropriate in certain very limited circumstances because of increased expenditures experienced by states as a result of the transfer of resources to the Title V permit program.

In the 1980's, many states enacted operating permit programs as part of their air pollution control programs. The costs of these state permit programs were allowable under section 105 grants and many states used the permit fees they collected to satisfy the cost-sharing requirement of the section 105 grant program. The 1990 Amendments, however, added Title V to the Act. Title V requires all states to establish operating permit programs supported by permit fees. Many activities previously funded through section 105 grants are now required to be included and funded through the Title V permit fee programs. In order to obtain a permit, sources of pollution must pay to the state an annual fee that is sufficient to cover all the costs of the permitting program. (Section 502(b)(3)(A)). Title V and EPA regulations require that any such permit fees collected be utilized solely to cover the costs of the permit programs. (Section 502(b)(3)(C)(iii) and 40 CFR 70.9(d)).

Some states assumed the fees collected under Title V could be used to pay a portion or all of the 40 percent cost-share for their section 105 grant, like the fees under previous state permit programs. Other states without previously existing permit programs also planned to use Title V fees in lieu of state general revenues and other sources to meet the cost-share requirement. Relying on the assumption that Title V fees could be used for cost-sharing, some state legislatures did not authorize and appropriate funds sufficient to meet the cost-share requirements beyond the funds anticipated from the fees.

However, Title V permit fees cannot be used to meet the cost-sharing requirements of section 105 program grants. In order to qualify for cost-sharing, costs incurred by a grantee must be allowable under its grant with EPA. (40 CFR 31.24(a)). A grantee may not count costs that are not part of its grant program. Because Title V requires that the permit program be funded solely from the fees collected, and that the fees collected be used only for that purpose, Title V permit program costs cannot be funded from a section 105 grant. As a result, the permit program cost are not allowable section 105 grant costs and, therefore, the costs and the fees used to pay them cannot be used to meet the section 105 cost-sharing requirements.

Because the Title V fees cannot be used for cost-sharing, some state and local agencies have indicated that they will not be able to meet the 40 percent cost-sharing obligation once their Title V programs are approved. As a result, some states need additional time to identify other sources of funds or obtain additional funds from their legislatures. If a state cannot meet its cost-share it would either be ineligible for a section 105 award or would have its grant award reduced as a result. Section 105 grants fund a large portion of state air pollution control programs. Without grant support some states have indicated an inability to fulfill responsibilities under the Act and would not be able to meet all of the statutory deadlines. Consequently, states would risk the imposition of severe growth sanctions.

To prevent significant shortfalls in near-term funding, states requested relief from the cost-sharing requirements. The EPA has noted three regulatory and administrative remedies that would help provide states relief and additional time to secure the necessary funding support: deferral of cost-sharing to the end of the budget period; use of revenue generated from fees during program development for cost-sharing; and promulgation of this rule to provide a temporary waiver of the cost-sharing requirement.

Deferral of cost-sharing. States can request deferral of the cost-sharing requirements until later in the annual grant budget period in order to provide additional time to obtain cost-sharing resources. Regulations governing cost-sharing require only that the costs be incurred under the assistance agreement, i.e., during the budget period identified in the assistance agreement (40 CFR 31.24). This is consistent with the decisions of the Comptroller General. *See e.g.*, 60 Comp. Gen. 208 (1981) (Cost-share requirements are met when nonfederal share is provided by the end of the grant budget period).

Use of fees generated prior to Title V implementation. As part of approved section 105 grant workplans, states have used section 105 grant funds in the development (''ramp-up'') of their Title V programs. Fees generated to help develop these Title V programs prior to their approval by EPA, unless otherwise specifically directed by the state to support its Title V program once it is approved, can be used for cost-sharing.

Waiver of cost-sharing requirements. The promulgation of this rulemaking will provide temporary relief in the form of waivers from the cost-sharing requirement in certain very limited circumstances under the authority provided in section 105(c)(1) of the Act. That section authorizes EPA to provide an exemption from both the section 105(c)(1) MOE requirements and the cost-sharing requirements of section 105(a) due to periodic increases experienced by states in their annual expenditures for purposes acceptable to EPA. Because some states assumed they could use the Title V fees for cost-sharing, they are now confronted with unanticipated increases in their expenditures in order to meet the cost-sharing requirements. EPA believes these increases fall within the scope of section 105 waiver authority.

The rule provides that a waiver may be permitted only when the reduction of a state or local agency's nonfederal grant contribution of the required cost-share is due to the redirection of its grant matching resources to the Title V operating permit program.

The waiver will be temporary and available on a case-by-case basis for a 1–year period. The waiver may be renewed for no more than 2 additional years so long as the total waiver period does not expire later than 3 years from the date of initial approval of a state's Title V program. EPA believes the 3–year timeframe is reasonable because it will provide the state legislatures with both annual and biennial sessions the opportunity to take corrective fiscal action. In addition, EPA believes it could take 3 years for a state to refocus its programs and resources.

The Governor of the state or the Governor's designee, (or in the case of a local air pollution control agency, the accountable authorizing official) must request a waiver from the Regional Administrator on an annual basis. A relevant showing of financial need, which meets the criteria set forth by EPA in §35.205(b), and any criteria in companion guidance to be issued by the Agency, must be provided by the state to the responsible EPA region. The waiver request should describe the nature and timing of the corrective fiscal action the state intends to take to restore its contribution to at least a 40 percent level.

The Governor of the state or the Governor's designee, (or in the case of a local air pollution control agency, the accountable authorizing official) must also provide an assurance that the state will not further reduce its nonfederal contribution below the level authorized by the waiver. The waiver will only be for that portion of the cost-sharing attributable to redirection of resources to Title V.

In addition to the information contained in this rule, EPA will provide supplemental guidance on the waiver and other aspects of this rule.

C. State Allotments and Reserves

The 1990 Amendments revised section 105(b)(2) to clarify that EPA must make available to each state for application, but not necessarily for award, one-half of 1 percent of the total national section 105 grant appropriation. While EPA must allot this amount per state for planning purposes, a state's application must demonstrate that it merits and can effectively utilize the funds it requests for purposes acceptable to the Administrator. EPA is not obligated to provide the full one-half of 1 percent amount. This rule revises 40 CFR 35.115 to reflect this statutory change.

III. Summary of Interim Final Rule

The following is a summary of the changes the EPA intends to make to the existing regulations at 40 CFR part 35, subpart A:

1. Section 35.105 Definitions. Modify the definition of ''recurrent expenditures'' to show that it does not apply to agreements made pursuant to section 105.

2. Amend §35.115 (a) (State allotments and reserves) so that it is consistent with section 105 (b)(2), as amended, which requires that each state have made available to it for application no less than one-half of 1 percent nor more than 10 percent of the annual section 105 appropriations.

3. Establish §35.201 (Definitions under section 105) to provide definitions for implementing, and recurrent and nonrecurrent expenditures applicable to the section 105 assistance awards:

a. Add a definition for ''implementing''. Prior to the 1990 Amendments the Act provided for differing levels of Federal share for grants for ''planning, developing, establishing, or improving'' air programs and for grants for maintaining air programs. The amendments provide for only one level of Federal share for ''implementing'' a program.

b. Add a definition for ''nonrecurrent expenditures''. Use of the definition of ''recurrent expenditures'' in the existing regulation often resulted in the MOE amount being inequitably raised.

c. Add a revised definition for ''recurrent expenditures'' for section 105 assistance agreements. The 1990 Amendments require that the current language be revised.

4. Amend §35.205 (Maximum Federal Share) by deleting the existing language and replacing it with one paragraph which reflects the new statutory maximum Federal grant share of 60 percent. A second paragraph provides a method by which grantees negatively-impacted by the transfer of resources to the Title V program may request the EPA to waive the cost-sharing requirement at §35.205(a).

5. Amend §35.210 (Maintenance of Effort) by revising subparagraph (a) to reflect the statutory provision allowing the Regional Administrator to base the initial determination of MOE level on the second preceding fiscal year rather than the preceding fiscal year.

IV. Public Docket

The docket for this regulatory action is A–94–45. The docket is an organized and complete file of all the information submitted to, or otherwise considered by EPA in the development of this interim final rulemaking. The principal purposes of the docket are:

(1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process, and

(2) To serve as the record in case of judicial review.

The public docket is located in M1500, 401 M Street SW., Washington, DC 20460. The information contained in this public docket, including printed, paper versions of electronic comments is available for inspection from 8:00 a.m. to 5:30 p.m., Monday thru Friday, excluding legal holidays.

As part of an interagency ''streamlining'' initiative, EPA is experimenting with submission of public comments on selected rulemaking actions electronically through the Internet in addition to accepting comments in traditional written form. This interim final rule is one of the rulemaking actions selected by EPA for this experiment. From the experiment, EPA will learn how electronic commenting works, and any problems that arise can be addressed before EPA adopts electronic commenting more broadly in its rulemaking activities. Electronic commenting through posting to the EPA Bulletin Board or through the Internet using the ListServe function raises some novel issues that are discussed below in this Section.

To submit electronic comments, persons can either ''subscribe'' to the Internet ListServe application or ''post'' comments to the EPA Bulletin Board. To ''Subscribe'' to the Internet ListServe application for this interim final rule, send an e-mail message to: listserver@unixmail.rtpnc.epa.gov that says '' Subscribe RIN–2060–AF03 <first name> <last name>.'' Once you are subscribed to the ListServe, comments should be sent to: RIN–2060–AF03@unixmail.rtpnc.epa.gov.

For online viewing of submissions and posting of comments, the public-access EPA Bulletin Board is also available by dialing 202–488–3671, enter selection ''DMAIL,'' user name ''BB—USER'' or 919–541–4642, enter selection ''MAIL,'' user name ''BB—USER.'' When dialing the EPA Bulletin Board type <Return> at the opening message. When the ''Notes>'' prompt appears, type ''open RIN–2060–AF03'' to access the posted messages for this document. To get a listing of all files, type ''dir/all'' at the prompt line. Electronic comments can also be sent directly to EPA at:

Docket-OPPTS@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special control characters and any form of encryption.

To obtain further information on the electronic comment process, or on submitting comments on this interim final rule electronically through the EPA Bulletin Board or the Internet ListServe, please contact John A. Richards (Telephone: 202–260–2253; FAX: 202–260–3884; Internet: richards.john@epamail.epa.gov).

Persons who comment, and those who view comments electronically, should be aware that this experimental electronic commenting is administered on a completely public system. Therefore, any personal information included in comments and the electronic mail addresses of those who make comments electronically are automatically available to anyone else who views the comments.

Commenters and others outside EPA may choose to comment on the comments submitted by others using the RIN–2060–AF03 ListServe or the EPA Bulletin Board. If they do so, those comments as well will become part of EPA's record and included in the public docket for this rulemaking. Persons outside EPA wishing to discuss comments with commenters or otherwise communicate with commenters but not have those discussions or communications sent to EPA and included in the EPA rulemaking record and public docket should conduct those discussions and communications outside the RIN–2060–AF03 ListServe or the EPA Bulletin Board.

EPA will transfer all comments received electronically in the RIN–2060–AF03 ListServe or the EPA Bulletin Board, in accordance with the instructions for electronic submission, into printed, paper form as they are received and will place the paper copies in the official rulemaking docket which will also include all comments submitted directly in writing. All the electronic comments will be available to everyone who obtains access to the RIN–2060–AF03 ListServe or the EPA Bulletin Board; however, the official rulemaking docket is the paper docket maintained at the address in ''ADDRESSES'' at the beginning of this document. (Comments submitted only in written form will not be transferred into electronic form and thus may be accessed only by reviewing them in the EPA Docket as described above.)

Because the electronic comment process is still experimental, EPA cannot guarantee that all electronic comments will be accurately converted to printed, paper form. If EPA becomes aware, in transferring an electronic comment to printed, paper form, of a problem or error that results in an obviously garbled comment, EPA will attempt to contact the commenter and advise the commenter to resubmit the comment either in electronic or written form. Some commenters may choose to submit identical comments in both electronic and written form to ensure accuracy. In that case, EPA requests that commenters clearly note in both the electronic and written submissions that the comments are duplicated in the other medium. This will assist EPA in processing and filing the comments in the rulemaking docket.

As with ordinary written comments, at the time of receipt, EPA will not attempt to verify the identities of electronic commenters nor to review the accuracy of electronic comments. Electronic and written comments will be placed in the rulemaking docket without any editing or change by EPA except to the extent changes occur in the process of converting electronic comments to printed, paper form.

EPA will address significant electronic comments either in a notice in the **Federal Register** or in a response to comments document placed in the rulemaking docket for this Interim Final Rule. EPA will not respond to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or conversion to printed paper form as discussed above. Any communications from EPA employees to electronic commenters, other than those described in this paragraph, either through Internet or otherwise are not official responses from EPA.

V. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866, [58 FR 51735, October 4, 1993] the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. It has been determined that this rule is a not a significant regulatory action under the terms of Executive Order 12866 and is therefore not subject to formal OMB review.

B. Regulatory Flexibility Act

EPA did not develop a Regulatory Flexibility Analysis for this grant-

related rule because it is exempt from notice and comment rulemaking under section 553(a)(2) of the Administrative Procedure Act (5 U.S.C. 553(a)(2)), and therefore is not subject to the analytical requirements of sections 603 and 604 of the Regulatory Flexibility Act (5 U.S.C. 603 and 604).

C. Paperwork Reduction Act

The information collection activities associated with the administrative requirements of assistance programs have already been approved under the provisions of the Paperwork Reduction Act at 44 U.S.C. 3501 *et seq* and have been assigned OMB control number 2030–0020.

The collection of information associated with the administrative requirements of assistance programs to state and local government agencies is estimated to have a public reporting burden averaging 25 hours annually. This includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The interim final regulation will cause a modest increase in information collection activity for some respondents above that associated with the normal administrative requirements of assistance programs. This is primarily attributable to the financial demonstration of need required for the approval of a waiver. Approximately 11 to 15 State and local agencies are anticipated to request a waiver.

D. Unfunded Federal Mandates: Enhancing the Intergovernmental Partnership, Executive Order 12875

We believe this regulation will provide relief to State and local governments negatively impacted by the transfer of program activities and resources in compliance with section 502(b) of the Act. While additional funds are not being provided, this rule allows state and local agencies to request waivers of the Act's cost-sharing requirements. The Office of Management and Budget was provided information and documents concerning consultations with state and local governments made directly, and indirectly through state and local groups. Affected state and local officials were also provided the means to participate in the development of this rulemaking through surveys, conference discussions, information papers, formal and informal comments, and communications with a variety of state and local associations.

We also believe, by including provisions for the cost-sharing requirements to be waived (as discussed above), the rulemaking increases the ''flexibility for state and local waivers.'' Furthermore, in accordance with the Act's requirements, the term ''implementing'' is being defined to encompass all grant activities in lieu of separately-based cost-share percentages for planning, developing, establishing, or improving programs and program maintenance.

We do not anticipate that these regulations will impose any burdensome effects on the national economy. Indeed, this rule is intended to provide administrative and fiscal relief to affected state and local agencies.

List of Subjects in 40 CFR Part 35

Accounting, Administrative practice and procedures, Environmental protection, Grant programs, Grants administration, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 23, 1994.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, 40 CFR part 35, subpart A is amended as follows:

PART 35— STATE AND LOCAL ASSISTANCE

1. The authority citation for part 35, subpart A, continues to read as follows:

Authority: Secs. 105 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7405 and 7601(a)); secs. 106, 205(g), 205(j), 208, 319, 501(a), and 518 of the Clean Water Act, as amended (33 U.S.C. 1256, 1285(g), 1285(j), 1288, 1361(a) and 1377); secs.1443, 1450, and 1451 of the Safe Drinking Water Act (42 U.S.C. 300j–2,300j–9 and 300j–11); secs. 2002(a) and 3011 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6912(a), 6931, 6947, and 6949); and secs. 4, 23, and 25(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. 136(b), 136(u), and 136w(a)).

2. Section 35.105 is amended by revising the definition of ''Recurrent expenditures'' to read as follows:

§35.105 Definitions.

* * * * *

Recurrent expenditures, except for the purposes of section 105 of the Clean Air Act (See §35.201), means those expenditures associated with the activities of a continuing environmental program. All expenditures, except those for equipment purchases with a unit acquisition cost of $5,000 or more, are considered recurrent unless justified by the applicant as unique and approved as such by the Regional Administrator in the assistance award.

* * * * *

3. In §35.115 paragraph (a) is amended by revising the last sentence to read as follows:

§35.115 State allotments and reserves.

* * * * *

(a) * * * However, no state shall have made available to it for application an allotment of less than one-half of 1 percent nor more than 10 percent of the annual appropriation for section 105 grants.

* * * * *

4. A new §35.201 is added to read as follows:

§35.201 Definitions applicable to Section 105.

For purposes of section 105 of the Clean Air Act the following definitions are to be used in addition to the definitions in §35.105; except that the definition of ''Recurrent expenditures'' has the meaning set forth below:

Implementing means, within the context of section 105 of the Clean Air Act, as amended, any activity related to planning, developing, establishing, carrying-out, improving, or maintaining programs for the prevention and control of air pollution or implementation of national primary and secondary ambient air quality standards.

Nonrecurrent expenditures means those expenditures which are shown by the recipient to be of a nonrepetitive, unusual, or singular nature such as would not reasonably be expected to recur in the foreseeable future. Costs categorized as nonrecurrent must be approved in the assistance agreement or an amendment thereto. All other approved project costs are deemed to be recurrent.

Recurrent expenditures means those expenses associated with the activities of a continuing environmental program. All expenditures are considered recurrent unless justified by the applicant as nonrecurrent and approved in the assistance award or an amendment thereto.

5. Section 35.205 is revised to read as follows:

§35.205 Maximum Federal share.

(a) The Regional Administrator may provide state, local, interstate, or intermunicipal agencies up to three-fifths of the approved costs of implementing programs for the prevention and control of air pollution or implementing national primary and secondary ambient air quality standards. Air pollution control agencies currently

receiving grants and contributing less than the required minimum of two-fifths of the approved program costs shall have until November 15, 1993 to increase their contribution to the required level.

(b) Subject to the conditions set forth below, the Regional Administrator may, at the request of the Governor of a State or the Governor's designee, or in the case of a local jurisdiction, the authorized local official, waive, for a 1–year period, all or a portion of the cost-sharing requirement of paragraph (a) of this section. The Regional Administrator may renew the waiver for no more than 2 years so long as the total waiver period does not exceed 3 years from the approval date of a state's permit program required under section 502 of the Clean Air Act (Act).

(1) The waiver may be approved on a case-by-case basis and only when a state or local government's nonfederal contribution is reduced below the required two-fifths minimum as a result of the redirection of its nonfederal air resources to meet the requirements of section 502(b) of the Act.

(2) In applying for a waiver the Governor or the Governor's designee, or in the case of a local jurisdiction, the authorized local official, must:

(i) Describe the extent of fiscal and programmatic impact on the agency's section 105 program as a result of the transfer of nonfederal resources to support the program approved by EPA under section 502(b) of the Act.

(ii) Provide documentation of the amount of the cost-sharing shortfall and the programmatic activities that would not be able to be carried out if the section 105 grant is reduced or not awarded as a result of a state or local air pollution control agency's inability to meet the cost-sharing requirements.

(iii) Assure that there is no source of funding that may reasonably be used to meet the cost-sharing requirement for the affected grant budget period; and

(iv) Assure that during the section 105 grant period the non-federal share of the program costs will not be reduced in an amount greater than that authorized by the waiver.

6. Section 35.210 is amended by adding a sentence at the end of paragraph (a) to read as follows:

§35.210 Maintenance of effort.

(a) * * * In order for the Regional Administrator to award grants in a timely manner each fiscal year, the Regional Administrator shall compare an agency's proposed expenditure level, as detailed in the agency's application for grant assistance, to that agency's expenditure level in the second preceding fiscal year.

* * * * *

[FR Doc. 95–150 Filed 1–3–95; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[NE–6–1–6445a; FRL–5115–3]

Approval and Promulgation of Implementation Plans and Delegation of 112(l) Authority; State of Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This final action approves the State Implementation Plan (SIP) submitted by the state of Nebraska. The state's revision includes the creation of a Class II operating permit program, part D (nonattainment) new source review (NSR) rule changes, SO_2 rule corrections, and the use of enhanced monitoring. The creation of a Class II operating permit program enables Nebraska to have a Federally enforceable program for sources not covered by the requirements for major title V sources under the Clean Air Act Amendments (CAAA) of 1990 and part 70 of the Code of Federal Regulations.

DATES: This final rule is effective March 6, 1995 unless by February 3, 1995 adverse or critical comments are received. If the effective date is delayed EPA will publish timely notice in the **Federal Register**.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and EPA Air & Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Christopher D. Hess at (913) 551–7213.

SUPPLEMENTARY INFORMATION: The state of Nebraska has operated a Federally approved SIP that has implemented the various requirements of the Clean Air Act (Act) since 1972. During the past two decades, numerous revisions and updates have been made to the SIP in response to new applicable requirements, including those requirements generated by the Act's 1990 Amendments. Title 129, Nebraska's Air Quality Regulations, has been the chief regulatory component of the currently approved SIP framework although it is supported by other state rules.

Due to the Act's title V requirements, title 129 has been revised to include permitting requirements for both title V sources and other sources regulated by the SIP. Those sources that will be regulated by the SIP will be part of a Class II operating permit program, while those sources subject to title V will be part of a Class I operating permit program. Both programs will be governed by title 129, December 17, 1993.

After submitting its title V program in November 1993, and those aspects of title 129 that support that program, the state subsequently submitted a proposed revision to the SIP on February 16, 1994. This revision specifically deals with the Class II, SIP-based operating permit program and those aspects of title 129 that support it.

Nebraska's request for a revision to the SIP also includes Part D (nonattainment) NSR changes, SO_2 rule corrections, use of enhanced monitoring, and other miscellaneous changes. The state has also requested approval of the Class II operating permit program pursuant to section 112(l) of the Act, which governs state programs for regulation of hazardous air pollutants.

For a complete and thorough understanding of the state's submission and EPA's analysis, the reader should consult the ''Technical Support Document (TSD) for a Revision to the Nebraska State Implementation Plan (SIP) and Request for Approval under Section 112(l)'' dated August 12, 1994.

Significant Features of the SIP Revision

A. Definitions

There are approximately 30 new definitions in the revised title 129. Not all of these new definitions affect the SIP, however, as some have been added for title V purposes. Nevertheless, all of the definitions are being incorporated into the SIP to ensure consistent use of terms by the state and EPA.

New definitions or significant topical changes include:

1. The definition of ''Federally Enforceable'' now includes applicable SIPs, permits, and any requirements in title 129 which are enforceable by the Administrator.

2. The definition of ''Primary standard'' and ''Secondary standard'' no longer directly reference section 109 of the Act, but chapter 4 of title 129 instead. This is acceptable since chapter 4 incorporates the primary and secondary standards outlined in 40 CFR 50.4–50.12.

3. The definition of ''Significant'' has deleted four pollutants: Asbestos,

Beryllium, Mercury and Vinyl Chloride. These four pollutants will now be regulated under section 112 (g) of the Act. In accordance with 40 CFR 51.166(b)(23)(i), three categories of pollutants have been added to this definition: Municipal waste combuster organics, Municipal waste combuster metals, and Municipal waste combuster acid gases.

4. The definition of ''Major Source'' incorporates the previously approved definition, and expands it in accordance with 40 CFR 70.2 and section 112 of the Act. It also defines major source for nonattainment areas and for emissions offsets. Finally, in accordance with 40 CFR 52.21 which is incorporated by reference, this also defines major source for the purposes of prevention of significant deterioration.

B. Ambient Air Quality Standards

Standards for total suspended particulate (TSP) have been deleted. A July 1, 1987, **Federal Register** document changed the indicator for both the primary and secondary standards from TSP to PM_{10}. The state of Nebraska originally elected to maintain both standards, although only the standard for PM_{10} is required. The state now deletes this TSP standard.

C. Class II Operating Permit Program

By making the Class II operating permit program part of the SIP and legally requiring in the SIP that permittees comply with such permits, any violation of such a permit will be enforceable under the Clean Air Act and subject to EPA enforcement. One effect of this rule is that any limitation on potential-to-emit (PTE) criteria pollutants will be recognized and be enforceable by EPA. Thus, sources may voluntarily restrict their potential emissions and be issued a Class II permit to avoid the more extensive requirements of title V.

In the **Federal Register** document dated June 28, 1989 (54 FR 27281), EPA outlines five criteria that a state must meet in order to achieve a Federally enforceable operating permit program which is approved into the SIP. These criteria apply to both the Class II program and to the request for approval under section 112(l). The state of Nebraska has met this criteria by: (1) Submitting this program for approval; (2) imposing a legal obligation that operating permit holders adhere to the terms and limitations of their permits; (3) requiring that all emissions limitations, controls, and other requirements imposed by permits will be at least as stringent as any other applicable limitations and requirements contained in or enforceable under the SIP; (4) further requiring the limitations, controls, and requirements of the permits to be permanent, quantifiable, and otherwise enforceable as a practical matter; and (5) providing that the permits issued are subject to public participation and EPA review. The reader may consult the TSD for a fuller description of how the state has met these criteria.

D. Revised Thresholds

The state has revised the thresholds for minor NSR permitting so that the same thresholds apply for both Class II operating permits as well as NSR. Sources with the PTE equal to or greater than these thresholds must obtain a construction permit from the state. Sources with a PTE below these thresholds are still subject to state and Federal regulations, but are not required to have an operating or NSR permit. The following chart outlines these threshold changes (note: some thresholds have been converted from pounds per hour to an annual rate):

	Previous SIP	Current SIP
TSP [1]	43.7 TPY	25 TPY
PM_{10}	10 TPY	15 TPY
SO_2	8.76 TPY	40 TPY
NO_X	9.1 TPY	40 TPY
VOC	65.7 TPY	40 TPY
CO	100 TPY	50 TPY
HAP	2.5 TPY	2.5 TPY
Lead		0.6 TPY

[1] Although the national ambient air quality standard for TSP has been changed to PM_{10} by EPA, Nebraska is retaining TSP increments. The threshold standard is based on 40 CFR 52.21 as are the other standards.

With respect to the three thresholds which have been increased, the state has indicated that air quality screen modeling is routinely performed for criteria pollutants before construction permits are issued. In a letter from the state dated November 7, 1994, Nebraska indicates that the evidence available from the cumulative pool of modeling results clearly demonstrates that sources with pollutant potentials, less than the new thresholds, do not threaten the maintenance of the ambient air quality standards.

E. 112(l) Authority

The state has also requested that the provisions of Title 129 that pertain to Class II operating permits be approved pursuant to section 112(l) of the Act. By approving the Class II permit program under section 112(l), permittees must comply with such permits relating to hazardous air pollutants, and any violation of such a permit will be enforceable under the Clean Air Act and subject to EPA enforcement. One effect of this rule is that any limitation on PTE hazardous pollutants will be recognized and be enforceable by EPA. Thus, sources may voluntarily restrict their potential emissions and be issued a Class II permit and avoid the more extensive requirements of Title V.

In addition to meeting the criteria of the June 28, 1989, **Federal Register** document, the state has also met specific criteria for approval under 112(l) which include:

1. Adequate authority within the program to ensure compliance by all sources with each applicable standard, regulation, or requirement established by the Administrator. The state provided an Attorney General's statement which ensures necessary legal authority and compliance by all sources within the state.

2. Adequate authority to implement the program. The state has submitted copies of state statutes, regulations, and other requirements which contain the appropriate provisions demonstrating authority to implement and enforce the state rule upon approval.

3. Adequate resources to implement the program. The state has committed to provide adequate resources for this part of its program.

4. An expeditious schedule for implementing the program and ensuring compliance by the affected sources. Class II permit applications are due within 12 months of the effective date of Title 129 (December 1994).

The reader may consult the TSD for a fuller description of how the state meets the criteria for approval under 112(l).

F. Emissions Reporting

The state is requiring an annual emissions inventory by each July 1 which describes the emissions of the past calendar year. These inventories will include the source's administrative information (name, address, etc.), a description of the facilities and hours of operation, nature and amounts of fuel, rate of discharge, and time duration of contaminant emissions. Sources are responsible to report the actual quantity of emissions, including documentation of the measurement method, for any single regulated air pollutant in a greater quantity than one ton and for any combination of regulated air pollutants in a quantity greater than two and one-half tons.

G. Construction Permits

With respect to preconstruction review, Title 129 contains provisions to ensure that any construction or

modification of stationary sources will not interfere with the attainment or maintenance of a national ambient air quality standard, which meets the requirements of 40 CFR 51.160(b)(2). Title 129 also requires that sources which have failed to obtain a construction permit must meet the standards which would have been imposed if a permit had been issued. This requirement is in addition to the requirement to obtain a permit. Therefore, a source could be in violation of the requirement to obtain a permit, and, to the extent identifiable, any emission standards which would be included in a permit for the source.

With respect to preconstruction requirements in nonattainment areas, the state has added provisions in accordance with the 1990 Amendments to part D of the Act. With respect to section 173(a)(4), Title 129 provides that no permit will be issued if the source is not in compliance with the requirements of the SIP, or if the Administrator determines that the Implementation Plan is not being adequately implemented. Pursuant to 173(a)(5), the source must also complete an analysis of alternative sites, sizes, production processes, and environmental control techniques which demonstrate that the proposed construction outweighs the environmental and social costs imposed by the source. The state has demonstrated its commitment to continue submitting information from permits to the RACT/BACT/LAER Clearinghouse as required in section 173(d) in its SIP request cover letter. EPA has determined that the state meets the relevant requirements for nonattainment areas as identified in section 173 of the Act.

H. Sulfur Compound Emissions; Existing Sources Emissions Standards

The state has modified this portion of the SIP in response to EPA's request to improve enforceability. Previously, heat input was determined from the aggregate of all fuel-burning equipment on the source's premises. Subsequently, all fuel-burning equipment had to be tested to determine compliance with the plantwide SO_2 emission limitation. Routine or even periodic compliance determinations were expensive, and in some cases impracticable for sites with more than two or three combustion units. The state now establishes source-specific or source-category SO_2 emission limitations, using only the heat input contribution from sulfur-bearing fuels.

This modification conforms to the enforceability criteria methods contained in EPA's SO_2 Guideline document, EPA–452/R–94–008, chapter 8.

I. Open Fires Prohibitions and Exceptions

Several modifications have been made to the SIP with respect to open fires. In title 129 the word ''vegetation'' replaces the word ''trees'' to describe those materials that should be destroyed to prevent a fire hazard.

The previous SIP granted exceptions to open burning for land clearing of roads and construction activity. As an enforcement matter, the state found its previous language did not restrict the types of materials that could be burned pursuant to construction activity.

Thus, the state has promulgated two distinct types of open burning: one for land clearing for roads and one for construction activity. This allows the state to restrict construction burning to trees, brush, vegetation, and untreated lumber which strengthens the SIP.

With written permission of the director, the state now allows the burning of straw used as a winter insulating cover on agricultural products. This activity is concentrated in the Scottsbluff area, which is monitored for PM_{10}. In the past a variance was granted for this annual activity, but the state now adopts this new provision to recognize a practice which has never led to a violation of a PM_{10} standard.

The state has also modified the SIP to allow the burning of materials after cleanup from a natural disaster, again with written permission of the director. The director will ensure that these activities do not contribute to violations of any air quality standards.

J. Duty to Prevent Escape of Dust

The state has modified the SIP so that normal farming practices, on-farm crop drying and handling, and animal feeding activities will not be regulated by the state so long as reasonable and practical measures are exercised to limit particulate matter. This is consistent with EPA's rural fugitive dust policy. This policy states that EPA does not require SIP control strategies due to contributions of activities such as windblown dust, dirt, and agricultural practices.

K. Emission Sources; Testing; Monitoring

The SIP adds several new test methods by incorporating by reference EPA provisions that were published since the last modification to the SIP. The SIP also specifies that test methods may also include those approved for the source which are in their respective permit; any contained in the SIP; any issued under construction permits, PSD permits, or pursuant to an MACT standard; or any other method approved under title 129. Inclusion of these comprehensive test methods affords the state a wide range of references to address all types of emissions and sources within the state.

L. Title 115

This title describes the rules of practice and procedure within Nebraska with respect to hearings, contested cases, and rulemaking. To a large extent, EPA does not regulate the manner in which Nebraska conducts its internal proceedings except to the degree which the rules in title 115 may affect the implementation of the SIP. Hence, the rules of title 115 are approvable as part of this request for a revision to the SIP.

EPA Action

EPA is taking final action to approve revisions submitted February 16, 1994, for the state of Nebraska.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in the **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities

with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

The Office of Management and Budget has exempted these actions from review under Executive Order 12866.

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 March 6, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 10, 1994.

William Rice,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart CC—Nebraska

2. Section 52.1420 is amended by adding paragraph (c)(41) to read as follows:

§ 52.1420 Identification of plan.

* * * * *

(c) * * *

(41) On February 16, 1994, the Director of the Nebraska Department of Environmental Quality submitted revisions to the State Implementation Plan (SIP) to create a Class II operating permit program, Part D NSR rule changes, SO_2 rule corrections, and the use of enhanced monitoring.

(i) Incorporation by reference.

(A) Revised rules ''Title 129—Nebraska Air Quality Regulations,'' effective December 17, 1993. This revision approves all chapters except for parts of Chapters 5, 7, 8, 9, 10, 11, 12, 13, 14, and 15 that pertain to Class I permits; Chapter 17 as it relates to hazardous air pollutants; and excludes Chapters 23, 25, 26, 27, 28, 29, and 31.

(B) ''Title 115—Rules of Practice and Procedure,'' effective August 8, 1993, and submitted as an SIP revision on February 16, 1994.

(ii) Additional material.

(A) Letter from Nebraska to EPA Region VII dated February 16, 1994, regarding a commitment to submit information to the RACT/BACT/LAER Clearinghouse as required in section 173(d) of the Clean Air Act.

(B) Letter from Nebraska to EPA Region VII dated June 10, 1994, regarding the availability of state operating permits to EPA and specified emissions limitations in permits.

(C) Letter from Nebraska to EPA Region VII dated November 7, 1994, regarding the increase in New Source Review (NSR) permitting thresholds.

[FR Doc. 95–00146 Filed 1–3–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[IN43–3–6716; FRL–5133–4]

Approval and Promulgation of Implementation Plan; State of Indiana

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On July 19, 1994, the United States Environmental Protection Agency (USEPA) published direct final rulemaking approving a 1990 base year ozone precursor emissions inventory for Lake and Porter Counties, Indiana as a revision to the Indiana State Implementation Plan (SIP). On the same day (July 19, 1994), a proposed rule was also published which established a 30-day public comment period, noting that, if adverse comments were received regarding the direct final rule, the USEPA would withdraw the direct final rule and publish an additional final rule to address the public comments. Adverse comments were received during the public comment period and the USEPA published a withdrawal of the direct final rule on September 15, 1994. This revised final rule summarizes the public comments and USEPA's responses and finalizes the approval of the 1990 base year ozone precursor emissions inventory for Lake and Porter Counties as a revision to the Indiana SIP.

EFFECTIVE DATE: This action will be effective February 3, 1995.

ADDRESSES: Copies of the SIP revision, public comments and USEPA's response are available for inspection at the following address: (It is recommended that you telephone Edward Doty at (312) 886–6057 before visiting the Region 5 office.) United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Edward Doty, Regulation Development Section (AR–18J), Regulation Development Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 886–6057.

SUPPLEMENTARY INFORMATION:

I. Background Information

The 1990 base year emissions inventory for Lake and Porter Counties, Indiana discussed in this rule was submitted by the Indiana Department of Environmental Management (IDEM) on January 15, 1994. The emissions inventory submittal covers the emissions of Volatile Organic Compounds (VOC), Oxides of Nitrogen (NOx), and Carbon Monoxide (CO) for the Indiana portion of the Chicago-Northwest Indiana ozone nonattainment area. In addition to emissions from the nonattainment area, the submittal also covers VOC, NOx, and CO emissions from major stationary sources (with actual emissions for any of the covered pollutants equal to or in excess of 100 tons per year) in all counties located within 25 miles of the ozone nonattainment area.

On July 19, 1994 (59 FR 36700), USEPA published a direct final rule approving the emissions inventory as a revision of the Indiana ozone SIP. On the same day, USEPA published a proposed rule noting that if adverse comments were received regarding the direct final rule, the USEPA would withdraw the direct final rule and

publish another final rule addressing the public comments. Adverse comments were received regarding the direct final rule and USEPA, therefore, withdrew the direct final rule on September 15, 1994 (59 FR 47263). This final rule addresses the comments that were received during the public comment period and announces USEPA's final action regarding the base year ozone precursor emissions inventory for Lake and Porter Counties.

II. Public Comments

The following discussion summarizes the comments received regarding the emissions inventory. All comments were submitted by a single commentor, Bethlehem Steel Corporation.

Comment

Bethlehem Steel Corporation notes that the base year emissions inventory developed by IDEM used a VOC emission factor of 1.246 pounds VOC per ton of sinter to estimate sinter plant windbox emissions for all steel plants except Inland Steel (an emission factor of 0.359 pounds VOC per ton of sinter was used for the sinter plant windbox emissions at this steel plant). This produced a total VOC emission rate of 43,480.5 pounds per day (3,783.77 tons per year) for this source category. Behlehem Steel Corporation notes that sampling of Bethlehem Steel Corporation's sinter plant exhaust emissions, conducted to support the preparation of 1993 emission statements, has led to the conclusion that the actual VOC emission rate for Bethlehem Steel Corporation's sinter plant windbox exhausts is approximately 0.15 pounds VOC per ton of sinter. Given the significant magnitude of the VOC emissions from this source category, the commentor believes the emissions inventory must be changed to take into account the measured emission rate. The commentor further recommends that other steel plants, in particular US Steel, should be requested to forward measured sinter plant windbox emission rates to further correct the base year emissions inventory.

Comment

Bethlehem Steel Corporation raises a concern regarding the conversion of calculated annual emissions to ozone season daily emissions. The commentor notes that, for sinter plants with single sinter strands operating over 90 percent of the available hours in a year, the assumption that the non-operating hours each year are outside of the ozone season day is a reasonable assumption. However, for the US Steel plant, where each sinter plant is operated only 1,877 hours per year, the assumption that each plant emits 4.66 times its annual average daily emissions during the ozone season will significantly overestimate the likely ozone season daily emissions. It is unlikely that all three of US Steel's sinter plants would be operated on the same schedule during the ozone season. If actual 1990 ozone season operating information can not be obtained from US Steel, the three sinter plants should be treated as one for the purposes of calculating ozone season daily emissions. This would change the total ozone season daily VOC emission rate (using the 1.246 pounds VOC per ton of sinter emission rate) from 27,285 pounds per day to 9,039.3 pounds per day without reducing the reported annual emissions.

Comment

Bethlehem Steel Corporation notes that the VOC emissions from coke oven underfiring have been measured for the Bethlehem Steel facility and it has been found that the level of VOC emissions depend significantly upon the condition of the individual battery. The 1993 VOC emission rate for this source type was found to be 46.43 tons per year. IDEM's 1990 base year emissions inventory credits these sources with emissions of 2,339 tons VOC per year. The commentor believes that similar overestimates are present for other coke oven batteries addressed in the emissions inventory.

Comment

Bethlehem Steel Corporation notes that other changes may be needed in the inventory based on actual emission measurements. Due to the shortness of the comment period for the direct final/proposed rulemaking, however, the commentor was unable to itemize other recommended emission changes. Bethlehem Steel Corporation recommends that the USEPA consider using actual emission measurements instead of assumed emission rates for the steel plants.

Based on the above comments, Bethlehem Steel Corporation recommends that the USEPA disapprove Indiana's 1990 base year ozone precursor emissions inventory for Lake and Porter Counties.

III. State Response

The IDEM has prepared responses to the comments presented above and has requested that these responses be included in the record of this rulemaking. The following summarizes IDEM's responses as conveyed in a September 12, 1994 letter from IDEM to the USEPA.

First, IDEM notes that the 1990 base year emission inventory was intended by the Clean Air Act (Act) to be a ''snapshot in time'', a tool to be used by IDEM as it develops its attainment strategies. Bethlehem Steel's information, if accurate, may not be relevant to the 1990 baseline operating conditions. Particularly for a facility as complicated as a steel mill, it is extremely difficult to establish a perfect inventory for a specific time period. When IDEM submitted the final inventory in January 1994, it represented IDEM's best effort, developed in accordance with USEPA procedures and incorporating an opportunity for public comment, for quantifying 1990 emissions. IDEM believes that the emission factors that it used for sinter plants were the appropriate ones based on USEPA guidance.

Second, although the base year inventory was the subject of public review with opportunity for public comments during the State's development process, the commentor did not raise the above issues. A properly noticed public hearing was held in Gary, Indiana on July 1, 1993. The commentor did not make any comments during that hearing, nor were written comments filed by the State's comment deadline of July 9, 1993. If the commentor had major concerns about the accuracy of the inventory developed by IDEM, the State's public comment process was the appropriate mechanism for raising those concerns.

Third, the primary issue raised by the commentor relates to the emission factors used to quantify emissions from one operation at the mill—the sinter plant. The method used to quantify the emissions from this particular type of facility is an extremely complex issue, for which there is considerable uncertainty, variation in time, and difference of approach.

IDEM has commenced a State rulemaking to develop controls for emissions of VOC. As part of that rulemaking process, IDEM will directly raise the issue of emission factors with the steel companies and other interested parties. The results of that effort may lead IDEM to request a change in the 1990 base year emissions inventory. IDEM, however, does not at this time have sufficient information to conclude that changes in the 1990 base year emissions inventory are appropriate.

IV. USEPA Response

With regard to the commentor's comments summarized in II. above, it is

noted that the USEPA encourages the use of site-specific emissions data if data acceptable to the State and the USEPA are available. The commentor should present all available sampling data and a discussion of the sampling procedures to the State for review. It is the State and not the USEPA that must determine whether these data warrant a revision to the 1990 base year emissions inventory. As noted in the State's response, the State may have some concerns regarding the acceptability of the source-specific emission factors for the sinter plant windboxes. Nonetheless, the State is encouraged to consider the data presented by the commentor, and, if appropriate, to revise the 1990 base year emissions inventory through a SIP revision request (the emission adjustments recommended by the commentor, if accepted by the State, would warrant a SIP revision). The rulemaking process that has been initiated by the State is the appropriate forum for resolving this issue and should be completed in a timeframe that minimizes the need for related SIP revisions in the State's reasonable further progress and demonstration of attainment SIP currently under development by the State.

The USEPA agrees with the State that the most appropriate time to have adjusted the emissions inventory was during the State's public review period. Requesting disapproval of the emissions inventory based on data collected more than one year after the public review period is needlessly disruptive to the State's SIP development process. USEPA agrees with the State that the State used the best available data at the time the emissions inventory was prepared. Therefore, the USEPA disagrees with the commentor that the emissions inventory should be disapproved now that new data may have come to light. The USEPA fully expects some base year emission inventories to be revised after-the-fact through follow-up quality assurance checks and input of improved emission factors. Many States are pursuing such emissions inventory improvements. The USEPA does not wish to discourage such quality assurance efforts through disapproval of emission inventory SIP revisions based on emission factor changes made after the adoption and submittal of the base year emission inventories.

With regard to the conversion of annual emissions to ozone season daily emissions, IDEM assumed for this source category that emissions occur uniformly throughout the year. Therefore, no distinction was made between hourly emission rates within the summer months (the months assumed to be associated with high ozone concentrations) and those from other months. Given the lack of season-specific and day-specific data, the approach taken by the State is acceptable. The fewer hours of sinter plant operation during 1990 at the US Steel facility would logically have led to higher per hour emission rates when annual emissions were converted to daily emissions by dividing the annual emissions by the hours of operation. IDEM's conversion procedures are acceptable to the USEPA.

V. Final Rulemaking Action

The State of Indiana has met the requirements of the Act for the submittal of a base year ozone precursor emissions inventory. The USEPA approves Indiana's 1990 base year ozone precursor emissions inventory for Lake and Porter Counties. It is noted, however, that the State of Indiana will consider the issues raised by Bethlehem Steel Corporation, and may, dependent on the extent of the revisions needed in the emissions inventory, submit another base year emissions inventory SIP revision request in the future.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The SIP approvals under section 110 and subchapter I, part D, of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids the USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976).

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 March 6, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: December 23, 1994.

Valdas V. Adamkus,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart P—Indiana

2. Section 52.777 is amended by adding paragraph (j) to read as follows:

§ 52.777 Control strategy: Photochemical oxidants (hydrocarbons).

* * * * *

(j) The base year ozone precursor emission inventory requirement of section 182(a)(1) of the Clean Air Act, as amended in 1990, has been satisfied for Lake and Porter Counties, Indiana.

[FR Doc. 95–148 Filed 1–3–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[PP 3F4169 and FAP 3H5655/R2090; FRL–4922–8]

RIN 2070–AB78

Pesticide Tolerance for Imidacloprid; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Correction.

SUMMARY: This document corrects a typographical error for a time-limited pesticide tolerance for the insecticide imidacloprid on cotton seed.

EFFECTIVE DATE: January 4, 1995.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis H. Edwards, Jr., Product Manager (PM 19), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-3686.

SUPPLEMENTARY INFORMATION: In FR Doc. 94-29501 in the **Federal Register** of November 30, 1994 (59 FR 61277), the following correction to a typographical error is made at page 61278 in the middle column: In § 180.472(b), the date ''November 17, 1994'' is corrected to read ''November 17, 1996''. The document's preamble states that the intended date is November 17, 1996.

List of Subjects in 40 CFR Parts 180, 185, and 186

Environmental protection, Administrative practice and procedure, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 20, 1994.

Lois Rossi,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–151 Filed 1–3–95; 8:45 am]

BILLING CODE 6560–50–F

Proposed Rules

Federal Register
Vol. 60, No. 2
Wednesday, January 4, 1995

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 75

[Docket No. LS–94–011]

RIN 0581–AB35

Increase Seed Inspection Fees

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) is proposing to increase the applicable fees for testing seed under the voluntary seed inspection and certification program. The fees which will be paid by the users of the service are intended to generate sufficient revenue to offset the costs of operating the program.

DATES: Written comments must be received by February 3, 1995.

ADDRESSES: Send written comments in duplicate to James P. Triplitt, Chief, Seed Regulatory and Testing Branch, Livestock and Seed Division, Agricultural Marketing Service, USDA, Building 506, BARC-E, Beltsville, Maryland 20705. Comments should reference Docket No. LS–94–011. Comments received will be made available for public inspection during regular business hours.

FOR FURTHER INFORMATION CONTACT: James P. Triplitt, Chief, Seed Regulatory and Testing Branch, 301–504–9430.

SUPPLEMENTARY INFORMATION: This rule has been determined to be not significant for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget.

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

This action was also reviewed under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Administrator of AMS has determined that this action will not have a substantial economic impact on a significant number of small entities. Although some seed growers and shippers using this service may be classified as small entities, the effect of the increased fees will be minimal. Under the proposal the cost for a typical test will increase from about $57.00 to approximately $64.50. It is estimated that the total revenue generated by this increase will be approximately $15,000 annually.

Background

This proposed rule is authorized by the Agricultural Marketing Act (AMA) of 1946, as amended, 7 USC 1621 et seq. Section 203(h) of the AMA authorizes the Secretary to inspect and certify the quality of agricultural products and collect such fees as reasonable to cover the cost of service rendered. This revision is to increase the fees to be charged for the inspection and certification of quality of agricultural and vegetable seeds to reflect the Department's cost of operating the program.

The purpose of the voluntary program is to promote efficient, orderly marketing of seeds, and assist in the development of new and expanding markets. Under the program samples of agricultural and vegetable seeds submitted are tested for factors such as purity and germination at the request of the applicant for the service. In addition, grain samples, submitted at the applicant's request, by the Grain Inspection, Packers and Stockyards Administration are examined for the presence of certain weed and crop seed. A Federal Seed Analysis Certificate is issued giving the test results. Of 1650 samples tested in fiscal year 1994 most represented seed or grain scheduled for export. Many importing countries require a Federal Seed Analysis Certificate on United States seed.

After reviewing the current costs the department has determined that the present fee is insufficient to cover the department's cost of operation. The fee increase is necessary to offset increased salaries and fringe benefits to personnel, as well as increases in rent and other costs of operating the program. Based on the Agency's analysis of the increased costs, AMS is proposing to increase the hourly rate for voluntary service from $35.40 to $40.40 per hour. In addition, the cost of issuing additional duplicate original certificates will be increased from $8.85 to $10.10. Approximately one-fourth hour is required to issue additional duplicate certificates.

List of Subjects in 7 CFR Part 75

Administrative practice and procedure, Agricultural commodities, Reporting and record keeping requirements, Seeds, Vegetables.

For reasons set forth in the preamble, it is proposed that 7 CFR Part 75 be amended as follows:

PART 75—REGULATIONS FOR INSPECTION AND CERTIFICATION OF QUALITY OF AGRICULTURAL AND VEGETABLE SEEDS.

1. The authority citation for Part 75 continues to read as follows:

Authority: Secs. 203, 205, 60 Stat. 1087, and 1090, as amended (7 U.S.C. 1622 and 1624).

§ 75.41 [Amended]

2. § 75.41 is amended by removing ''$35.40'' and adding in its place ''$40.40''.

§ 75.47 [Amended]

3. § 75.47 is amended by removing ''$8.85'' and adding in its place ''$10.10''.

Dated: December 28, 1994.

Lon Hatamiya,

Administrator, Agricultural Marketing Service.

[FR Doc. 95–153 Filed 1–3–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 1050

[DA–95–09]

Milk in the Central Illinois Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This document invites written comments on a proposal to suspend the aggregate limits on the amount of producer milk that may be diverted

from a pool plant under the Central Illinois Federal milk marketing order for an indefinite period beginning with the month of January 1995. The proposal was submitted by Prairie Farms Dairy, Inc., and Associated Milk Producers, Inc. Both cooperatives contend the suspension is necessary to ensure that producers historically associated with the market will continue to have their milk pooled under the order without having to move milk uneconomically.

DATES: Comments are due no later than January 11, 1995.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

The Department is issuing this proposed rule in conformance with Executive Order 12866.

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

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act, the suspension of the following provision of the order regulating the handling of milk in the Central Illinois marketing area is being considered for an indefinite period commencing on January 1, 1995:

In § 1050.13(d)(2), the words ''*: Provided,* That the total quantity of producer milk diverted does not exceed 35 percent of the physical receipts of producer milk at the handler's pool plant during the month, exclusive of milk of producers who are members of a cooperative association that is diverting milk and the milk of other producers that is diverted pursuant to paragraph (d)(3) of this section''.

All persons desiring to submit written data, views or arguments about the proposed suspension should send two copies of their views to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures before the requested suspension is to be effective.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed action would suspend the aggregate limit on the amount of milk that may be diverted from a pool plant during the months of August through April. At the present time, for each day's production of a producer's milk that is delivered to a pool plant during these months, another day's production may be diverted to a nonpool plant. However, in addition to this individual producer limit, there is an aggregate limit of 35 percent that applies to the total amount of milk that a pool plant operator may divert during the month. The language proposed to be suspended would remove this 35 percent aggregate limit, effectively increasing the aggregate limit to 50 percent of a pool plant operator's total producer receipts during the month.

In their letter requesting the suspension, Prairie Farms Dairy, Inc. (Prairie Farms) and the Morning Glory Farms region of Associated Milk Producers, Inc. (AMPI), explained that Prairie Farms now operates the only distributing plant under the Central Illinois order (Order 50) and that both cooperatives supply milk to this plant, which is located in Peoria. For several reasons, including the availability of abundant quantities of good quality feed, milk production is up substantially in recent months compared to the same period of last year. This has resulted in both cooperatives having to divert additional milk to nearby unregulated manufacturing plants on weekends, holidays, and other days when the Peoria plant is not in operation.

Prairie Farms and AMPI state that the proposed suspension would allow them to continue to balance the supply of milk needed at the Peoria plant while, at the same time, eliminating the need to haul milk in and out of the plant merely to keep their milk pooled under the order.

Accordingly, it may be appropriate to suspend the aforesaid provision for an indefinite period commencing on January 1, 1995.

List of Subjects in 7 CFR Part 1032

Milk marketing orders.

The authority citation for 7 CFR Part 1050 continues to read as follows:

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

Dated: December 28, 1994.

Lon Hatamiya,

Administrator, Agricultural Marketing Service.

[FR Doc. 95–154 Filed 1–3–95; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 1280

[No. LS–94–014]

Sheep Promotion, Research, and Information Order

AGENCY: Agricultural Marketing Service; USDA.

ACTION: Notice: Invitation to submit proposals.

SUMMARY: Interested parties are invited to submit proposals for a sheep and wool promotion, research, education, and information order, or parts of an order as provided for by the Sheep

Promotion, Research, and Information Act (Act). The Act authorizes a national industry-funded program for sheep and wool promotion, research, education, and information.

Interested parties are also invited to submit views on whether it would be beneficial to hold a public meeting during an ensuing comment period to discuss the proposals.

DATES: Proposals must be received by February 3, 1995.

ADDRESSES: Proposals (two copies) should be mailed to: Ralph L. Tapp, Chief, Marketing Programs Branch, Livestock and Seed Division, Agricultural Marketing Service (AMS), USDA, Room 2624–S; P.O. Box 96456; Washington, D.C. 20090–6456.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp on 202/720–1115.

SUPPLEMENTARY INFORMATION: The Sheep Promotion, Research, and Information Act, enacted on October 22, 1994, authorizes the establishment of a national sheep and wool promotion, research, education, and information program financed through assessments on both domestic and imported sheep and sheep products, including exports of live sheep and greasy wool. The nationwide program will be administered by the National Sheep Promotion, Research, and Information Board, composed of 120 members, including 85 producers, 10 feeders and 25 importers, who will be appointed by the Secretary of Agriculture to represent units. The term units means each State, group of States, or class designation that is represented on the Board.

To establish the initial Board, the Secretary will solicit nominations from eligible producer, feeder, and importer organizations. Organizations that represent the producer segment of the industry must meet certain criteria in order to be certified to submit nominations for that industry segment. If no producer organization is certified to submit nominations for a State unit, or if no feeder or importer organization is eligible to submit nominations for those industry segments, then the Secretary shall use other means to secure nominations for appointment to the Board.

Funds will be collected by assessing domestic producers, feeders, and exporters 1 cent per pound of live sheep sold and 2 cents per pound of greasy wool sold. Importers will be assessed: (1) 1 cent per pound of live sheep imported; (2) the equivalent of 1 cent per pound of live sheep for sheep products imported; and (3) 2 cents per pound of degreased wool or the equivalent of degreased wool for wool and wool products imported. Imported raw wool is exempt from assessments. All assessment rates may be adjusted in accordance with applicable provisions of the Act.

Because the Act permits an association of producers to request the issuance of an order and to submit a proposal, the Department of Agriculture will receive written proposals for a sheep and wool promotion, research, education, and information order, or for various provisions thereof. Proposals must be submitted in duplicate to the Marketing Programs Branch, Livestock and Seed Division; AMS, USDA, Room 2624–S; P.O. Box 96456, Washington, D.C. 20090–6456, and must be received in the Department by February 3, 1995.

Proposals should include: (1) the proposed order language; (2) a description of the proposed order provisions; (3) an explanation of the nature and purpose of the proposed order provisions; (4) references to the section of the Sheep Promotion, Research, and Information Act that would be implemented by an order provision; and (5) any other pertinent information concerning a proposal that would assist in the process of implementing the Act.

The Department will only publish for public comment in the **Federal Register** proposals that are consistent with the Act.

List of Subjects in 7 CFR Part 1280

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Sheep and sheep products, Reporting and recordkeeping requirements.

Authority: The Sheep Promotion, Research, and Information Act; 7 U.S.C. 7101–7111.

Dated: December 29, 1994.

Lon Hatamiya,

Administrator, Agricultural Marketing Service.

[FR Doc. 95–155 Filed 1–3–95; 8:45 am]

BILLING CODE 3410–02–P

Commodity Credit Corporation

7 CFR Part 1421

RIN 0560–AD66

1995-Crop Peanut Minimum CCC Export Edible Sales Price for Additional Peanuts

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule sets forth a proposed minimum Commodity Credit Corporation (CCC) sales price for 1995 crop of additional peanuts for export edible use of $400 per short ton (st).

DATES: coments must be received by January 17, 1995, in order to be assured of consideration.

ADDRESSES: Comments must be mailed to Robert Miller, Consolidated Farm Service Agency (CFSA), United States Department of Agriculture, room 3739, South Building, PO Box 2415, Washington, DC 20013–2415. All written submissions will be made available for public inspection from 8:15 a.m. to 4:45 p.m., Monday through Friday, in room 3739, South Building, 14th and Independence Avenue SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Miller, CFSA, USDA, room 3739, South Building, P.O. Box 2415, Washington, DC 20013–2415, telephone 202–720–7477.

SUPPLEMENTARY INFORMATION: .

Executive Order 12866

This proposed rule has been determined to be significant and was reviewed by OMB under Executive Order 12866.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies, are Commodity Loans and Purchases—10.051.

Executive Order 12778

This rule has been reviewed in accordance with Executive Order 12778. The provisions of this rule do not preempt Sate law, are not retroactive, and do not involve administrative appeals.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable because 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 of these determinations.

Paperwork Reduction Act

The amendments to 7 CFR part 1421 set forth in this proposed rule do not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35.

Discussion

This proposed rule would amend 7 CFR part 1421 to set forth the minimum CCC sales price for the 1995 crop of

additional peanuts sold for export edible use.

A minimum price, at which additional peanuts owned or controlled by CCC may be sold for use as edible peanuts in export markets, is expected to be announced on or before February 15, 1995, at the same time that the quota and additional peanut support levels for the 1995 crop are announced. The announcement of the price provides producers and handlers with information to facilitate the negotiation of private contracts for the sale of additional peanuts.

An overly high price may create an unrealistic expectation of high pool dividends and discourage private sales. If too low, the minimum price could have an unnecessary, adverse effect on prices paid to producers for additional peanuts.

It is proposed that the minimum price at which the 1995 crop of additional peanuts owned or controlled by CCC may be sold for use as edible peanuts in export markets be established at $400 per st, the same as for the 1994 crop. This level will maintain exports while providing price stability for additional peanuts sold under contract. It will also assure handlers that CCC will not undercut their export contracting efforts with offerings of additional peanuts for export edible sale below the minimum sales price.

Accordingly, comments are requested with respect to these foregoing issues.

List of Subjects 7 CFR Part 1421

Grains, Loan programs—agriculture, Oilseeds, Peanuts, Price support programs, Reporting and recordkeeping requirements, Soybeans, Surety bonds, Warehouses.

Accordingly, it is proposed that 7 CFR part 1421 be amended as follows:

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

3. The authority citation for 7 CFR part 1421 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1441z, 1444f–1, 1445b–3a, 1445c–3, 1445e, and 1446f; 15 U.S.C. 714b and 714c.

4. Section 1421.27 is amended by:

A. Removing the period at the end of paragraph (a)(2)(iv) and inserting a semicolon followed by the work ''and'' in its place, and

B. Adding a new paragraph (a)(2)(v):

§ 1421.27 Producer-handler purchases of additional peanuts pledged as collateral for a loan.

(a) * * *

(2) * * *

(v) The minimum CCC sales price for additional peanuts sold for export edible use for the 1995 crop is $400 per short ton.

* * * * *

Signed at Washington, DC, on December 27, 1994.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 95–00132 Filed 1–3–95; 8:45 am]

BILLING CODE 3410–05–P–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–ANE–31]

Airworthiness Directives; Aerospace Lighting Corporation Power Units and Power Supplies

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Aerospace Lighting Corporation (ALC) lamp connectors and fluorescent lamps, that currently requires an inspection, and adjustment or replacement of improperly installed, damaged, or improperly configured lamp connectors and fluorescent lamps used in cabin fluorescent lighting systems. This action would add an optional replacement of certain power units and power supplies with improved design parts as terminating action to the repetitive inspections. This proposal is prompted by the availability of improved design components. The actions specified by the proposed AD are intended to prevent smoke, fire, electrical shock, and possible electromagnetic interference caused by high voltage arcing in the cabin which, if undetected, could result in personal hazard or loss of the aircraft.

DATES: Comments must be received by March 6, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–ANE–31, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Aerospace Lighting Corporation, 101–8 Colin Drive, Holbrook, NY 11741; telephone (516) 563–6400, fax (516) 563–8781. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Bradford Chin, Electronics Engineer, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 181 South Franklin Ave., Room 202, Valley Stream, NY 11581; telephone (516) 791–6427, fax (516) 791–9024.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 94–ANE–31.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–ANE–31, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On June 14, 1990, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 90–14–06,

Amendment 39–6640 (55 FR 27457, July 3, 1990), applicable to Aerospace Lighting Corporation (ALC) lamp connectors, Part Number (P/N) 31.85.1.A, and Series 66 fluorescent lamps. That AD requires initial and repetitive inspections, and adjustment or replacement of improperly installed, damaged, or improperly configured lamp connectors and fluorescent lamps used in cabin fluorescent lighting systems. That action was prompted by reports of cabin lighting systems that are not properly installed, are damaged, or are improperly configured. That condition, if not corrected, could result in smoke, fire, electrical shock, and possible electromagnetic interference caused by high voltage arcing in the cabin which, if undetected, could result in personal hazard or loss of the aircraft.

Since the issuance of that AD, the manufacturer has developed improved design protected power units that have an internal safety circuit which monitors output voltage produced. If the output voltage increases as a result of a fault condition, the safety circuit will activate and cause the input power to the protected power unit to be disconnected. In addition, the manufacturer has developed improved design protected power supplies that have system output faults which react by preventing output power production. The protected power supplies are equipped with circuit output protection circuitry that monitors the protected power supply's output circuit and will immediately shut down the protected power supply if a fault condition occurs.

The FAA has reviewed and approved the technical contents of the following ALC Installation Instructions (II): AL–11023M, Revision A, dated May 20, 1994; AL–11024M, dated March 15, 1992; and AL–11025M, dated March 15, 1992. These II's describe procedures for installing improved design protected power units, and protected power supplies, as applicable. In addition, ALC has issued Information Bulletin No. IB 90–001, which describes procedures for initial and repetitive inspections of the cabin fluorescent lighting system.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 90–14–06 to continue to require an inspection, and adjustment or replacement of improperly installed, damaged, or improperly configured lamp connectors and fluorescent lamps used in cabin fluorescent lighting systems. This proposed AD adds an optional replacement of power units, and power supplies and dimmers, with improved design protected power units, and protected power supplies, as applicable. Installation of these protected power units and protected power supplies constitutes terminating action to the repetitive inspections.

The FAA estimates that it would take approximately 3 work hours per power unit or power supply to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $5000 per power unit or power supply. Based on these figures, the impact of the proposed AD on U.S. operators is estimated to be $5,165 per power unit or power supply.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [AMENDED]

2. Section 39.13 is amended by removing amendment 39–6640 (55 FR 27457, July 3, 1990) and by adding a new airworthiness directive to read as follows:

Aerospace Lighting Corporation: Docket No. 94–ANE–31. Supersedes AD 90–14–06, Amendment 39–6640.

Applicability: Aerospace Lighting Corporation (ALC) lamp connectors, Part Number (P/N) 31.85.1.A; Series 66 fluorescent lamps; power units, P/N's TR–991, TR–992, AL–0546, and AL–0514; and power supplies, P/N's 1895D and AL–0598. These products are utilized in cabin fluorescent lighting systems, and are installed on, but not limited to, the following aircraft: Airbus Industrie Model A310; Avion Marcel Dassault Breguet Aviation Model Falcon 10; Beech Aircraft Corporation Model 400A; Boeing Airplane Company Models 727, 737, 747, and 757; British Aerospace Model HS.125–600A and –700A; Canadair Ltd. Models CL–600–1A11, CL–600–2A12, and CL–600–2B16; Cessna Aircraft Company Models 550 and 560; Dassault Aviation Models Mystere-Falcon 20 and 50; Empresa Brasileira de Aeronauctica S/A Model Embraer EMB–120; Gulfstream Aerospace Corporation Models G–159, G–1159, G–1159A, and G-IV; Israel Aircraft Industrie, Ltd. Models 1124 and 1125; Jetstream Aircraft, Ltd. Jetstream Model 310; Learjet Corporation Models Learjet 35 and 36; Saab Aircraft AB Model Saab 340A; and Sikorsky Aircraft Division Model S–76A.

Compliance: Required as indicated, unless accomplished previously.

To prevent smoke, fire, electrical shock, and possible electromagnetic interference caused by high voltage arcing in the cabin which, if undetected, could result in personal hazard or loss of the aircraft, accomplish the following:

(a) Within 30 calendar days of the effective date of this airworthiness directive (AD), accomplish the following:

(1) Inspect the cabin fluorescent lighting system in accordance with ALC Information Bulletin No. IB 90–001, paragraph IV. ''Fluorescent Lighting System Components Identification and Inspection Procedure,'' subparagraphs B.1, 2., 3., 5., 6., and 7.

(2) After completing the inspection above in paragraph (a)(1) of this AD, any part(s) found to be damaged or improperly configured, perform the removal and replacement procedures in accordance paragraph IV. B.4, 8., and 9., as required, of ALC Information Bulletin No. IB 90–00.

(b) Within 5 flights or 10 flight hours, whichever occurs first, of a cabin fluorescent lighting system components failure, repeat the removal and replacement procedures of paragraph (a)(2) of this AD.

(c) An alternative method of compliance with paragraphs (a)(1), (a)(2), and (b) of this AD would be to turn the fluorescent lighting system off and to placard the system to prevent unintentional activation.

(d) Replacement of the following ALC parts, in accordance with the following instructions, constitutes terminating action to

the inspections required by paragraph (b) of this AD. These actions are optional:

(1) Remove power units, P/N TR–991 or AL–0546, and replace with protected power units, P/N AL–5117, in accordance with ALC Installation Instruction (II) No. AL–11025M, dated March 15, 1992.

(2) Remove power units, P/N TR–992 or AL–0514, and replace with protected power unit, P/N AL–5112, in accordance with ALC II No. AL–11024M, dated March 15, 1992.

(3) Remove power supplies, P/N 18–95D, and dimmer, P/N 22–311, and replace with protected power supply, P/N AL–5118, in accordance with ALC II No. AL–11023M, Revision A, dated May 20, 1994.

(4) Remove power supplies, P/N AL–0598, and dimmer, P/N AL–0542, and replace with protected power supply, P/N AL–5130, in accordance with ALC II No. AL–11023M, Revision A, dated May 20, 1994.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the New York Aircraft Certification Office.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on December 27, 1994.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–58 Filed 1–3–95; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 94–NM–193–AD]

Airworthiness Directives; Airbus Model A300, A310, and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Airbus Model A300, A310, and A300–600 series airplanes. This proposal would require repetitive mechanical and electrical inspections to detect chafing of electrical wiring; and repair or replacement of discrepant parts, and repositioning the looms. This proposal is prompted by reports of wire chafing in the forward avionic compartment. The actions specified by the proposed AD are intended to prevent such chafing, which may lead to a short in the electrical circuits at the 104VU panel; this condition could result in unwanted depressurization, loss of wing de-icing, and loss of in-flight engine restart capability.

DATES: Comments must be received by February 13, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–193–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 94–NM–193–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–193–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on all Airbus Model A300, A310, and A300–600 series airplanes. The DGAC advises that it has received several reports of wire chafing in the forward avionic compartment. Investigation revealed that the chafing occurred at the top of the 104VU panel between the extending ladder in the avionic compartment (in the stowed position) and the 104VU wire bundles through the brown plastic cover; this cover protects the upper part of the 103VU/104VU/105VU panels. Investigation revealed that this chafing occurs when some of the attachment rivets of the ladder support shaft are sheared due to mishandling of the ladder. Model A310 and A300–600 series airplanes have significantly more wires in the subject area than Model A300 series airplanes. These wire bundles are sometimes positioned very close to the ladder. As a result, if the protective cover is damaged or torn, there is a risk of the cable chafing, even without rivet damage, for Model A310 and A300–600 series airplanes. This risk is greater in a case of cable bundle ballooning or when tie-wraps are loose or missing.

Chafing of the electrical wire cables between the upper part of the 104VU panel and the extending ladder in the avionic compartment, if not corrected, may lead to a short in the electrical circuits at the 104VU panel, which could result in unwanted depressurization, loss of wing de-icing, and loss of in-flight engine restart capability.

Airbus has issued All Operators Telex AOT 24–05, Revision 1, dated June 7, 1994, which describes procedures for repetitive mechanical and electrical inspections to detect discrepancies, repair or replacement of discrepant

parts, and repositioning the looms. The mechanical inspections include an inspection of the protective cover, ladder support shaft, and attaching rivets. The electrical inspection includes an inspection of the electrical bundles, and an inspection to determine adequacy of clearance between the looms and the ladder. The DGAC classified this all operators telex as mandatory and issued French airworthiness directive 94–187–163(B), dated August 17, 1994, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive mechanical and electrical inspections to detect discrepancies; and repair or replacement of discrepant parts, and repositioning the looms. The actions would be required to be accomplished in accordance with the all operators telex described previously.

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this requirement.

The FAA estimates that 69 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $4,140, or $60 per airplane, per inspection cycle.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 94–NM–193–AD.

Applicability: All Model A300, A310, and A300–600 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent unwanted depressurization, loss of wing de-icing, and loss of in-flight engine restart capability, accomplish the following:

(a) Within 600 flight hours or 6 months after the effective date of this AD, whichever occurs first, accomplish paragraphs (a)(1) and (a)(2) of this AD.

(1) Perform mechanical inspections to detect discrepancies, in accordance with paragraph 4.2.1. of Airbus All Operators Telex AOT 24–05, Revision 1, dated June 7, 1994. Repeat the inspection thereafter at intervals not to exceed 1,050 flight hours. If any discrepancy is detected, prior to further flight, repair or replace discrepant parts, and perform an electrical inspection in accordance with the AOT.

(2) Perform an electrical inspection to detect discrepancies, in accordance with paragraph 4.2.2. of Airbus All Operators Telex AOT 24–05, Revision 1, dated June 7, 1994. Repeat the inspection thereafter at intervals not to exceed 18 months. If any discrepancy is detected, prior to further flight, repair or replace discrepant parts, and reposition the looms, in accordance with the AOT.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators

shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 28, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–59 Filed 1–3–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–NM–197–AD]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes, that currently requires repetitive visual inspections to detect cracking in the elevator rear spar and repair, if necessary. It also provides for an optional terminating action for the repetitive inspections. This action would add an additional one-time inspection of certain airplanes for clearance between the shear plate and the radii of the rear spar; and would provide additional instructions for the terminating action. This proposal is prompted by reports of cracking in the rear spar of the elevator at the hinge fitting attachment of the control tab and reports of loose hinge fittings at the crack locations. The actions specified by the proposed AD are intended to prevent cracking of the elevator rear spar, which could cause excessive free play of the elevator control tab and possible tab flutter, and could result in loss of controllability of the airplane.

DATES: Comments must be received by March 1, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No.94–NM–197–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.–

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Walter Sippel, Aerospace Engineer, Airframe Branch, ANM–121S, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2774; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited–

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. –

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket. –

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 94–NM–197–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs–

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–197–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On October 30, 1987, the FAA issued AD 87–24–03, amendment 39–5769 (52 FR 43742, November 16, 1987), applicable to certain Boeing Model 727 series airplanes, to require repetitive visual inspection to detect cracking of the elevator rear spar, and repair, if necessary. That action was prompted by reports of cracking in the elevator rear spar at the control tab hinge fitting attachment, and loose hinge fittings at the crack locations. The requirements of that AD are intended to detect cracking in the elevator rear spar which, if not corrected, could lead to loss of controllability of the airplane. –

Since the issuance of that AD, there have been several reports of cracking in the radii at the tab hinge fitting of the rear spar, and reports of loose hinge fittings at the crack locations on airplanes that were modified in accordance with Boeing Service Bulletin 727–55–0087, dated June 20, 1986. The modification described in that Boeing service bulletin was considered to be terminating action for the repetitive inspection requirements of AD 87–24–03. The manufacturer has advised that the cause of this cracking is attributable to continued contact between the shear plate and the radii of the elevator rear spar. Cracking in this area, if not corrected, could cause excessive free play of the elevator control tab and possible tab flutter, and could result in loss of controllability of the airplane.–

The FAA has reviewed and approved Boeing Service Bulletin 727–55–0087, Revision 1, dated March 31, 1994, which describes procedures for continued repetitive visual inspections to detect cracking of the elevator rear spar, and repair, if necessary. For airplanes that have been modified in accordance with Boeing Service Bulletin727–55–0087, dated June 20, 1986, the service bulletin describes procedures for an additional one-time inspection to ensure clearance between the shear plate and the rear spar radii. Additionally, for all other airplanes, Revision 1 of this service bulletin provides instructions for accomplishing an improved modification or repair that would eliminate the need for repetitive inspections.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 87–24–03 to require continued repetitive visual inspections to detect cracking of the elevator rear spar, and repair, if necessary. However,

this proposal would add a one-time inspection to determine clearance between the shear plate and the rear spar radii of the elevator rear spar on airplanes on which the terminating action specified in AD 87–24–03 has been accomplished. The proposed AD would also provide for an improved modification or repair of the elevator rear spar, which, if accomplished, would provide terminating action for the repetitive visual inspection requirements. The actions would be required to be accomplished in accordance with the service bulletin described previously.–

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this requirement. –

There are approximately 1,531 Model 727 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,102 airplanes of U.S. registry would be affected by this proposed AD.–

The inspections of the elevator rear spar that were previously required by AD 87–24–03, and retained in this proposal, take approximately 12 work hours per airplane to accomplish, at an average of $60 per work hour. Based on these figures, the total cost impact of this inspection requirement on U.S. operators of previously modified airplanes is estimated to be $793,440, or $720 per airplane, per inspection cycle.

The one-time inspection of previously modified airplanes that would be required by this proposal would take approximately 12 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of the one-time inspection requirement of this proposal on U.S. operators of previously modified airplanes is estimated to be $720 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment –

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–5769 (52 FR 43742), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 94–NM–197–AD. Supersedes AD 87–24–03, Amendment 39–5769.

Applicability: Model 727 series airplanes, line numbers 1 through 1719 inclusive, certificated in any category.–

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD. –

Compliance: Required as indicated, unless accomplished previously.

To prevent excessive free play of the elevator control tab and possible tab flutter, accomplish the following: –

(a) For airplanes on which the modification described in Boeing Service Bulletin 727–55–0087, dated June 20, 1986 (the terminating action specified in AD 87–24–03, amendment 39–5769), has not been accomplished: Prior to the accumulation of 27,000 flight hours or within the next 4,000 flight hours after December 24, 1987 (the effective date of AD 87–24–03 amendment 39–5769), whichever occurs later, perform a visual inspection of the elevator rear spar to detect cracking, in accordance with Boeing Service Bulletin 727–55–0087, dated June 20, 1986, or Revision 1, dated March 31, 1994. Repeat the inspection thereafter at intervals not to exceed 4,000 flight hours. After the effective date of this AD, only Revision 1 of this service bulletin shall be used.

(b) If any crack is detected during any inspection required by paragraph (a) of this AD, accomplish paragraphs (b)(1) and (b)(2) of this AD in accordance with Boeing Service Bulletin 727–55–0087, dated June 20, 1986, or Revision 1, dated March 31, 1994. After the effective date of this AD, only Revision 1 of this service bulletin shall be used.–

(1) If any crack is found that is within the specified limits in Part 1 of the Accomplishment Instructions of the service bulletin, accomplish paragraphs (b)(1)(i) and (b)(1)(ii) of this AD.

(i) Prior to further flight, perform a time-limited repair by stop drilling the crack in accordance with the service bulletin. Within 1,600 flight hours after the repair, repeat the inspection required by paragraph (a) of this AD. If any crack growth is detected after the stop drilling, repair prior to further flight, in accordance with Part III of the Accomplishment Instructions of the service bulletin.

(ii) Prior to the accumulation of 3,200 flight hours after stop drilling, repair the elevator rear spar in accordance with Part III of the Accomplishment Instructions of the service bulletin.

(2) If any crack is found that is outside the specified limits of Part 1 of the Accomplishment Instructions of the service bulletin, prior to further flight, repair in accordance with Part III of the Accomplishment Instructions of the service bulletin.

(c) For airplanes on which the modification specified in Boeing Service Bulletin 727–55–0087, dated June 20, 1986, (terminating action specified in AD 87–24–03, amendment 39–5769) has been accomplished : Prior to the accumulation of 1,600 flight hours, or within 12 months after the effective date of this AD, whichever occurs later, conduct an inspection to ensure proper clearance between the shear plate and the radii of the rear spar, in accordance with Boeing Service Bulletin 727–55–0087, Revision 1, dated March 31, 1994.–

(1) If clearance is within the limits specified in Part I of the Accomplishment Instructions of the service bulletin, no further action is required by this AD.

(2) If clearance is outside the limits specified in Part I of the Accomplishment Instructions of the service bulletin, prior to further flight, reaccomplish the repair in accordance with Part III of the service bulletin. After modification, no further action is required by this AD.–

(d) Modification or repair of the elevator rear spar in accordance with Part II or Part III of the Accomplishment Instructions of Boeing Service Bulletin 727–55–0087, Revision 1, dated March 31, 1994, constitutes terminating action for the requirements required of this AD.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.–

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 28, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–60 Filed 1–3–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–NM–155–AD]

Airworthiness Directives; Canadair Model CL–600–2B19 (Regional Jet Series 100) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to certain Canadair Model CL–600–2B19 series airplanes. That action would have required removal of certain shear pins and installation of stronger shear pins on the elevator flutter dampers. The proposed actions were intended to prevent problems associated with undampened vibration of the elevators in normal cruise conditions. Since the issuance of the NPRM, the Federal Aviation Administration (FAA) has issued other rulemaking that positively addresses the identified unsafe condition. Accordingly, the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: Franco Pieri, Aerospace Engineer, Airframe Branch, ANE–172, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791–6220; fax (516) 791–9024.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to certain Canadair Model CL–600–2B19 series airplanes, was published as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on October 11, 1994 (59 FR 51392). The proposed rule would have required removal of certain shear pins from the elevator flutter dampers, and installation of stronger shear pins. That action was originally prompted by a report of sheared-off shear pins found on one airplane's elevator dampers. The proposed actions were intended to prevent undampened vibration of the elevators in normal cruise conditions, resulting from the failure of the shear pins installed in the elevator flutter dampers; when combined with hydraulic system failures, this condition can result in reduced controllability of the airplane. –

Since the issuance of that NPRM, Transport Canada Aviation, which is the airworthiness authority for Canada, has notified the FAA that the lugs of the elevator flutter damper sheared off of two Model CL–600–2B19 series airplanes. Investigation revealed that the shear pins that were installed in the elevator flutter dampers on these incident airplanes were the stronger pins, whose installation would have been required by the NPRM. The stronger shear pins caused the loads to transfer to the lugs of the elevator flutter damper, which subsequently failed under the increased loads. –

Consequently, on November 17, 1994, the FAA issued AD 94–24–02, amendment 39–9075 (59 FR 60888, November 29, 1994), applicable to certain Canadair Model CL–600–2B19 series airplanes, to require the removal of all elevator flutter dampers. It also requires revisions to the FAA-approved Airplane Flight Manual (AFM) that advise the flight crew of the need to perform daily checks to verify proper operation of the elevator control system, and that restrict altitude and airspeed of the airplane. –

The FAA has determined that the actions currently required by AD 94–24–02 positively address the previously identified unsafe condition. Removal of the elevator flutter dampers from these airplanes and the daily checks of the elevator control system will ensure that the risk of jamming or restricting movement of the elevator is eliminated. Additionally, the operational limitation will enable the pilot to avert conditions of potential flutter. –

In light of the fact that other rulemaking adequately addresses the identified unsafe condition, the FAA finds that the previously proposed action is unwarranted and hereby withdraws the NPRM.–

Withdrawal of this NPRM constitutes only such action, and does not preclude the agency from issuing another notice in the future, nor does it commit the agency to any course of action in the future.–

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore, is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39–

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal–

Accordingly, the notice of proposed rulemaking, Docket 94–NM–155–AD, published in the **Federal Register** on October 11, 1994 (59 FR 51392), is withdrawn.

Issued in Renton, Washington, on December 28, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–61 Filed 1–3–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–114–AD]

Airworthiness Directives; McDonnell Douglas Model DC–10 Series Airplanes and Model KC–10A (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10 series airplanes and Model KC–10A (military) airplanes. This proposal would require various modifications of the flight controls, hydraulic power systems, and landing gear. This proposal is prompted by a recommendation by the Systems Review Task Force (SRTF) for accomplishment of certain modifications that will enhance the controllability of these airplanes in the unlikely event of catastrophic damage to all hydraulics systems. The actions specified by the proposed AD are intended to ensure airplane survivability in the event of damage to fully powered flight control systems.

DATES: Comments must be received by March 1, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–114–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, Mail Code 2–98. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Mauricio J. Kuttler, Aerospace Engineer, Systems and Equipment Branch, ANM–131L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5355; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket. –

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 94–NM–114–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs–

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–114–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion–

In July 1989, a McDonnell Douglas Model DC–10–30 series airplane was involved in an accident in Sioux City, Iowa, resulting in the deaths of 110 passengers and one crewmember. The National Transportation Safety Board (NTSB) identified the catastrophic disintegration of the stage 1 fan disk of one of the engines as a probable cause of the accident. The resulting debris damaged the hydraulic systems that power the flight controls, resulting in the loss of virtually all control capability.–

Following the accident, the Administrator of the Federal Aviation Administration convened a Systems Review Task Force (SRTF) to investigate means for enhancing airplane survivability following damage to fully powered flight control systems. The SRTF formed working groups to perform these investigations for specific airplane models to determine what actions could be effective in protecting other transport category airplanes with powered flight control systems from similar engine or systems failures.–

The SRTF working group assigned to review Model DC–10 series airplanes completed its review of the Model DC–10 design, including existing service bulletins, and issued a report recommending accomplishment of certain modifications described in 12 Model DC–10 service bulletins. A copy of the report is contained in the Rules Docket for this AD action.

Explanation of Relevant Service Documents–

The FAA has reviewed and approved the 12 McDonnell Douglas DC–10 Service Bulletins recommended for accomplishment by the SRTF working group. Accomplishment of the modifications specified in these service bulletins will enhance the controllability of the airplane in the unlikely event of catastrophic damage to all three hydraulic systems in the tail area of the airplane.

Seven of the 12 service bulletins discussed previously describe procedures for various modifications of the flight controls:–

1. McDonnell Douglas DC–10 Service Bulletin 27–71, Revision 1, dated February 14, 1973, was issued in response to reports of failures of the piping of the hydraulic system of the horizontal stabilizer on Model DC–10 series airplanes that had accumulated as few as 70 flight hours. The failures were attributed to rapid release of the trim control handles of the stabilizer, which resulted in pressure surges that were abnormally high in the hydraulic system of the stabilizer. Continued high pressure surges and externally induced vibrations could result in fatigue failure of the hydraulic piping. These conditions, if not corrected, could result in the loss of fluid, which could render the affected system inoperative.–

The service bulletin describes procedures for installation of surge damper assemblies and new piping assemblies in hydraulic systems 1 and 3 of the horizontal stabilizer. Installation of the dampers and piping will ensure that high pressure surges are absorbed and will prevent pipe failures.–

2. McDonnell Douglas DC–10 Service Bulletin 27–120, dated February 10, 1975, describes procedures for modification and reidentification of the

trim hydraulic motor assembly of the horizontal stabilizer. Accomplishment of the modification will minimize the possibility of fatigue failure of the motor case screws and shuttle valve screws. (The service bulletin references Sperry Rand Corporation, Vickers Division, Service Bulletin 390017–27–2, dated December 2, 1974, as an additional source of service information.) Failure of the motor case screws and/or failure of the shuttle valve screws, if not corrected, could result in loss of hydraulic system fluid. Failure of two shuttle valve screws could cause the shuttle valve to separate from the trim motor.–

3. McDonnell Douglas DC–10 Service Bulletin 27–152, dated August 9, 1976, was issued in response to a report of inoperative horizontal stabilizer trim due to disengagement of the torsional coupling of the drive system on Model DC–10 series airplanes that had accumulated approximately 4,100 flight hours. In addition, during fleet inspections, loose retaining nuts and locking clips were found on these airplanes; the torsional nut did not engage adequately to provide locking action. The inoperative horizontal stabilizer trim was attributed to failure of the locking clip to prevent the retaining nut of the torsional coupling from rotating and becoming loose. This condition could result in the retaining nut becoming loose and allowing disengagement of the torsional coupling. This condition, if not corrected, could result in the loss of horizontal stabilizer trim capability.

The service bulletin describes procedures for replacing the existing locking clip on the torsional coupling of the horizontal stabilizer with a new nut retainer of an improved design. Accomplishment of this modification will minimize the possibility of the torsional nut becoming loose.–

4. McDonnell Douglas DC–10 Service Bulletin 27–181, Revision 1, dated May 28, 1981, was issued in response to reports of failure of the differential drive shear pin in the horizontal stabilizer drive system. These failures occurred during takeoff climb on Model DC–10 series airplanes that had accumulated between 4 and 4,201 flight hours. Investigation revealed that these failures were caused by bending fatigue of the shear pin due to a loose fit. Failure of the shear pin could result in an inoperative horizontal stabilizer drive system. This condition, if not corrected, could result in reduced controllability of the airplane.–

The service bulletin describes procedures for installation of a modified chain drive unit on the horizontal stabilizer. The new unit incorporates a larger shear pin with a single shear point having a larger diameter with less constraint. Accomplishment of this modification will increase the reliability of the drive assembly.–

5. McDonnell Douglas DC–10 Service Bulletin 27–201, dated December 30, 1985, was issued in response to a report of in-flight loss of hydraulic systems 1 and 2 shortly after takeoff of a Model DC–10 series airplane. Investigation revealed that the loss of hydraulic systems was caused by blowout of the number 6 tire after gear retraction. The blowout deflected the keel web structure, which ruptured hydraulic pipes to the flap lock valves and caused rapid loss of fluid. This condition, if not corrected, could result in loss of operation of the hydraulic system.–

The service bulletin describes procedures for replacement of the hydraulic pipe assemblies of the flap lock valve with new pipe assemblies having increased flexibility and strength. Installation of these pipe assemblies will minimize the possibility of rupture of the pipe assemblies during events such as those described previously.–

6. McDonnell Douglas DC–10 Service Bulletin 27–208, dated September 5, 1989, was issued in response to reports of cracking of the end caps of the trim control valve of the horizontal stabilizer on Model DC–10 series airplanes that had accumulated between 9,800 and 16,000 flight hours. Investigation revealed that fatigue cracking initiated from inside the radius of the end cap. Such fatigue cracking, if not corrected, could result in loss of hydraulic fluid and eventual shutdown of the hydraulic system.–

The service bulletin describes procedures for replacement of eight end caps of the trim control valve of the horizontal stabilizer with new end caps having a larger inside radius. Replacement of the end caps will minimize the possibility of cracking of the end caps.–

7. McDonnell Douglas DC–10 Service Bulletin 27–209, dated October 20, 1989, was issued in response to reports of failure of the chain drive fuse of the horizontal stabilizer on Model DC–10 series airplanes that had accumulated between 4,000 and 18,000 flight hours. Investigation revealed that a fuse pin within the chain drive unit had sheared due to loose nuts on the shaft assembly. These conditions, if not corrected, could result in the horizontal stabilizer drive system becoming inoperative.–

The service bulletin describes procedures for inspecting the nuts on the shaft assembly for looseness, proper orientation, excess backlash, and engagement of the washer locking tab; and replacing the fuse pin, adjusting backlash, and properly positioning and tightening the nuts, if necessary. Replacing the fuse pin and tightening the nuts will minimize the possibility of failure of the chain drive fuse of the horizontal stabilizer.–

Two of the 12 service bulletins describe procedures for modifications of certain hydraulic power systems:–

8. McDonnell Douglas DC–10 Service Bulletin 29–109, Revision 1, dated September 22, 1978, was issued in response to reports of rapid rise in temperature in hydraulic system 3 subsequent to the loss of hydraulic fluid in hydraulic system 1 or 2. Investigation revealed that a shutoff valve on the reversible motor pump may fail on one side of the reversible motor pump and that failure may go undetected. This failure poses a problem if a failure occurs in the opposite hydraulic system that causes total loss of that system's fluid. If a valve fails in the open position on one side and fluid is lost from the opposite hydraulic system, the reversible motor pump will rotate at maximum rpm (limited by the flow control). This condition, if not corrected, could result in a rise in temperature in the opposite hydraulic system, which may necessitate limited use of the engine-drive pumps on that hydraulic system.–

The service bulletin describes procedures for installation of an indication system that will allow the flight crew to immediately detect an inoperative shutoff valve on the reversible motor pump. The installation of the indication system involves installing two pressure switches on the reversible motor pumps; installing a ground stud, two relays, and receptacles on the center compartment electrical rack; replacing the 6-post terminal strip in the wheel well of the right main landing gear with an 8-post terminal strip; installing an annunciator legend on the flight engineer's annunciator panel; installing a circuit breaker and replacing the nameplate on the flight engineer's circuit breaker panel; revising the failure indication wiring on the constant speed drive; and installing indication wiring and associated clamps and brackets on the reversible motor pump.–

9. McDonnell Douglas DC–10 Service Bulletin 29–125, Revision 2, dated October 23, 1987, was issued in response to reports of complete loss of fluid from the number 3 hydraulic system. The fluid loss was caused by a ruptured hi-pressure switch on the hydraulic case drain. This condition, if

not corrected, could result in the loss of function of the hydraulic system.

The service bulletin describes procedures for modification of the main hydraulic power system. The modification involves replacing the hi-pressure switches on the hydraulic case drain on engine numbers 1, 2, and 3 with plugs; removing one relay and one receptacle on the aft relay panel of the equipment rack; replacing the existing legend in position 8 on the flight engineer's annunciator panel with a blank legend; and revising the wiring for indicating the aircraft hydraulic temperature and pressure. Accomplishment of this modification will minimize the possibility of loss of hydraulic fluid.–

Three of the 12 service bulletins describe procedures for modifications of the landing gear:–

10. McDonnell Douglas DC–10 Service Bulletin 32–134, dated March 22, 1977, was issued in response to reports of damage to the electrical and hydraulic installations of the aft antiskid manifold on the main landing gear. The damage resulted from blown tire fragments and debris, which rendered the antiskid system inoperative and, in one case, ruptured a hydraulic pipe. Failure of the pipe, if not corrected, could cause hydraulic system numbers 1 or 3 to become inoperative due to the loss of hydraulic fluid.–

The service bulletin describes procedures for modification of the aft antiskid manifold on the left and right main landing gear. The modification entails installing a protective shield and associated brackets on the aft antiskid manifold. Accomplishment of this modification will minimize the possibility of damage to the aft antiskid manifold.–

11. McDonnell Douglas DC–10 Service Bulletin 32–143, dated August 8, 1978, was issued in response to reports of damage to the brake piping that is routed between the antiskid manifolds and the swivel glands of the main landing gear. This damage occurred as a result of the impact of debris following failure of a tire on the main landing gear. A ruptured antiskid return pipe could result in loss of fluid from the affected antiskid system during application of the brakes. A single failure of a pressure pipe will limit brake performance on a single system. Failure of brake pressure pipes in both systems, if not corrected, could result in complete loss of braking capability.–

The service bulletin describes procedures for installation of protective shields over the brake and the antiskid piping located on the aft side of the left and right main landing gear. Accomplishment of this modification will minimize the possibility of brake pressure and damage to the antiskid return piping caused by failure of a tire on the main landing gear.–

12. McDonnell Douglas DC–10 Service Bulletin 32–157, Revision 1, dated October 29, 1980, was issued in response to a report of damage to a support bracket on the aileron trim cable and to a flight control mixer in the wheel well of the centerline landing gear. Investigation revealed that the damage was caused by the impact of a tire tread that was thrown into the open area created by the aft doors on the centerline landing gear when the landing gear is in the down position. This condition, if not corrected, could result in damage to components located in the wheel well of that landing gear.–

The service bulletin describes procedures for installing a doubler on the web assembly between the wheel wells of the center landing gear and the right main landing gear; installing a fiberglass deflector assembly on the shock strut of the centerline landing gear; replacing the pressure gage manifold of the shock strut; and installing an instruction plate and adding precaution instruction markings in the wheel well of the right main landing gear and on the forward door of the center landing gear. Accomplishment of this modification will minimize the possibility of damage to components in the wheel well of the centerline landing gear caused by a thrown tire tread or other debris.

Explanation of the Proposed Rule–

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require various modifications of the flight controls, hydraulic power systems, and landing gear. The actions would be required to be accomplished in accordance with the McDonnell Douglas service bulletins described previously.–

The FAA is continuing to review the recommendations of the SRTF working group for these airplanes and may consider further rulemaking based on those recommendations.–

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this requirement.

Cost Impact–

There are approximately 427 Model DC–10 series airplanes and Model KC–10A (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 254 airplanes of U.S. registry would be affected by this proposed AD.–

Approximate work hours to accomplish the proposed actions and costs for required parts are listed in the following table. The average labor rate is $60 per work hour.

Service bulletin No.–	Estimated work hours–	Parts cost per airplane	Total cost per airplane
27–71	5	(1)	$300.00
27–120 ..	3	$68.00	248.00
27–152 ..	1	278.00	338.00
27–181 ..	5	431.00	731.00
27–201 ..	10	7,943.00	8,543.00
27–208 ..	5	3,704.00	4,004.00
27–209 ..	9	N/A	540.00
29–109 ..	101	713.00	6,773.00
29–125 ..	4	498.00	738.00
32–134 ..	3	2,034.00	2,214.00
32–143 ..	3	649.00	829.00
32–157 ..	6	46,463.00	46,823.00

[1] Required parts would be supplied by the manufacturer at no cost to operators.–

Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $18,308,574, or $72,081 per airplane.–

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.–

The number of required work hours, as indicated above, is presented as if the accomplishment of the actions proposed in this AD were to be conducted as ''stand alone'' actions. However, the 24-month compliance time specified in paragraph (a) of this proposed AD should allow ample time for the actions to be accomplished coincidentally with scheduled major airplane inspection and maintenance activities, thereby minimizing the costs associated with special airplane scheduling.–

Further, the FAA recognizes that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. Because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining safe aircraft, most prudent operators would accomplish the required actions even if they were not required to do so by the AD. –

A full cost-benefit analysis has not been accomplished for this proposed AD. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-beneficial. When the FAA, as in this proposed AD, makes a finding of an unsafe condition, this means that the original cost-beneficial level of safety is no longer being achieved and that the proposed actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost-beneficial, a full cost-benefit analysis for this proposed AD would be redundant and unnecessary.

Regulatory Impact

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39–

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment–

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]–

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 94–NM–114–AD.–

Applicability: Model DC–10–10, –10F, –15, –30, –30F, –40, and –40F series airplanes and Model KC–10A (military) airplanes; as listed in the following McDonnell Douglas DC–10 service bulletins; certificated in any category:–

Service bulletin No. –	Revision level –	Date issued–
27–71–	1 –	February 14, 1973.–
27–120– ..	Original– .	February 10, 1975.–
27–152– ..	Original– .	August 9, 1976.–
27–181– ..	1 –	May 28, 1981.–
27–201– ..	Original– .	December 30, 1985.–
27–208– ..	Original– .	September 5, 1989.–
27–209– ..	Original– .	October 20, 1989.–
29–109– ..	1–	September 22, 1978.–
29–125– ..	2–	October 23, 1987.–
32–134– ..	Original– .	March 22, 1977.–
32–143– ..	Original– .	August 8, 1978.–
32–157– ..	1–	October 29, 1980.–

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously. –

To ensure airplane survivability in the event of damage to fully powered flight control systems, accomplish the following:–

(a) Within 24 months after the effective date of this AD, modify the flight controls, hydraulic power systems, and landing gear in accordance with paragraphs (a)(1) through (a)(12) of this AD, as applicable.–

(1) For airplanes listed in McDonnell Douglas DC–10 Service Bulletin 27–71, Revision 1, dated February 14, 1973: Install surge damper assemblies and new piping assemblies in hydraulic systems 1 and 3 of the horizontal stabilizer in accordance with the service bulletin. As of the effective date of this AD, no person shall install a pipe assembly, part number AJK7004–641, –642, –643, –644, –645, –646, –647, or –648 on any airplane. As of the effective date of this AD, no person shall install a valve assembly, part number AJG7041–5515 or –5517, on any airplane unless that assembly has been modified in accordance with the service bulletin.–

(2) For airplanes listed in McDonnell Douglas DC–10 Service Bulletin 27–120, dated February 10, 1975: Modify and reidentify the trim hydraulic motor assembly of the horizontal stabilizer in accordance with the service bulletin.

Note 2: The McDonnell Douglas service bulletin references Sperry Rand Corporation, Vickers Division, Service Bulletin 390017–27–2, dated December 2, 1974, as an additional source of service information.

(3) For airplanes listed in McDonnell Douglas DC–10 Service Bulletin 27–152, dated August 9, 1976: Replace the existing retaining nut locking clip on the torsional coupling of the horizontal stabilizer with a new retaining nut locking clip in accordance with the service bulletin. As of the effective date of this AD, no person shall install a locking clip or nut retainer, part number AJH7259–1, on any airplane.–

(4) For airplanes listed in McDonnell Douglas DC–10 Service Bulletin 27–181, Revision 1, dated May 28, 1981: Install a modified chain drive unit on the horizontal stabilizer in accordance with the service bulletin. As of the effective date of this AD, no person shall install a chain drive unit assembly, part number AJH7337–1 or AJH7337–501; pin, part number AJH7343–1; housing assembly, part number AJH7345–1; shaft, part number AJH7075–1 or –501; or decal, part number AJH7347–1; on any airplane.–

(5) For airplanes listed in McDonnell Douglas DC–10 Service Bulletin 27–201, dated December 30, 1985: Replace the hydraulic pipe assemblies of the flap lock valve with new pipe assemblies in accordance with the service bulletin. As of the effective date of this AD, no person shall

install a pipe assembly, part number AYK7002–876, –877, –878, –879, –880, and –881; AYK7136–1; and AYK7137–1; on any airplane.–

(6) For airplanes listed in McDonnell Douglas DC–10 Service Bulletin 27–208, dated September 5, 1989: Replace eight end caps of the trim control valve of the horizontal stabilizer with new end caps having a larger inside radius, in accordance with the service bulletin. As of the effective date of this AD, no person shall install an end cap, part number AJG7020–503; or valve assembly, part number AJG7041–5535, –5533, –5531, –5529, –5527, –5525, –5523, –5521, –5519, –5517, –5515, –5513, –5511, –5509, –5507, –5505, –5503, –5501, or –5001; on any airplane.–

(7) For airplanes listed in McDonnell Douglas DC–10 Service Bulletin 27–209, dated October 20, 1989: Inspect the nuts on the shaft assembly for looseness, proper orientation, excess backlash, and engagement of the washer locking tab, in accordance with the service bulletin. As of the effective date of this AD, no person shall install a drive assembly, part number AJH7337–505, on any airplane unless that assembly has been modified in accordance with the service bulletin.–

(i) If no discrepancy is found, no further action is required by this paragraph.–

(ii) If any discrepancy is found, prior to further flight, replace the fuse pin, adjust backlash, and properly position and tighten the nuts in accordance with the service bulletin.–

(8) For airplanes listed in McDonnell Douglas Service Bulletin 29–109, Revision 1, dated September 22, 1978: Install an indication system on the reversible motor pump in accordance with the service bulletin. As of the effective date of this AD, no person shall install a nameplate, part number ABN7191–1124, –1125, –1126, –872, –873, –874, –878, or –1084; a support, part number 2394536–509; or a plate, part number 2710497–1–6; on any airplane.–

(9) For airplanes listed in McDonnell Douglas DC–10 Service Bulletin 29–125, Revision 2, dated October 23, 1987: Modify the main hydraulic power system in accordance with the service bulletin. As of the effective date of this AD, no person shall install an annunciator panel, part number 102200–268, or –274, on any airplane unless that panel has been modified in accordance with the service bulletin.–

(10) For airplanes listed in McDonnell Douglas DC–10 Service Bulletin 32–134, dated March 22, 1977: Modify the aft antiskid manifold on the left and right main landing gear in accordance with the service bulletin. As of the effective date of this AD, no person shall install a bracket, part number ARG7291–1, ARG7291–501,ARG7485–501, or ARG7485–502 on any airplane. As of the effective date of this AD, no person shall install a main landing gear assembly, part number ARG7393-(Any Configuration), on any airplane unless that assembly has been modified in accordance with the service bulletin.–

(11) For airplanes listed in McDonnell Douglas DC–10 Service Bulletin 32–143, dated August 8, 1978: Install protective shields over the brake and antiskid piping located on the aft side of the left and right main landing gear in accordance with the service bulletin. As of the effective date of this AD, no person shall install a support, part number ARG7551–1 or ARG7552–1, or bracket, part number AEP8009–25, on any airplane. As of the effective date of this AD, no person shall install a main landing gear assembly, part number ARG7393-(Any Configuration), on any airplane unless that assembly has been modified in accordance with the service bulletin.–

(12) For airplanes listed in McDonnell Douglas DC–10 Service Bulletin 32–157, Revision 1, dated October 29, 1980: Install a doubler on the web assembly between the wheel wells of the center landing gear and the right main landing gear; install a fiberglass deflector assembly on the shock strut of the centerline landing gear; replace the pressure gage manifold of the shock strut; and install an instruction plate and adding precaution instruction markings in the wheel well of the right main landing gear and on the forward door of the center landing gear in accordance with the service bulletin. As of the effective date of this AD, no person shall install a manifold, part number AYK7162–501, on any airplane.–

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished. Issued in Renton, Washington, on December 28, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–62 Filed 1–3–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–ANE–64]

Airworthiness Directives; Textron Lycoming LTS101 Series Turboshaft and LTP101 Series Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Textron Lycoming LTS101 series turboshaft and LTP101 series turboprop engines. This proposal would require replacement of cast material axial compressor rotors with wrought material axial compressor rotors that have improved fatigue characteristics and material properties. This proposal is prompted by 36 reports of axial compressor blade failures on cast rotors. The actions specified by the proposed AD are intended to prevent engine power loss and inflight engine shutdown.

DATES: Comments must be received by February 3, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–ANE–64, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The service information referenced in the proposed rule may be obtained from Textron Lycoming, 550 Main Street, Stratford, CT 06497. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Eugene Triozzi, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7131, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact

concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 94–ANE–64.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–ANE–64, 12 New England Executive Park, Burlington, MA 01803-5299.

Discussion

The Federal Aviation Administration (FAA) has determined that cast material axial compressor rotors in Textron Lycoming LTS101 series turboshaft and LTP101 series turboprop engines are susceptible to high cycle fatigue (HCF) failure. The FAA has received 36 reports of axial compressor blade failures on cast material axial compressor rotors installed in these engines. Metallurgical evaluation of these failed rotors found that cracks originated from porosity, inclusions, or pitting erosion. This condition, if not corrected, can result in engine power loss and inflight engine shutdown.

Statistical analysis shows decreasing failure probability with increasing rotor time in service. In addition, engine testing has identified blade excitation frequencies that occur within the engine operating range that could contribute to HCF failure. The wrought rotor design has improved material properties and increased HCF margin. This proposed airworthiness directive (AD) requires replacement of cast material axial compressor rotors with wrought material axial compressor rotors.

The FAA has reviewed and approved the technical contents of Textron Lycoming Service Bulletin No. LT 101–72–30–0088, Revision 5, dated September 25, 1992, that describes procedures and schedules for replacing cast material axial compressor rotors with wrought material axial compressor rotors.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require replacing cast material axial compressor rotors with wrought material axial compressor rotors that have improved fatigue characteristics and material properties. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 200 engines of the affected design in the worldwide fleet. The FAA estimates that 100 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 50 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $6,500 per engine, on a prorated cost basis. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $955,000.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Textron Lycoming: Docket No. 94–ANE–64.

Applicability: Textron Lycoming LTS101 turboshaft and LTP101 turboprop engines installed on but not limited to Aerospatiale AS 350 and SA366G, Bell 222, and Messerschmitt Bolkow-Blohm (MBB) BK117 helicopters; Piaggio P166–DL3 and Airtractor AT302 airplanes.

Compliance: Required as indicated, unless accomplished previously.

To prevent engine power loss and inflight engine shutdown, accomplish the following:

(a) Remove from service Part Numbers (P/N) 4–101–006–20, –21, –24, –26, –35, –36, and –40 cast material axial compressor rotors, as follows:

(1) For axial compressor rotors P/N 4–101–006–35 with serial number suffix ''E,'' remove in accordance with Textron Lycoming Service Bulletin (SB) No. LT 101–72–30–0088, Revision 5, dated September 25, 1992, within 50 hours time in service (TIS), or 60 days after the effective date of this AD, whichever occurs first.

(2) For axial compressor rotors P/N 4–101–006–35 with serial number suffix other than ''E,'' and all other axial compressor rotors with P/N listed in paragraph (a) of this airworthiness directive (AD), remove in accordance with Textron Lycoming SB No. LT 101–72–30–0088, Revision 5, dated September 25, 1992, as follows:

(i) For axial compressor rotors that have accumulated 600 hours or less TIS since new, remove within 100 hours TIS, or 120 days after the effective date of this AD, whichever occurs first.

(ii) For axial compressor rotors that have accumulated more than 600 but less than or equal to 1,200 hours TIS since new, remove within 300 hours TIS, or 240 days after the effective date of this AD, whichever occurs first.

(iii) For axial compressor rotors that have accumulated more than 1,200 but less than or equal to 2,400 hours TIS since new, remove within 600 hours TIS, or 360 days after the effective date of this AD, whichever occurs first.

(iv) For axial compressor rotors that have accumulated more than 2,400 hours TIS since new, remove within 1,200 hours TIS, or 720 days after the effective date of this AD, whichever occurs first.

(3) Replace with a serviceable wrought material axial compressor rotor P/N 4–101–006–28, –32, –39, or –41, as applicable, in accordance with Textron Lycoming SB No. LT 101–72–30–0088, Revision 5, dated September 25, 1992.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of

compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on December 27, 1994.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–64 Filed 1–3–95; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Parts 61 and 67

[Docket No. 27940]

Revision of Medical Standards and Certification Procedures and Duration of Medical Certificates

AGENCY: Department of Transportation, Federal Aviation Administration (FAA).

ACTION: Proposed rule; public meetings.

SUMMARY: On October 21, 1994, the FAA published in the **Federal Register** a notice that proposes an extensive amendment of Title 14 CFR part 67 and § 61.23 of the Federal Aviation Regulations (FAR). The notice also announced that the FAA would be holding public meetings for oral views. This notice announces the dates, times, locations, and procedures for the meetings.

DATES: Three public meetings are scheduled as follows:

1. January 20, 1995, Washington, DC, from 9 am to 4:30 pm.
2. January 26, 1995, Orlando, FL, from 9 am to 1 pm, 2 to 4:30 p.m., and 6:30 to 8:30 p.m.
3. January 31, 1995, Seattle, WA, from 9 am to 1 pm, 2 to 4:30 p.m., and 6:30 to 8:30 p.m.

ADDRESSES: The Washington meeting will be held at the FAA National Headquarters, 800 Independence Ave, SW. The Orlando meeting will be held at the Radisson Hotel Orlando Airport, 5555 Hazeltine Drive. The Seattle meeting will be held at the Doubletree Suites, 16500 Southcenter Parkway.

Special room rates for meeting attendees have been arranged at the following hotels.

- In Washington, the Holiday Inn Capitol, 550 C Street SW. (phone number 202–479–4000), is offering a room rate of $113. To take advantage of the rate, reservations must be made by January 13.
- In Orlando, The Radisson Hotel Orlando Airport (phone number 407–856–0100) is offering a room rate of $66. To take advantage of the rate, reservations must be made by January 16.
- In Seattle, the Doubletree Suites (phone number 206–575–8220) is offering a room rate of $79. To take advantage of the rate, reservations must be made by January 16.

Persons planning to take advantage of these special room rates should indicate, when making their hotel reservations, that they will be attending the FAA Public Hearing.

Persons unable to attend any of the meetings may mail their comments in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Rules Docket (AGC–200), Docket No. 27940, 800 Independence Avenue, SW., Washington, DC 20591. Pursuant to the Notice of Proposed Rulemaking, published in the October 21, 1994, **Federal Register**, written comments are invited and must be received on or before February 21, 1995.

FOR FURTHER INFORMATION CONTACT: Requests to present a statement at the meeting or questions regarding the logistics of the meeting should be directed to Effie Upshaw, Office of Rulemaking, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7626.

Questions concerning the subject matter of the meeting should be directed to Carol Thomas, telephone (202) 493–4076, or Dennis McEachen, telephone (202) 493–4075, Aeromedical Standards Branch, 800 Independence Avenue, SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Participation at the Meeting

Requests from persons who wish to present oral statements at any of the public meetings should be received by the FAA no later than January 13, 1995, for the Washington meeting, and January 23, 1995, for the Orlando and Seattle meetings. Such requests should be submitted to Effie Upshaw as listed in the section titled **FOR FURTHER INFORMATION CONTACT** and should include a written summary of oral remarks to be presented, and an estimate of time needed for the presentation. Requests received after the date specified above will be scheduled if time is available during the meeting; however, the name of those individuals may not appear on the written agenda.

The FAA will prepare an agenda of speakers who will be available at the meeting. Every effort will be made to accommodate as many speakers as possible, to include, if necessary, extending the meeting to an extra day at each location. In addition, the amount of time allocated to each speaker may be less than the amount of time requested.

Background

On October 21, the FAA published in the **Federal Register** a notice that proposes an extensive amendment of part 67 of the Federal Aviation Regulations to revise airman medical standards and medical certification procedures. The FAA, in part, proposes to implement a number of recommendations resulting from a comprehensive review of the medical standards announced in previous notices. As proposed, this revision of the standards for airman medical certification and associated administrative procedures of part 67 will better provide for safety in the aviation system and reflect current medical knowledge, practice, and terminology.

This notice also proposes to amend § 61.23 of part 61 to revise the duration of third-class airman medical certificates, based on the age of the airman, for operations requiring a private, recreational, or student pilot certificate.

Meeting Procedures

The following procedures are established to facilitate each meeting:

(1) There will be no admission fee or other charge to attend or to participate in the meeting. The meeting will be open to all persons who have requested in advance to present statements or who register on the day of the meeting subject to availability of space in the meeting room.

(2) There will be a morning and afternoon break, a lunch break, and where appropriate, a dinner break.

(3) The meeting may adjourn early if scheduled speakers complete their statements in less time than currently is scheduled for the meeting.

(4) An individual, whether speaking in a personal or a representative capacity on behalf of an organization, may be limited to a 10-minute statement. If possible, we will notify the speaker if additional time is available.

(5) The FAA will try to accommodate all speakers. If the available time does not permit this, speakers generally will be scheduled on a first-come-first-served basis. However, the FAA reserves the right to exclude some speakers if necessary to present a balance of viewpoints and issues.

(6) Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested at the above number 10 calendar days before the meeting.

(7) Representatives of the FAA will preside over the meeting. A panel of FAA personnel involved in this issue will be present.

(8) The meeting will be recorded by a court reporter. A transcript of the meeting and any material accepted by the panel during the meeting will be included in the public docket. Any person who is interested in purchasing a copy of the transcript should contact the court reporter directly. This information will be available at the meeting.

(9) The FAA will review and consider all material presented by participants at the meeting. Position papers or material presenting views or information related to the proposed rule changes may be accepted at the discretion of the presiding officer and subsequently placed in the public docket. The FAA requests that persons participating in the meeting provide 10 copies of all materials to be presented for distribution to the panel members; other copies may be provided to the audience at the discretion of the participant.

(10) Statements made by members of the meeting panel are intended to facilitate discussion of the issues or to clarify issues. Any statement made during the meeting by a member of the panel is not intended to be, and should not be construed as, a position of the FAA.

(11) The meeting is designed to solicit public views and more complete information on the proposed rule changes. Therefore, the meeting will be conducted in an informal and nonadversarial manner. No individual will be subject to cross examination by any other participant; however, panel members may ask questions to clarify a statement and to ensure a complete and accurate record.

Issued in Washington, DC, on December 23, 1994.

William H. Hark,

Deputy Federal Air Surgeon.

[FR Doc. 95–76 Filed 1–3–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ASO–25]

Proposed Establishment of Class E Airspace at Hampton, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Hamton, GA. A GPS RWY 24 Standard Instrument Approach Procedure (SIAP) has been developed for the Clayton County-Tara Field Airport. Controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for instrument flight rules (IFR) operations at the airport. If approved, the operating status of the airport will change from VFR to include IFR operations concurrent with publication of the SIAP.

DATES: Comments must be received on or before: February 9, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 94–ASO–25, Manager, System Management Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Michael J. Powderly, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 94–ASO–25.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the special closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch, ASO–530, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace extending upward from 700 feet above the surface (AGL) at Hampton, GA, to accommodate a GPS RWY 24 SIAP and for IFR operations at the Clayton County-Tara Field Airport. If approved, the operating status of the airport would change from VFR to include IFR operations concurrent with publication of the SIAP. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9B dated July 18, 1994 and effective September 16, 1994 which is incorporated by reference in CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994 and effective September 16, 1994, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet above the surface of the earth.

* * * * *

ASO GA E5 Hampton, GA [New]

Clayton County—Tara Field Airport, GA
(Lat. 33°23′21″ N, long. 84°19′55″ W)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Clayton County—Tara Field Airport; excluding that airspace within the Atlanta, GA, Peachtree City, GA, and Griffin, GA, Class E airspace areas.

* * * * *

Issued in College Park, Georgia, on December 16, 1994.

Walter E. Denley,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 95–00077 Filed 1–3–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI–42–94]

RIN 1545–AS85

Mark to Market for Dealers in Securities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the mark-to-market method of accounting for securities that is required to be used by a dealer in securities. The proposed regulations address the relationship between mark-to-market accounting and the accrual of stated interest and discount and the amortization of premium and between mark-to-market accounting and the tax treatment of bad debts. They also provide rules relating to certain dispositions and acquisitions of securities required to be marked to market, the exemption from mark-to-market treatment of securities in certain securitization transactions, and the identification requirements for obtaining exemption from mark-to-market treatment. Finally, these proposed regulations provide guidance relating to the exclusion of REMIC residual interests from the definition of security and to the relationship between the mark-to-market provisions and the integrated transaction rules in the proposed regulations on debt instruments with contingent payments. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by April 4, 1995. Outlines of oral comments to be presented at a public hearing scheduled for May 3, 1995, at 10 a.m. must be received by April 4, 1995.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (FI–42–94), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (FI–42–94), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC.

The public hearing will be held in the Internal Revenue Auditorium, 7400 Corridor, Internal Revenue Building, 1111 Constitution Ave., NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning § 1.475(c)–2(a)(4), Carol A. Schwartz, (202) 622–3920; concerning other sections of the regulations, Robert B. Williams, (202) 622–3960, or JoLynn Ricks, (202) 622–3920; concerning submissions and the hearing, Michael Slaughter, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

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

The collection of information is in § 1.475(b)–4. The information required to be recorded under § 1.475(b)–4 is required by the IRS to determine whether exemption from mark-to-market treatment is properly claimed. This information will be used to make that determination upon audit of taxpayers' books and records. The likely recordkeepers are businesses or other for-profit institutions.

Estimated total annual recordkeeping burden: 2,500 hours.

The estimated annual burden per recordkeeper varies from 15 minutes to 3 hours, depending on individual circumstances, with an estimated average of 1 hour.

Estimated number of recordkeepers: 2,500.

Background

Section 475 of the Internal Revenue Code requires mark-to-market accounting for dealers in securities, broadly defined. Section 475 was added by section 13223 of the Revenue Reconciliation Act of 1993 (Pub. L. 103–66, 107 Stat. 481), and is effective for all taxable years ending on or after December 31, 1993.

On December 29, 1993, temporary regulations (T.D. 8505, 58 FR 68747) and cross-reference proposed regulations (FI–72–93, 58 FR 68798) were published to furnish guidance on several issues, including the scope of exemptions from the mark-to-market requirements, certain transitional issues relating to the scope of exemptions, and the meaning of the statutory terms ''dealer in securities'' and ''held for investment.'' This notice contains proposed regulations that supplement, and in a few cases revise, the proposed regulations that were published last December.

Explanation of Provisions

Stated Interest, Discount, and Premium

The proposed regulations contained in this notice provide rules for taking into account interest (including original issue discount (OID) and market discount), premium, and certain gains

and losses on securities that are debt instruments. In general, immediately before a debt instrument is marked to market, Code provisions related to calculating interest must be applied, and basis must be correspondingly adjusted. The mark-to-market computations do not affect either the amount treated as interest earned from a debt instrument or the taxable years in which that interest is taken into account.

For example, immediately before a debt instrument is marked to market, accruals of unpaid qualified stated interest (QSI) must be taken into account, and basis must be correspondingly increased. This is true regardless of the taxpayer's regular method of accounting. Marking a debt instrument to market under section 475(a) precludes the deferral that a cash-basis taxpayer might have experienced in the absence of the statutory provision, and the current accrual under the proposed regulations is needed in order to preserve the interest character of the QSI.

For debt instruments acquired with original issue discount or market discount, the proposed regulations require that, immediately before the mark-to-market gain or loss is computed under section 475(a), any OID or market discount accrued through the date of computation must be taken into account, and basis must be correspondingly increased. The amount of discount attributable to a particular period of time is computed under sections 1272 through 1275 (in the case of OID) and sections 1276 through 1278 (in the case of market discount). Thus, for example, the computation of OID attributable to a particular period takes into account any reduction for acquisition premium under section 1272(a)(7).

As indicated in the preceding paragraph, the proposed regulations provide that, in the case of a market discount bond to which section 475(a) applies, the holder must take market discount into account as it accrues, regardless of whether the holder elected under section 1278(b) to do so for all of its bonds. This rule is necessary to prevent market discount from producing gain on the mark instead of interest income. This provision, however, does not impose a section 1278(b) election on the taxpayer, because it does not apply to bonds that are not marked to market under section 475.

For taxable debt instruments acquired with amortizable bond premium, the proposed regulations provide that, if a dealer has made an election to amortize premium under section 171, any amortization for the taxable year (or for the portion of the taxable year during which the instrument is held by the dealer) must be taken into account (and basis must be appropriately reduced) before the mark-to-market gain or loss is computed under section 475. Because section 171 applies only to instruments not held primarily for sale to customers in the ordinary course of the taxpayer's trade or business, this proposed regulatory provision is applicable only to premium instruments described in section 475(b)(1) for which the taxpayer has not made the identification described in section 475(b)(2).

In the case of tax-exempt bonds, the proposed regulations require basis to be reduced as required by section 1016(a)(5) or (6) before mark-to-market gain or loss is computed.

If a dealer acquires a bond with premium and a section 171 election first applies to the bond in a taxable year after the year of acquisition, the proposed regulations require the dealer to amortize premium based on the original basis, without regard to any mark-to-market adjustments that may have been taken into account before the section 171 election became effective, but with regard to the adjustments required under section 171(b)(1). Thus, for example, if a dealer acquires in year 1 an instrument that is subject to section 475(a) and that has $10 of amortizable premium and if the dealer makes an election to amortize premium that is first effective in year 4 (when unamortized premium attributable to years 1 through 3 is $4), the dealer takes into account the appropriate portion of the remaining $6 of amortizable bond premium (as required under section 171(b)(3)) each taxable year before computing the mark-to-market adjustment on the instrument. Any mark-to-market basis adjustments in taxable years 1 through 3 are ignored in determining the amount of amortizable bond premium to which the election applies.

Under section 475(a)(2), a dealer in securities recognizes mark-to-market gain or loss on a security, other than inventory, as if the security were sold on the last business day of the taxable year. Although there may be circumstances under which marking a security to market produces results similar to the actual sale of the security, the statutory reference to the deemed sale prescribes the amount of gain or loss to be taken into account and does not trigger all of the consequences of a sale and reacquisition under the Code. For example, when a dealer in securities marks a bond (or other security) to market and takes recognized gain or loss into account, the dealer has not actually sold and reacquired the bond. Thus, under the proposed regulations, marking a debt instrument does not create, increase, or reduce market discount, acquisition premium, or bond premium.

The proposed regulations also contain a special rule to provide the proper character for mark-to-market gains or losses on a market discount instrument that was originally identified as held for investment by the dealer. This rule is necessary to ensure that all market discount is ultimately characterized as interest income and not as gain from the sale of a security.

Worthless Debts

The proposed regulations provide rules for marking a partially or wholly worthless debt to market. These rules coordinate the mark-to-market rules with the bad debt rules under the Code. The amount of gain or loss recognized under section 475(a)(2) when a debt instrument is marked to market generally is the difference between the adjusted basis and the fair market value of the debt. Under the proposed regulations, if a debt becomes partially or wholly worthless during a taxable year, the amount of any gain or loss required to be taken into account under section 475(a) is determined using a basis that reflects the worthlessness. The basis of the mark-to-market debt is treated as having been reduced by the amount of any book or regulatory charge-off (including the establishment of a specific allowance for a loan loss) for which a deduction could have been taken, without regard to whether any portion of the charge-off is, in fact, deducted or charged to a tax reserve for bad debts. The difference between this adjusted basis and the fair market value of the debt is the amount of gain or loss to be taken into account under section 475(a)(2). Thus, if the debt is wholly worthless, its basis would be reduced to zero and no gain or loss would be taken into account under section 475(a)(2).

This proposed treatment preserves the longstanding distinctions between losses due to the worthlessness of debts and other losses on debt instruments held by a taxpayer. See § 1.166–1(a), which requires bad debts to be taken into account either as a specific deduction in respect of debts or as a deduction for a reasonable addition to a reserve for bad debts. See also §§ 1.585–3 and 1.593–7(c), which require a reserve-method taxpayer to charge bad debts to the reserve for bad debts. In addition, computing the mark-to-market adjustment as if the debt's basis had been adjusted to reflect worthlessness

preserves a taxpayer's ability to postpone claiming a deduction for partial worthlessness until the debt becomes wholly worthless. To the extent that a debt has been previously charged off, mark-to-market gain is treated as a recovery.

The rules that are provided for bad debts in the proposed regulations do not apply to debts accounted for by a dealer as inventory under section 475(a)(1). Although it is possible for a debt that is in inventory to become partially worthless prior to sale, the likelihood or frequency of such an occurrence is difficult to ascertain given the speed with which inventory is sold. Comments are requested, however, concerning whether similar rules are necessary for partially worthless debt that is accounted for as inventory of the dealer.

Dispositions

Section 475(a) states that regulations may provide for securities held by a dealer to be marked to market at times other than the end of the dealer's taxable year. In general, the proposed regulations provide that, if a dealer in securities ceases to be the owner of a security for tax purposes, and if the security would have been marked to market under section 475(a) if the dealer's taxable year had ended immediately before the dealer ceases to own it, then (whether or not the security is inventory in the hands of the dealer) the dealer must recognize gain or loss as if the security had been sold for its fair market value immediately before the dealer ceases to own it. Any gain or loss so recognized is taken into account at that time.

In the absence of a mark upon disposition, a gain on a security held by a dealer could be deferred by transferring the security before the end of the taxable year to a related non-dealer in an intercompany transaction or in a non-recognition, carry-over-basis transaction. This potential for abuse is avoided if marking to market is required in every case in which a dealer ceases to be the owner of a security for tax purposes. The proposed requirement is analogous to the requirement that applies to dispositions of securities that are required to be marked to market under section 1256.

Transfers to which the proposed rule applies include the following: (a) Transfers to a controlled corporation under section 351; (b) Transfers to a trust (other than a grantor trust); (c) Transfers by gift to a charitable or non-charitable donee; (d) Transfers to other members of the same controlled group; (e) Transfers to a partnership under section 721; and (f) Transfers of mortgages to a REMIC under section 860F(b).

In the case of a transfer by a dealer to a partnership, the basis of a security transferred is generally its fair market value, because the security is marked to market immediately before the transfer. Thus, no special allocation issues arise. If there is any difference between a transferred security's basis after the mark and its fair market value (because, for example, the security transferred had been properly identified as held for investment but ceased to be so held at some time prior to the date of transfer), any special allocation of built-in gain or loss with respect to that security in the hands of the partnership will be made under section 704 and the regulations thereunder.

The mark to market immediately before disposition is separate and distinct from the disposition transaction. Thus, for example, the gain or loss from the mark is not gain or loss from a deferred intercompany transaction under § 1.1502–13.

Securities Acquired With Substituted Basis

The proposed regulations provide rules for situations where a dealer in securities receives a security with a basis in its hands that is determined, in whole or in part, either by reference to the basis of the security in the hands of the transferor or by reference to other property held at any time by the dealer. In these cases, section 475(a) applies only to post-acquisition gain and loss with respect to the security. That is, section 475(a) applies only to changes in value of the security occurring after its acquisition. See section 475(b)(3). The character of the mark-to-market gain or loss is determined as provided under section 475(d)(3). The character of pre-acquisition gain or loss (that is, the built-in gain or loss at the date the dealer acquires the security) and the time for taking that gain or loss into account are determined without regard to section 475. The fact that a security has a substituted basis in the dealer's hands does not affect the security's date of acquisition for purposes of determining the timeliness of an identification under section 475(b).

The proposed regulations provide rules for the identification of securities contributed and received in securitization transactions. Under the proposed regulations, a taxpayer that expects to contribute securities to a trust or other entity in exchange for interests therein may identify the contributed securities as held for investment (within the meaning of section 475(b)(1)(A)) or not held for sale (within the meaning of section 475(b)(1)(B)) only if it expects each of the interests received (whether or not a security within the meaning of section 475(c)(2)) to be either held for investment or not held for sale to customers in the ordinary course of the taxpayer's business. Thus, for example, if a mortgage banker securitizes its loans and does not intend to hold for investment (or for other than sale to customers) all of the interests received in the securitization transaction, the mortgage banker will be required to account for its inventory of mortgages at fair market value under section 475(a)(1), regardless of whether the mortgages are to be sold to a trust or contributed to a REMIC.

Under the proposed regulations, if a dealer engages in a securitization transaction that results in dispositions of only partial interests in the contributed securities, the dealer is not permitted to identify the contributed securities as exempt under section 475(b)(1)(A) or (B). As a result, all of the contributed securities must be accounted for under section 475(a). Moreover, under the mark-on-disposition rule of these proposed regulations, the dealer is required to mark the securities to market immediately before the securitization transaction. The Service invites comments on whether there are other administrable approaches that reflect the fact that only a partial disposition of the securities has occurred.

In other securitization transactions, a taxpayer transfers securities to a trust (or other entity) in a transaction that is not a disposition of the securities for tax purposes. The trust issues certificates (or other forms of interest) that represent secured debt of the taxpayer rather than debt of the trust or ownership of the underlying securities. In these cases, if the taxpayer retains the full ownership of the contributed securities for tax purposes and if the contributed securities otherwise qualify to be identified as held for investment or not held for sale, then the taxpayer may identify the securities as held for investment or not held for sale notwithstanding the transfer.

Further, if a transfer of securities is a disposition, a taxpayer may identify the interests received in a securitization transaction as exempt from mark-to-market if the interests are described in section 475(b)(1) and are not treated for tax purposes as continuing ownership of the securities transferred. This identification is permitted even if the securitized assets were marked to market under section 475. For example, a taxpayer may identify some of the

REMIC regular interests received on the transfer of mortgage securities to a REMIC, even if the mortgages were subject to section 475(a). Conversely, a taxpayer that has marked mortgages to market but subsequently contributes those mortgages to a grantor trust and receives beneficial interests therein may not identify the beneficial interests as exempt from mark-to-market treatment, because the beneficial interests represent continued ownership of the contributed securities, whose eligibility for exemption was determined when they were acquired.

The proposed regulations clarify that an identification of a security as exempt must specify the subparagraph of section 475(b)(1) under which the exemption is claimed and that the time by which a dealer must identify a security as exempt is not affected by whether the dealer has a substituted basis in the security. The proposed regulations also provide rules for determining whether an identification of a security as exempt is timely where a dealer engages in certain integrated transactions described in § 1.1275–6 as proposed on December 16, 1994 (FI–59–91, 59 FR 64884, 64905).

Definition of Dealer in Securities

Section 475(c)(1) defines a dealer in securities as a taxpayer who regularly purchases securities from, or sells securities to, customers in the ordinary course of a trade or business or who regularly offers to enter into, assume, offset, assign or otherwise terminate positions in securities with customers in the ordinary course of a trade or business.

The proposed regulations provide that whether a taxpayer is transacting business with customers is determined based on all of the facts and circumstances.

Under section 475(c)(1)(B) and the proposed regulations, the term dealer in securities includes a taxpayer that, in the ordinary course of its trade or business, regularly holds itself out as being willing and able to enter into either side of a transaction enumerated in section 475(c)(1)(B). For instance, if a taxpayer regularly holds itself out as being willing to enter a swap in which it is either the fixed or the floating payor, the taxpayer is a swaps dealer.

The proposed regulations clarify that a life insurance company does not become a dealer in securities solely by selling annuity, endowment, or life insurance policies to its customers. Under the temporary regulations published on December 29, 1993 (T.D. 8505), a contract that is treated for federal income tax purposes as an annuity, endowment, or life insurance contract is deemed to have been identified as held for investment, and is therefore not marked to market by the policy holder. This was necessary because variable life and annuity products fall within the literal language of section 475(c)(2)(E). Because many life insurance companies sell these insurance contracts to their customers, some commentators asked whether these life insurance companies were dealers in securities. There is no indication that Congress intended for a life insurance company that was not otherwise a dealer in securities to be characterized as a dealer merely because it sells life insurance policies to its customers. These proposed regulations provide the appropriate clarification.

Definition of Security

The temporary regulations that were published on December 29, 1993 (T.D. 8505), exclude certain items from the definition of security. Among the excluded items are liabilities of the taxpayer and negative value residual interests (NVRIs) in a REMIC and other arrangements that are determined to have substantially the same economic effect as NVRIs (for example, a widely held partnership that holds noneconomic REMIC residual interests). Those rules are needed to carry out the purposes of section 475 and other Code provisions, including section 860E.

These proposed regulations clarify that a liability of the taxpayer means a debt issued by the taxpayer. Also, for the reasons given below, these proposed regulations exclude all REMIC residual interests from the definition of security.

A typical REMIC holds a pool of long-term, real estate mortgages originated at a ''blended'' interest rate. These mortgages are used to support the issuance of regular interests, which are treated as debt, with varied maturities and interest rates. The REMIC takes cash flows on the mortgages and redirects them to holders of the regular interests. As a result, there is generally a mismatch in the recognition of interest income from the mortgages and the interest expense attributable to the regular interests. This mismatch of interest income and interest deductions results in taxable income or loss that does not represent economic gain or loss. Some commentators refer to this as ''phantom'' income or loss.

Phantom income or loss is allocated to the holders of the residual interests in a REMIC even though that income or loss does not represent any economic benefit or detriment to those holders. Further, sections 860C and 860E require a residual interest holder to pay taxes on a portion of phantom income (called ''excess inclusion'') and to increase the basis of the residual interest by the amount of phantom income. Because this basis increase does not represent economic value, a subsequent mark to market is likely to result in a loss. Permitting taxpayers to take this loss into account currently under the mark-to-market provisions effectively undermines the Congressional mandate embodied in section 860E to require current taxation of phantom income.

Although the adverse effect of section 475 on section 860E is most apparent when the residual interests being considered are NVRIs, residual interests with positive value present the same issue. Many residual interests with positive value, in spite of being entitled to REMIC distributions, have substantially the same economic effect as NVRIs and thus are already excluded by the temporary regulations from the definition of ''security.'' The IRS is concerned, however, that residual interests may be structured in a way that avoids embodying substantially the same economic effects as an NVRI but that still undermines the purposes of section 860E. The proposed regulations, therefore, contain a rule that would remove from the category of securities subject to section 475 all residual interests that are acquired after January 4, 1995. Also removed are arrangements that are acquired after that date and are determined to have substantially the same economic effect as a REMIC residual interest (for instance, an interest in a widely held partnership holding residual interests). The temporary regulations continue to apply to all residual interests described therein for all taxable years ending on or after December 31, 1993.

In addition, the Commissioner has determined that, if a residual interest, or an interest or arrangement that has substantially the same economic effect, is not a security within the meaning of section 475, it should not be treated as inventory under other provisions. Additional guidance on this matter will be issued.

Comments are requested concerning whether there are any residual interests that do not undermine section 860E upon being marked to market. If comments are received that describe any such interests, subsequent guidance may provide that they are included in the mark-to-market regime. In this regard, it is important that any mechanism for identifying these interests not impose an undue burden on either taxpayers or the IRS.

Additional Comments Requested

The provisions of section 475 generally apply in determining the taxable income of a dealer that may also be subject to various international provisions of the Code. The Service is considering the possibility of using the definitions contained in section 475 and the regulations thereunder for purposes of various international provisions, except where a modification of the provisions is necessary to carry out the purposes of those international provisions. Comments on this issue also are welcome.

Finally, the Service is considering whether there are additional situations in which securities should not be accounted for under section 475(a). (The temporary and proposed regulations that were published on December 29, 1993, listed some such situations.) For example, a dealer in securities may acquire at original issue and in exchange for property certain non-interest-bearing debt instruments that are not subject to the interest imputation provisions of section 1274 or 483. Because these instruments will seldom appreciate in value, it may be inappropriate to subject them to the mark-to-market regime.

Dates of Applicability

The proposed regulations will apply to identifications made, securities acquired, or events occurring, on or after January 4, 1995, or to taxable years beginning on or after January 1, 1995, as appropriate.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Wednesday, May 3, 1995 at 10 a.m. The public hearing will be held in the Internal Revenue Auditorium, 7400 corridor, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC 20224. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by April 4, 1995 and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by April 4, 1995.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Robert B. Williams and JoLynn Ricks, Office of Assistant Chief Counsel (Financial Institutions & Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

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

Section 1.475(a)–1 also issued under 26 U.S.C. 475(e).

Section 1.475(a)–2 also issued under 26 U.S.C. 475(a) and 26 U.S.C. 475(e).

Section 1.475(a)–3 also issued under 26 U.S.C. 475(e).

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Section 1.475(b)–3 also issued under 26 U.S.C. 475(e).

Section 1.475(b)–4 also issued under 26 U.S.C. 475(b)(2) and 26 U.S.C. 475(e).

Section 1.475(c)–1 also issued under 26 U.S.C. 475(e).

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Section 1.475(c)–2 also issued under 26 U.S.C. 475(e) and 26 U.S.C. 860G(e).

* * * * *

Section 1.475(e)–1 also issued under 26 U.S.C. 475(e).

* * * * *

Par. 2. Section 1.475–0 is added to read as follows:

§ 1.475–0 Table of contents.

This section lists headings contained in §§ 1.475–0, 1.475(a)–1, 1.475(a)–2, 1.475(a)–3, 1.475(b)–1, 1.475(b)–2, 1.475(b)–3, 1.475(b)–4, 1.475(c)–1, 1.475(c)–2, 1.475(d)–1, and 1.475(e)–1.

§ 1.475–0 Table of contents.

§ 1.475(a)–1 Mark to market of debt instruments.

(a) Overview.
(b) No effect on amount of market discount, acquisition premium, or bond premium.
(c) Accrual of interest, discount, and premium.
  (1) Qualified stated interest.
  (2) General rule regarding accrual of discount.
  (3) Bond premium.
(d) Mandatory current inclusion of market discount.
  (1) General rule.
  (2) Interaction with section 1278(b).
(e) Recognition of market discount that accrued before section 475(a) applies to a market discount bond.
  (1) General rule.
  (2) Examples.
(f) Worthless debts
  (1) Computation of mark-to-market gain or loss.
  (2) Treatment of mark-to-market gain or loss.
(g) Additional rules applicable to reserve-method taxpayers.
(h) Example.

§ 1.475(a)–2 Mark to market upon disposition of security by a dealer.

(a) General rule.
(b) Example.

§ 1.475(a)–3 Acquisition by a dealer of a security with a substituted basis.

(a) Scope.
(b) Rules.

§ 1.475(b)–1 Scope of exemptions from mark-to-market requirement.

(a) Securities held for investment or not held for sale.
(b) Securities deemed identified as held for investment.
  (1) In general.
  (2) Control defined.
(c) Securities deemed not held for investment.
  (1) General rule for dealers in notional principal contracts and derivatives.
  (2) Exception for securities not acquired in dealer capacity.

§ 1.475(b)–2 Exemptions—Transitional issues.

(a) Transitional identification.

(1) Certain securities previously identified under section 1236.
(2) Consistency requirement for other securities.
(b) Corrections on or before January 31, 1994.
(1) Purpose.
(2) To conform to § 1.475(b)–1(a)
(i) Added identifications.
(ii) Limitations.
(3) To conform to § 1.475(b)–1(c).
(c) Effect of corrections.

§ 1.475(b)–3 Exemption of securities in certain securitization transactions.

(a) Exemption of contributed assets.
(b) Exemption of resulting interests.
(1) General rule.
(2) Examples.

§ 1.475(b)–4 Exemptions—Identification requirements.

(a) Identification of the basis for exemption.
(b) Time for identifying a security with a substituted basis.
(c) Securities involved in integrated transactions under § 1.1275–6.
(1) Definitions.
(2) Synthetic debt held by a taxpayer as a result of legging in.
(3) Securities held after legging out.

§ 1.475(c)–1 Definitions—Dealer in securities.

(a) Sellers of nonfinancial goods and services.
(b) Taxpayers that purchase securities but do not sell more than a negligible portion of the securities.
(1) Exemption from dealer status.
(2) Negligible portion.
(3) Special rules.
(c) Dealer-customer relationship.
(1) [Reserved].
(2) Transactions described in section 475(c)(1)(B).
(d) Issuance of life insurance products.

§ 1.475(c)–2 Definitions—Security.

(a) In general.
(b) Negative value REMIC residuals.
(c) Special rules.
(d) Synthetic debt held by a taxpayer as a result of an integrated transaction under § 1.1275–6.

§ 1.475(d)–1 Character of gain or loss.

§ 1.475(e)–1 Effective dates.

(a) Taxable years ending on or after December 31, 1993.
(b) Taxable years beginning on or after January 1, 1995.
(c) Securities acquired on or after January 4, 1995.
(d) Events occurring on or after January 4, 1995

Par. 3. Section 1.475(a)–1 is added to read as follows:

§ 1.475(a)–1 Mark to market of debt instruments.

(a) *Overview.* This section provides rules for taking into account interest accruals and gain and loss on a debt instrument to which section 475(a) applies. Paragraph (b) of this section clarifies that the mark-to-market computation affects neither the amount treated as interest earned from a debt instrument nor the taxable year in which that interest is taken into account. Paragraph (c) of this section prescribes general rules. Paragraph (d) of this section prescribes additional rules for instruments acquired with market discount. Paragraph (e) of this section provides rules for taking into account market discount that accrued on a bond before the bond became subject to the mark-to-market requirements. Paragraph (f) of this section prescribes rules for computing the mark-to-market gain or loss on partially or wholly worthless debts, and paragraph (g) provides rules for dealers accounting for bad debts using a reserve method of accounting.

(b) *No effect on amount of market discount, acquisition premium, or bond premium.* Marking a debt instrument to market does not create, increase, or reduce market discount, acquisition premium, or bond premium, nor does it affect the adjusted issue price of, or accruals of original issue discount (OID) on, a bond issued with OID.

(c) *Accrual of interest, discount, and premium.* In general, the amount of gain or loss from marking a debt instrument to market is computed after adjustments to basis for accruals of stated interest, discount, and premium.

(1) *Qualified stated interest.* Immediately before a debt instrument is marked to market under section 475(a), the holder of the instrument must take any unpaid accrued qualified stated interest into account and must correspondingly increase the basis of the instrument. The holder must later decrease the basis of the instrument when accrued qualified stated interest is actually received. (See § 1.1273–1(c) for the definition of qualified stated interest and § 1.446–2(b) for the rule governing its accrual.)

(2) *General rule regarding accrual of discount.* If a bond that was acquired with OID or market discount is marked to market under section 475(a), then, immediately before the bond is marked to market, the discount accrued through that date (determined under section 1272, 1275(d), or 1276, as applicable) is included in gross income, to the extent not previously included, and the bond's basis is correspondingly increased for amounts so included. (Because accrued OID is determined under all of the rules of section 1272 and the regulations thereunder, it is computed taking into account the reduction for acquisition premium that is required by section 1272(a)(7).) See paragraph (d) of this section, which requires the current inclusion in income of market discount on bonds marked to market. See paragraph (e) of this section for exceptions, and additional rules, for market discount bonds that become subject to section 475(a) after acquisition.

(3) *Bond premium.* If a debt instrument that is subject to the basis adjustment required by section 1016(a)(5) or (6) is marked to market under section 475(a), then, immediately before the debt instrument is marked to market, the required basis adjustment must be made. Accordingly, the mark-to-market adjustment is computed after the basis of the debt instrument has been adjusted under section 1016(a)(5) or (6) for disallowed amortizable bond premium (in the case of tax-exempt bonds) or deductible bond premium (in the case of taxable bonds). If an election under section 171(c) is made after the first taxable year in which section 475(a) applies to the bond, the amount of bond premium is determined under section 171(b)(1) without regard to any basis adjustments that may have been required as a result of the bond being marked to market in prior taxable years. See paragraph (b) of this section for the rule that marking a debt instrument to market does not affect bond premium.

(d) *Mandatory current inclusion of market discount*—(1) *General rule.* If section 475(a) applies to a bond during any portion of a taxable year, gross income for that taxable year includes the market discount attributable to the portion of the year to which section 475(a) applies (as determined under section 1276(b)). Section 1276 does not apply to the bond except with respect to market discount, if any, that accrued before the bond became subject to section 475(a). Similarly, section 1277 does not apply to the bond except with respect to any net direct interest expense (as defined in section 1277(c)) that accrued before the bond became subject to section 475(a). See paragraph (e) of this section for additional rules governing this situation. For purposes of the Code other than the purposes described in the last sentence of section 1278(b)(1), any amount included in gross income under this paragraph (d)(1) is treated as interest. The bond's basis is correspondingly increased for any amount so included in gross income.

(2) *Interaction with section 1278(b).* Paragraph (d)(1) of this section applies to a dealer, even if the dealer has not elected under section 1278(b) to include market discount currently. If the dealer has not made that election, however, this paragraph (d) does not require current inclusion of market discount on any bond to which section 475(a) does not apply.

(e) *Recognition of market discount that accrued before section 475(a) applies to a market discount bond*—(1) *General rule.* In the case of a debt instrument that is acquired with market discount, that is not subject to an election under section 1278(b), and that first becomes subject to section 475(a) in the taxpayer's hands on a date after its acquisition, this paragraph (e) governs the recognition of market discount that is attributable (as determined under section 1276(b)) to any period before section 475(a) applies to the debt instrument. To the extent that the market discount described in the preceding sentence is greater than the excess, if any, of the fair market value of the debt instrument at the time it became subject to section 475(a) over its adjusted basis at that time, section 1276(a)(1) applies to any gain recognized under section 475(a). To the extent of any remaining market discount that had accrued before section 475(a) became applicable, section 1276(a) applies no later than it would have applied if section 475(a) did not apply to the bond. For example, section 1276(a) applies to the previously accrued market discount as partial principal payments are made. Except as provided in the preceding sentences, gain recognized under section 475(a) is not recharacterized as interest by section 1276(a).

(2) *Examples.* The rules of paragraphs (d) and (e) of this section are illustrated by the following examples:

Example 1.

(i) *Facts.* Bond *X* was issued on January 1, 1996, for $1,000. Bond *X* matures on December 31, 2005, provides for a principal payment of $1,000 on the maturity date, and provides for interest payments at a rate of 8%, compounded annually, on December 31 of each year. *D* is a dealer in securities within the meaning of section 475(c)(1). On January 1, 1997, *D* purchased bond *X* for $955. *D* had not elected under section 1278(b) to include market discount in gross income currently. Under section 475(b), section 475(a) did not apply to bond *X* until January 1, 1999, at which time bond *X* had a fair market value of $961. On December 31, 1999, bond *X* had a fair market value of $980.

(ii) *Holdings.* In the absence of an election under section 1276(b)(2), market discount on bond *X* accrues under section 1276(b)(1) at the rate of $5 per year. On January 1, 1999, when bond *X* became subject to section 475(a), $10 of market discount had accrued, but the excess of the bond's fair market value on January 1, 1999, over its adjusted basis on that date (the built-in gain) was only $6 ($961—$955). During 1999, *D* is required to include as interest income the $5 of market discount that accrues during that year, and *D* increases by that amount its basis in the bond and the amount to be used in computing mark-to-market gain or loss. On December 31, 1999, *B* must mark bond *X* to market and recognize a gain of $14 ($980—[$961 + $5]). Under section 1276(a)(1) and (4) and paragraph (e)(1) of this section, $4 of that $14 gain is treated as interest income. The $4 is the amount by which the market discount of $10 that had accrued on January 1, 1999, exceeded the $6 built-in gain on that date.

Example 2.

(i) *Facts.* The facts are the same as in *Example 1,* except that, in addition, *D* sells bond *X* for its fair market value of $1,000 on June 30, 2000.

(ii) *Holdings.* Immediately before the sale, *D* is required to include as interest income the $2.50 of market discount that accrued during the portion of the year through June 30, and *D* increases by that amount its basis in the bond and the amount to be used in computing mark-to-market gain or loss. Also, under § 1.475(a)–2, immediately before the sale, *D* recognizes $17.50 of mark-to-market gain (the increase in value since the preceding mark to market, less the basis increase of $2.50 from the market discount accrual. See § 1.475(a)–2). On the sale, *D* also recognizes the $6 of built-in gain, all of which is recharacterized as ordinary interest income under section 1276(a)(4).

Example 3.

(i) *Facts.* The facts are the same as in *Example 1,* except that, during 2001, the issuer of bond *X* made a partial principal payment in the amount of $20.

(ii) *Holdings.* Under paragraph (e)(1) of this section and section 1276(a)(4), $6 of the partial principal payment is included in *D*'s 2001 income as interest income. The $6 is the portion of the $10 of market discount that had accrued at the time bond *X* became subject to section 475(a) and that had not previously caused gain or a partial principal payment to be treated as interest income.

(f) *Worthless debts*—(1) *Computation of mark-to-market gain or loss.* This paragraph (f) applies to any dealer that, under section 475(a)(2), marks to market either a debt that was charged off during the year because it became partially worthless or a debt that became wholly worthless during the taxable year (without regard to whether the debt was charged off). Any gain or loss attributable to marking a debt to market is determined by deeming the debt's adjusted basis to be the debt's adjusted basis under § 1.1011–1, less the amount charged off during the taxable year or during any prior taxable year, to the extent that amount has not previously reduced tax basis. A debt that becomes wholly worthless is deemed to have an adjusted basis of zero. The deemed adjusted basis, however, is used solely for this paragraph (f). Thus, any portion of a loss attributable to a bad debt continues to be accounted for under the bad debt provisions of the Code, and the basis of the debt continues to be adjusted as otherwise required under the Code.

(2) *Treatment of mark-to-market gain or loss.* To the extent that a debt has been previously charged off, mark-to-market gain is treated as a recovery. Thus, for example, a dealer using the section 585 reserve method of accounting for bad debts must credit to the reserve any portion of mark-to-market gain that is treated as a recovery of a bad debt previously charged to the reserve account, and the dealer must include any excess in gross income as required by § 1.585–3(a). Similarly, if a dealer is a large bank that changed to the specific charge-off method of accounting for bad debts using the elective cut-off procedures described in § 1.585–7, the dealer must charge to the reserve for pre-disqualification loans all losses recognized as a result of marking to market a debt that is a pre-disqualification loan within the meaning of § 1.585–7(b)(2). Marking a pre-disqualification loan to market, however, is not a disposition of that loan under § 1.585–7(d).

(g) *Additional rules applicable to reserve-method taxpayers.* If a dealer accounts for bad debts using the reserve method of accounting under section 585 or 593, the following additional rules apply in computing a reasonable addition to a reserve—

(1) To determine the amount of total loans outstanding, the outstanding balance on a debt that is marked to market is increased or decreased by the amount of any mark-to-market gain or loss recognized, except that the outstanding balance of the debt may never exceed the actual balance currently due; and

(2) If the reasonable addition to the reserve is computed based on a percentage of taxable income, any gain or loss attributable to marking a debt to market must be taken into account in computing taxable income.

(h) *Example.* This example illustrates paragraphs (f) and (g) of this section.

Example.

(i) *B,* a calendar year taxpayer, is a dealer that marks some of its debts to market under section 475(a)(2). Additionally, *B* is a bank that accounts for bad debts using the section 585 reserve method of accounting. *B* has not made an election to use the conformity method of accounting described in § 1.166–2(d)(3).

(ii) On December 31, 1995, *B* has total loans outstanding of $1,000,000 and a bad debt reserve balance of $1000. Among the loans that *B* marks to market is loan *X*. On January 1, 1995, loan *X* had a book and tax basis of $100. During the taxable year, loan taxable became partially worthless, and *B* charged off the loan by $5. Thus, loan *X* had a book basis of $95 and a tax basis of $100. The fair market value of loan *X* was $94 on December 31, 1995.

(iii) *B* computes the amount of gain or loss to be taken into account under section

475(a)(2) with respect to loan *X* using the rules of paragraph (f) of this section. Under paragraph (f)(1) of this section, *B* treats the adjusted tax basis of loan *X* as having been reduced by the $5 charge-off. Thus, *B* determines that it is required to take into account a $1 mark-to-market loss based on the difference between *B*'s adjusted basis in loan *X* of $95, as determined under paragraph (f)(1) of this section, and loan *X*'s fair market value of $94.

(iv) Further, *B* decides to claim a bad debt deduction with respect to loan *X* in 1995, rather than waiting until loan *X* becomes totally worthless. Thus, *B* charges the $5 of partial worthlessness to its reserve for bad debts. In computing a reasonable addition to the reserve under section 585(b), *B* reduces the amount of its total loans outstanding by $6 ($5 charged to the reserve for bad debts, plus $1 mark-to-market loss).

(v) On December 31, 1997, loan *X* has a fair market value of $93 and an adjusted basis (and outstanding principal balance) of $90. No additional worthlessness occurred with respect to loan *X* in 1996 or 1997. *B* determines that it is required to recognize a $3 mark-to-market gain with respect to loan *X*. Because *B* previously charged $5 to the bad debt reserve with respect to loan *X*, the entire $3 is a recovery item and must be credited to the bad debt reserve. See paragraph (f)(2) of this section. In computing a reasonable addition to the reserve for 1997, *B* does not increase the balance of its total loans outstanding by the $3 mark-to-market gain, because that adjustment would increase the balance to an amount in excess of the actual outstanding principal balance of $90. See paragraph (g)(1) of this section.

Par. 4. Section 1.475(a)–2 is added to read as follows:

§ 1.475(a)–2 Mark to market upon disposition of security by a dealer.

(a) *General rule.* If a dealer in securities ceases to be the owner of a security for federal income tax purposes and if the security would have been marked to market under section 475(a) if the dealer's taxable year had ended immediately before the dealer ceases to own it, then (whether or not the security is inventory in the hands of the dealer) the dealer must recognize gain or loss on the security as if it were sold for its fair market value immediately before the dealer ceases to own it, and gain or loss is taken into account at that time. The amount of any gain or loss subsequently realized must be properly adjusted, in the form of a basis adjustment or otherwise, for gain or loss taken into account under this paragraph (a). See § 1.475(b)–4(b) for the rule governing when a security with substituted basis must be identified if it is to be exempted from the application of section 475(a).

(b) *Example.* The rule of paragraph (a) of this section is illustrated by the following example.

Example.

(i) *Facts. D* is a dealer in securities within the meaning of section 475(c)(1) and is a member of a consolidated group that uses the calendar year as its taxable year. On February 1, 1995, *D* acquired for $100 a debt instrument issued by an unrelated party. On June 1, 1995, *D* sold the debt instrument to another member of the group, *M1*, for $110, which was the fair market value of the security on that date. *D* would have been required to mark the debt instrument to market under section 475(a) if its taxable year had ended immediately before it sold the debt instrument to *M1*.

(ii) *Holding.* Under paragraph (a) of this section, *D* marks the debt instrument to market immediately before the sale to *M1* and takes into account $10 of gain. The gain is not deferred intercompany gain. As a result, *D*'s basis in the debt instrument increases to $110 immediately before the sale. Accordingly, there is no gain or loss on the sale, and *M1*'s basis in the debt instrument is $110.

Par. 5. Section 1.475(a)–3 is added to read as follows:

§ 1.475(a)–3 Acquisition by a dealer of a security with a substituted basis.

(a) *Scope.* This section applies if—

(1) A dealer in securities acquires a security that is subject to section 475(a) and the dealer's basis in the security is determined, in whole or in part, by reference to the basis of that security in the hands of the person from whom the security was acquired; or

(2) A dealer in securities acquires a security that is subject to section 475(a) and the dealer's basis in the security is determined, in whole or in part, by reference to other property held at any time by the dealer.

(b) *Rules.* If this section applies to a security—

(1) Section 475(a) applies only to changes in value of the security occurring after the acquisition; and

(2) Any built-in gain or loss with respect to the security (based on the difference between the fair market value of the security on the date the dealer acquired it and its basis to the dealer on that date) is taken into account at the time, and has the character, provided by the sections of the Code that would apply to the built-in gain or loss if section 475(a) did not apply to the security.

Par. 6. Section 1.475(b)–3 is added to read as follows:

§ 1.475(b)–3 Exemption of securities in certain securitization transactions.

(a) *Exemption of contributed assets.* If a taxpayer expects to contribute securities (for example, mortgages) to a trust or other entity, including a REMIC, in exchange for interests therein (including ownership interests or debt issued by the trust or other entity), the contributed securities qualify as held for investment (within the meaning of section 475(b)(1)(A)) or not held for sale (within the meaning of section 475(b)(1)(B)) only if the taxpayer expects each of the interests received (whether or not a security within the meaning of section 475(c)(2)) to be either held for investment or not held for sale to customers in the ordinary course of the taxpayer's trade or business.

(b) *Exemption of resulting interests*—(1) *General rule.* If a taxpayer contributes securities to a trust or other entity in exchange for interests therein (including ownership interests or debt issued by the trust or other entity) and if, for federal income tax purposes, the ownership of the interests received is not treated as ownership of the securities contributed, the interests received may be identified as being described in section 475(b)(1), even if some or all of the contributed securities were not so described and could not have been so identified. For purposes of determining the timeliness of an identification of an interest received, the interest is treated as acquired on the day of its receipt.

(2) *Examples.* The following examples illustrate the principles of paragraph (b)(1) of this section.

Example 1. Identification of REMIC regular interests. If a taxpayer holds mortgages that are marked to market under section 475 and the taxpayer contributes the mortgages to a REMIC in exchange for REMIC regular interests that are described in section 475(b)(1), the taxpayer may identify the regular interests as exempt from mark-to-market treatment. This is permissible because REMIC regular interests are debt securities issued by the REMIC and do not represent continued ownership of the contributed mortgages.

Example 2. Identification of interests in a grantor trust. If a taxpayer contributes securities to a grantor trust and receives beneficial interests therein and if the taxpayer marked the contributed securities to market under section 475, the taxpayer cannot identify the beneficial interests in the grantor trust as exempt from mark-to-market treatment. Because ownership of a beneficial interest in a grantor trust represents continued ownership of an undivided interest in the contributed assets, no new security has been acquired.

Par. 7. Section 1.475(b)1–4 is added to read as follows:

§ 1.475(b)–4 Exemptions—Identification requirements.

(a) *Identification of the basis for exemption.* An identification of a security as exempt does not satisfy section 475(b)(2) if it fails to identify the subparagraph of section 475(b)(1) in which the security is described.

(b) *Time for identifying a security with a substituted basis.* For purposes of determining the timeliness of an identification under section 475(b)(2), the date that a dealer acquires a security is not affected by whether the dealer's basis in the security is determined, in whole or in part, either by reference to the basis of the security in the hands of the person from whom the security was acquired or by reference to other property held at any time by the dealer. See § 1.475(a)–3 for rules governing how the dealer accounts for such a security if this identification is not made.

(c) *Securities involved in integrated transactions under § 1.1275–6*—(1) *Definitions.* The following terms are used in this paragraph (c) with the meanings that are given to them by § 1.1275–6: integrated transaction, legging into, legging out, qualifying debt instrument, § 1.1275–6 hedge, and synthetic debt instrument.

(2) *Synthetic debt held by a taxpayer as a result of legging in.* If a taxpayer becomes the holder of a synthetic debt instrument as the result of legging into an integrated transaction, then, for purposes of the timeliness of an identification under section 475(b)(2), the synthetic debt instrument is treated as having the same acquisition date as the qualifying debt instrument. A pre-leg-in identification of the qualifying debt instrument under section 475(b)(2) applies to the synthetic debt instrument as well.

(3) *Securities held after legging out.* If a taxpayer legs out of an integrated transaction, then, for purposes of the timeliness of an identification under section 475(b)(2), the qualifying debt instrument, or the § 1.1275–6 hedge, that remains in the taxpayer's hands is generally treated as having been acquired, originated, or entered into, as the case may be, immediately after the leg-out. If any loss or deduction determined under § 1.1275–6(d)(2)(ii)(B) is disallowed by § 1.1275–6(d)(2)(ii)(D) (which disallows deductions when a taxpayer legs out of an integrated transaction within 30 days of legging in), then, for purposes of this section and section 475(b)(2), the qualifying debt instrument that remains in the taxpayer's hands is treated as having been acquired on the same date that the synthetic debt instrument was treated as having been acquired.

Par. 8. Section 1.475(c)–1, as proposed on December 29, 1993 (58 FR 68798), is amended as follows:

1. The heading of the section is revised.

2. Paragraphs (c) and (d) are added.

3. The revision and additions read as follows:

§ 1.475(c)–1 Definitions—Dealer in securities.

* * * * *

(c) *Dealer-customer relationship.* Whether a taxpayer is transacting business with customers is determined on the basis of all of the facts and circumstances.

(1) [Reserved].

(2) *Transactions described in section 475(c)(1)(B).* For purposes of section 475(c)(1)(B), the term dealer in securities includes, but is not limited to, a taxpayer that, in the ordinary course of the taxpayer's trade or business, regularly holds itself out as being willing and able to enter into either side of a transaction enumerated in section 475(c)(1)(B). An example of a taxpayer willing to enter into either side of a transaction is a taxpayer willing to enter into an interest rate swap and either pay a fixed interest rate and receive a floating rate or pay a floating rate and receive a fixed rate.

(d) *Issuance of life insurance products.* A life insurance company that is not otherwise a dealer in securities under section 475(c)(1) does not become a dealer solely because it regularly issues life insurance products to its customers in the ordinary course of a trade or business. For purposes of the preceding sentence, the term life insurance product means a contract that is treated for federal income tax purposes as an annuity, endowment, or life insurance contract. See sections 817 and 7702.

Par. 9. Section 1.475(c)–2, as proposed on December 29, 1993 (58 FR 68798), is amended as follows:

1. The heading of the section is revised.

2. Paragraph (a)(2) is revised.

3. Paragraph (a)(3) is amended by adding ''; or'' in lieu of the period at the end of that paragraph.

4. Paragraph (a)(4) and paragraph (d) are added.

5. The revisions and additions read as follows:

§ 1.475(c)–2 Definitions—Security.

(a) * * *

(2) A debt issued by the taxpayer (including a synthetic debt instrument, within the meaning of § 1275–6(b), that the taxpayer is treated as having issued as a result of an integrated transaction under § 1.1275–(6);

(3) * * * ; or

(4) A REMIC residual interest, or an interest or arrangement that is determined by the Commissioner to have substantially the same economic effect, if the residual interest or the interest or arrangement is acquired on or after January 4, 1995.

* * * * *

(d) *Synthetic debt held by a taxpayer as a result of an integrated transaction under § 1.1275–6.* If, as the result of an integrated transaction under § 1.1275–6, a taxpayer is treated as the holder of a synthetic debt instrument (within the meaning of § 1.1275–6(b)), the synthetic debt instrument is a security held by the taxpayer within the meaning of section 475(c)(2)(C). See § 1.475(b)–4(c) for rules governing identification of such a synthetic debt instrument for purposes of section 475(b).

Par. 10. Section 1.475(e)–1, as proposed on December 29, 1993 (58 FR 68798), is revised to read as follows:

§ 1.475(e)–1. Effective dates.

(a) *Taxable years ending on or after December 31, 1993.* The following sections apply to taxable years ending on or after December 31, 1993: §§ 1.475(b)–1 (concerning the scope of exemptions from mark-to-market requirement), 1.475(b)–2 (concerning transitional issues relating to exemptions), 1.475(c)–1(a) (concerning sellers of nonfinancial goods and services) and (b) (concerning taxpayers that purchase securities but do not sell more than a negligible portion of the securities), 1.475(c)–2 (concerning the definition of security), and 1.475(d)–1 (concerning the character of gain or loss). Note, however, that, by its terms, § 1.475(c)–2(a)(4) applies only to interests or arrangements that are acquired on or after January 4, 1995, and the integrated transactions to which § 1.475(c)–2(d) applies will exist only after the effective date of § 1.1275–6.

(b) *Taxable years beginning on or after January 1, 1995.* The following sections apply to taxable years beginning on or after January 1, 1995: §§ 1.475(a)–1 (concerning mark to market accounting for debt instruments) and 1.475(c)–1(c) (concerning the dealer-customer relationship) and (d) (concerning the issuance of life insurance products).

(c) *Securities acquired on or after January 4, 1995.* The following sections apply to securities acquired, originated, or entered into on or after January 4, 1995: §§ 1.475(a)–3 (concerning acquisition by a dealer of a security with a substituted basis), 1.475(b)–3(a) (concerning securities the taxpayer expects to contribute to a trust or other entity in a securitization transaction), and 1.475(b)–3(b) (concerning securities received in a securitization transaction).

(d) *Events occurring on or after January 4, 1995.*

(1) Section 1.475(a)–2 (concerning marking a security to market upon disposition) applies to dispositions occurring on or after January 4, 1995.

(2) Section 1.475(b)–4 (concerning the identification requirements for obtaining an exemption from mark-to-market treatment) applies to identifications made on or after January 4, 1995.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95–13 Filed 01–03–95; 8:45 am]

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26 CFR Part 1

[IA–55–94]

RIN 1545–AT13

Accuracy-related Penalty

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations which provide guidance as to when a taxpayer may rely upon the advice of others as evidence of reasonable cause and good faith within the meaning of section 6664(c) of the Internal Revenue Code of 1986 for purposes of avoiding the accuracy-related penalty of section 6662, and what constitutes reasonable cause and good faith within the meaning of section 6664(c) as it applies to the substantial understatement penalty of section 6662(b)(2) with respect to tax shelter items of a corporation. The proposed regulations implement changes to the accuracy-related penalty under section 6662 that were made by Title VII of the Uruguay Round Agreements Act (the Act) implementing the Uruguay Round of the General Agreement on Tariffs and Trade. Finally, this document provides notice of a public hearing on the proposed amendments to the regulations.

DATES: Written comments must be received by April 7, 1995. The IRS intends to hold a public hearing on these proposed regulations on April 28, 1995, beginning at 10 a.m. Persons wishing to speak at the hearing must submit outlines of their comments by April 7, 1995.

ADDRESSES: Send submissions to: Internal Revenue Service, Attn: CC:DOM:CORP:T:R (IA–55–94), room 5228, POB 7604, Ben Franklin Station, Washington, DC 20044. The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, David L. Meyer, 202–622–6232; concerning submissions, Christina Vasquez, 202–622–6803. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 6662 of the Internal Revenue Code (Code) imposes an accuracy-related penalty on certain underpayments of tax. Section 6664(c) provides that no accuracy-related penalty is imposed with respect to any portion of an underpayment if it is shown that there was a reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion.

Under current regulations interpreting sections 6662 and 6664, a taxpayer's good faith reliance on the advice (including an opinion) of a professional tax advisor may be taken into account for purposes of determining whether the taxpayer will be subject to an accuracy-related penalty. See, e.g., §§ 1.6662–4(g)(4)(ii) and 1.6664–4(b).

Section 6662(b)(2) of the Code imposes a penalty for a substantial understatement of income tax. An understatement is substantial if it exceeds the greater of 10 percent of the tax required to be shown on the taxpayer's return for the taxable year, or $5,000 ($10,000 in the case of a corporation other than an S corporation or a personal holding company). An understatement is defined as the excess of (1) the amount of tax required to be shown on the taxpayer's return, over (2) the amount of tax imposed which is shown on the return, reduced by any rebate.

The Code provides that the amount of an understatement is reduced to the extent that certain conditions are met. For example, section 6662(d)(2), prior to amendment by the Act (Pub. L. 103–465), provided that an understatement is reduced by the portion of the understatement attributable to a tax shelter item of the taxpayer (the *section 6662 tax shelter rule*) if: (1) there is substantial authority for the taxpayer's treatment of the tax shelter item; and (2) the taxpayer reasonably believed (at the time its return was filed) that its treatment of such item was more likely than not the proper treatment.

The substantial understatement penalty was first adopted in section 323 of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248. At that time, Congress believed that the new standards would ''assure that taxpayers who take highly aggressive filing positions are penalized while those who endeavor in good faith to self-assess are not penalized'' and that, with respect to tax shelters, ''if the principal purpose of a transaction is the reduction of tax, it is not unreasonable to hold participants to a higher standard than ordinary taxpayers.'' H.R. Conf. Rep. No. 97th Cong., 2d Sess. 575–76 (1982), 1982–2 C.B.650. More recently, Congress has been concerned that the substantial understatement penalty has not been effectively deterring corporate tax shelter transactions and thus, in Section 744 of the Act, eliminated the section 6662 tax shelter rule as it applies to corporations. As a result of this change, ''the standards applicable to corporate tax shetlers are tightened'' and ''in no instance [will] this modification result in a penalty not being imposed where a penalty would have been imposed under prior law.'' S. Rep. No. 412, 103d Cong., 2d Sess. 165 (1994); H.R. Rep. No. 826, 103d Cong., 2d Sess. 198–99 (1994). The change is effective for transactions occurring after December 8, 1994.

The proposed regulations set forth in this document address issues related to the section 6662 tax shelter rule and the reasonable cause exception of section 6664. This guidance includes, but is not limited to, rules that reflect the amendment of section 6662 by the Act.

Explanation of Provisions

Reliance on Tax Advisor

The proposed regulations set forth general rules clarifying when a taxpayer may be considered to have reasonably relied in good faith upon advice (including an opinion provided by a professional tax advisor). These rules apply to all taxpayers and to both tax shelter items and non-tax shelter items. In particular, the rules apply in determining whether reasonable cause and good faith exist for purposes of section 6664(c) and also apply in determining whether a taxpayer other than a corporation is considered to have reasonably relied in good faith on an opinion in order to satisfy the ''reasonable belief'' requirement of the section 6662 tax shelter rule.

In general, the proposed regulations require advice to be based on all material facts (including, for example, the taxpayer's purposes for entering into a transaction) and to relate applicable law to such facts in reaching its conclusion. The advice must not be based upon unreasonable factual or legal assumptions (including assumptions as to future events), nor

unreasonably rely on the representations, findings or agreements of the taxpayer or any other person.

Reasonable Cause for Tax Shelter Items of a Corporation

The proposed regulations provide additional guidance with respect to the application of the reasonable cause exception of section 6664(c) to a substantial understatement penalty attributable to a tax shelter item of a corporation. These changes apply only to corporations. Accordingly, no inference is intended with respect to the application of section 6664(c) to a substantial understatement penalty attributable to a tax shelter item of a taxpayer other than a corporation. Treasury and the IRS invite comments as to the need for clarification of the application of this exception to such items.

The proposed regulations provide that a corporation's legal justification may be taken into account, as appropriate, in establishing that the corporation acted with reasonable cause and in good faith in its treatment of a tax shelter item only if there is substantial authority for the treatment of the item and the corporation reasonably believes in good faith that such treatment is more likely than not the proper treatment. For this purpose, legal justification includes any justification relating to the treatment or characterization under the Federal tax law of the tax shelter item or of the entity, plan or arrangement that gave rise to the item. Thus, a taxpayer's belief (whether independently formed or based on the advice of others) as to the merits of the taxpayer's underlying position is a legal justification. Satisfaction of the substantial authority and reasonable belief criteria is an important factor to be considered in determining whether the taxpayer acted with reasonable cause and in good faith. However, it is not necessarily dispositive. A corporation will qualify for the reasonable cause and good faith exception only if, under all pertinent facts and circumstances, it acted with reasonable cause and in good faith.

The proposed regulations also provide that facts and circumstances other than a corporation's legal justification may be taken into account, as appropriate, in determining whether it acted with reasonable cause and in good faith, regardless of whether the substantial authority and reasonable belief requirements are satisfied.

The provisions relating to the reasonable cause and good faith exception with respect to corporate tax shelters apply only for purposes of the substantial understatement penalty. No inference is intended with respect to how the reasonable cause exception may apply to the negligence penalty of section 6662(b)(1). The proposed regulations do not alter the definitions of tax shelter or tax shelter items contained in § 1.6662–4(g)(2) and (3).

Conforming Changes

The proposed regulations would amend the existing regulations under section 6662 to reflect the changes made by the Act and to clarify the definition of reasonable belief under the section 6662 tax shelter rule.

In addition, the proposed regulations clarify that the determination of whether a corporate or non-corporate taxpayer acted with reasonable cause and in good faith with respect to an underpayment that is related to an item reflected on the return of a pass-through entity is made on the basis of all pertinent facts and circumstances, including the taxpayer's own actions, as well as the actions of the pass-through entity.

Proposed Effective Date

The amendments contained in this notice are proposed to be effective for returns the due date of which (determined without regard to extensions) is after the date on which final regulations are published in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before the adoption of these proposed regulations, consideration will be given to any written comments that are submitted timely (a signed original and eight (8) copies) to the IRS. All comments will be available for public inspection and copying in their entirety.

A public hearing will be held on April 28, 1995, in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit written comments, an outline of the topics to be discussed, and the time to be devoted to each topic by April 7, 1995.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is David L. Meyer, Office of Assistant Chief Counsel, Income Tax and Accounting, IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.6662–0 is amended by revising the entries for §§ 1.6662–2(d) and 1.6662–4(g) to read as follows:

§ 1.6662–0 Table of contents.

* * * * *

§ 1.6662–2 Accuracy related penalty.

* * * * *

(d) Effective date.
(1) In general.
(2) Special rules for tax shelter items.

* * * * *

§ 1.6662–4 Substantial understatement of income tax.

* * * * *

(g) Items relating to tax shelters.
(1) In general.
(i) Non-corporate taxpayers.
(ii) Corporate taxpayers.
(A) In general.
(B) Special rule for transactions occurring prior to December 9, 1994.
(iii) Disclosure irrelevant.
(iv) Cross-reference.

(2) Tax shelter.
(i) In general.
(ii) Principal purpose.
(3) Tax shelter item.
(4) Reasonable belief.
(i) In general.
(ii) Facts and circumstances; reliance on tax advisor.

* * * * *

Par. 3. Section 1.6662–2 is amended by:

1. Redesignating the text of paragraph (d) following the heading as paragraph (d)(1), adding a new heading for newly designated paragraph (d)(1), and revising the second sentence of newly redesignated paragraph (d)(1).

2. Adding a new paragraph (d)(2).

The additions and revisions read as follows:

§ 1.6662–2 Accuracy-related penalty.

* * * * *

(d) *Effective date*—(1) *In general.* * * * Except as provided in the preceding sentence and in paragraph (d)(2) of this section, §§ 1.6662–1 through 1.6662–5 apply to returns the due date of which (determined without regard to extensions of time for filing) is after December 31, 1989. * * *

(2) *Special rules for tax shelter items.* Sections 1.6662–4(g)(1) and 1.6662–4(g)(4) apply to returns the due date of which (determined without regard to extensions of time for filing) is after the date on which final regulations are published in the **Federal Register**. Sections 1.6662–4(g)(1) and (4) (as contained in 26 CFR Part 1 revised April 1, 1994) apply to returns the due date of which (determined without regard to extensions of time for filing) is on or before the date on which final regulations are published in the **Federal Register** and after December 31, 1989, subject to changes resulting from Section 744 of Title VII of the Uruguay Round Agreements Act, Pub. L. 103–465 (108 Stat, 4809).

Par. 4. Section 1.6662–4 is amended by revising paragraphs (g)(1), (g)(4), and (g)(5) to read as follows:

§ 1.6662–4 Substantial understatement of income tax.

* * * * *

(g) *Items relating to tax shelters*—(1) *In general*—(i) *Non-corporate taxpayers.* Tax shelter items (as defined in paragraph (g)(3) of this section) of a taxpayer other than a corporation are treated for purposes of this section as if such items were shown properly on the return for a taxable year in computing the amount of tax shown on the return, and thus the tax attributable to such items is not included in the understatement for the year, if—

(A) There is substantial authority (as provided in paragraph (d) of this section) for the tax treatment of that item; and

(B) The taxpayer reasonably believed at the time the return was filed that the tax treatment of that item was more likely than not the proper treatment.

(ii) *Corporate taxpayers*—(A) *In general.* Except as provided in paragraph (g)(1)(ii)(B) of this section, all tax shelter items (as defined in paragraph (g)(3) of this section) of a corporation are taken into account in computing the amount of any understatement.

(B) *Special rule for transactions occurring prior to December 9, 1994.* The tax shelter items of a corporation arising in connection with transactions occurring prior to December 9, 1994 are treated for purposes of this section as if such items were shown properly on the return if the requirements of paragraph (g)(1)(i) are satisfied with respect to such items.

(iii) *Disclosure irrelevant.* Disclosure made with respect to a tax shelter item of either a corporate or non-corporate taxpayer does not affect the amount of an understatement.

(iv) *Cross-reference.* See § 1.6664–4(e) for certain rules regarding the availability of the reasonable cause and good faith exception to the substantial understatement penalty with respect to tax shelter items of corporations.

* * * * *

(4) *Reasonable belief*—(i) *In general.* For purposes of section 6662(d) and paragraph (g)(1)(i)(B) of this section (pertaining to tax shelter items of non-corporate taxpayers), a taxpayer is considered reasonably to believe that the tax treatment of an item is more likely than not the proper tax treatment if (without taking into account the possibility that a return will not be audited, that an issue will not be raised on audit, or that an issue will be settled)—

(A) The taxpayer analyzes the pertinent facts and authorities in the manner described in paragraph (d)(3)(ii) of this section, and in reliance upon that analysis, reasonably concludes in good faith that there is a greater than 50-percent likelihood that the tax treatment of the item will be upheld if challenged by the Internal Revenue Service; or

(B) The taxpayer reasonably relies in good faith on the opinion of a professional tax advisor, if the opinion is based on the tax advisor's analysis of the pertinent facts and authorities in the manner described in paragraph (d)(3)(ii) of this section and unambiguously states that the tax advisor concludes that there is a greater than 50-percent likelihood that the tax treatment of the item will be upheld if challenged by the Internal Revenue Service.

(ii) *Facts and circumstances; reliance on professional tax advisor.* All facts and circumstances must be taken into account in determining whether a taxpayer satisfies the requirements of paragraph (g)(4)(i) of this section. However, in no event will a taxpayer be considered to have reasonably relied in good faith on the opinion of a professional tax advisor for purposes of paragraph (g)(4)(i)(B) of this section unless the requirements of § 1.6664–4(c)(1) are met. The fact that the requirements of § 1.6664–4(c)(1) are satisfied will not necessarily establish that the taxpayer reasonably relied on the opinion in good faith. For example, reliance may not be reasonable or in good faith if the taxpayer knew, or should have known, that the advisor lacked knowledge in the relevant aspects of Federal tax law.

(5) *Pass-through entities.* In the case of tax shelter items attributable to a pass-through entity, the actions described in paragraphs (g)(4)(i)(A) and (B) of this section, if taken by the entity, are deemed to have been taken by the taxpayer and are considered in determining whether the taxpayer reasonably believed that the tax treatment of an item was more likely than not the proper tax treatment.

Par. 5. Section 1.6664–0 is amended by revising the entries for §§ 1.6664–1(b) and 1.6664–4 to read as follows:

§ 1.6664–0 Table of contents.

* * * * *

§ 1.6664–1 Accuracy-related and fraud penalties; definitions and special rules.

* * * * *

(b) Effective date.
(1) In general.
(2) Reasonable cause and good faith exception to section 6662 penalties.

* * * * *

§ 1.6664–4 Reasonable cause and good faith exception to section 6662 penalties.

(a) In general.
(b) Facts and circumstances taken into account.
(1) In general.
(2) Examples.
(c) Reliance on opinion or advice.
(1) Fact and circumstances; minimum requirements.
(i) All facts and circumstances considered.
(ii) No unreasonable assumptions.
(iii) Law is related to actual facts.
(2) Definitions.
(i) Advice.

(ii) Material.
(d) Pass-through items.
(e) Special rules for substantial understatement penalty attributable to tax shelter items of corporations.
(1) In general; facts and circumstances.
(2) Reasonable cause based on legal justification.
(i) Minimum requirements.
(A) Authority requirement.
(B) Belief requirement.
(ii) Legal justification defined.
(3) Minimum requirements not dispositive.
(4) Other factors.
(f) Transactions between persons described in section 482 and net section 482 transfer price adjustments. [Reserved]
(g) Valuation misstatements of charitable deduction property.
(1) In general.
(2) Definitions.
(i) Charitable deduction property.
(ii) Qualified appraisal.
(iii) Qualified appraiser.

* * * * *

Par. 6. Section 1.6664–1 is amended by:

1. Redesignating the text of paragraph (b) following the heading as paragraph (b)(1), adding a heading for newly designated paragraph (b)(1), and revising the text of newly designated paragraph (b)(1).

2. Adding paragraph (b)(2).

The additions and revisions read as follows:

§ 1.6664–1 Accuracy-related and fraud penalties; definitions and special rules.

* * * * *

(b) *Effective date*—(1) *In general.* Sections 1.6664–1 through 1.6664–3 apply to returns the due date of which (determined without regard to extensions of time for filing) is after December 31, 1989.

(2) *Reasonable cause and good faith exception to section 6662 penalties.* Section 1.6664–4 applies to returns the due date of which (determined without regard to extensions of time for filing) is after the date on which the final regulations are published in the **Federal Register**. Section 1.6664–4 (as contained in 26 CFR Part 1 revised April 1, 1994) applies to returns the due date of which (determined without regard to extensions of time for filing) is on or before the date on which the final regulations are published in the **Federal Register** and after December 31, 1989, subject to changes resulting from Section 744 of Title VII of the Uruguay Round Agreements Act, Pub. L. 103–465 (108 Stat. 4809).

Par. 7. Section 1.6664–4 is amended by:

1. Revising the last sentence of paragraph (a).

2. Revising paragraph (b)(1).

3. Revising the introductory language of paragraph (b)(2) and *Example 1.*

4. Redesignating paragraphs (c), (d) and (e) as paragraphs (d), (f) and (g), respectively.

5. Revising newly designated paragraph (d).

6. Adding new paragraphs (c) and (e).

The revisions and additions read as follows:

§ 1.6664–4 Reasonable cause and good faith exception to section 6662 penalties.

(a) * * * Rules for determining whether the reasonable cause and good faith exception applies are set forth in paragraphs (b) through (g) of this section.

(b) *Facts and circumstances taken into account*—(1) *In general.* The determination of whether a taxpayer acted with reasonable cause and in good faith is made on a case-by-case basis, taking into account all pertinent facts and circumstances. (See paragraph (e) of this section for certain rules relating to a substantial understatement penalty attributable to tax shelter items of corporations.) Generally, the most important factor is the extent of the taxpayer's effort to assess the taxpayer's proper tax liability. Circumstances that may indicate reasonable cause and good faith include an honest misunderstanding of fact or law that is reasonable in light of all of the facts and circumstances, including the experience, knowledge and education of the taxpayer. An isolated computational or transcriptional error generally is not inconsistent with reasonable cause and good faith. Reliance on an information return or on the advice of a professional tax advisor or an appraiser does not necessarily demonstrate reasonable cause and good faith. Similarly, reasonable cause and good faith is not necessarily indicated by reliance on facts that, unknown to the taxpayer, are incorrect. Reliance on an information return, professional advice or other facts, however, constitutes reasonable cause and good faith if, under all the circumstances, such reliance was reasonable and the taxpayer acted in good faith. (See paragraph (c) of this section for certain rules relating to reliance on the advice of others.) For example, reliance on erroneous information (such as an error relating to the cost or adjusted basis of property, the date property was placed in service, or the amount of opening or closing inventory) inadvertently included in data compiled by the various divisions of a multidivisional corporation or in financial books and records prepared by those divisions generally indicates reasonable cause and good faith, provided the corporation employed internal controls and procedures, reasonable under the circumstances, that were designed to identify such factual errors. Reasonable cause and good faith ordinarily is not indicated by the mere fact that there is an appraisal of the value of property. Other factors to consider include the methodology and assumptions underlying the appraisal, the appraised value, the relationship between appraised value and purchase price, the circumstances under which the appraisal was obtained, and the appraiser's relationship to the taxpayer or to the activity in which the property is used. (See paragraph (g) of this section for certain rules relating to appraisals for charitable deduction property.) A taxpayer's reliance on erroneous information reported on a Form W–2, Form 1099 or other information return indicates reasonable cause and good faith, provided the taxpayer did not know or have reason to know that the information was incorrect. Generally, a taxpayer knows or has reason to know that the information on an information return is incorrect if such information is inconsistent with other information reported or otherwise furnished to the taxpayer, or with the taxpayer's knowledge of the transaction. This knowledge includes, for example, the taxpayer's knowledge of the terms of his employment relationship or of the rate of return on a payor's obligation.

(2) *Examples.* The following examples illustrate this paragraph (b). They do not involve tax shelter items. (See paragraph (e) of this section for certain rules relating to the substantial understatement penalty in connection with the tax shelter items of corporations.)

Example 1. A, an individual calendar year taxpayer, engages B, a professional tax advisor, to give A advice concerning the deductibility of certain state and local taxes. A provides B with full details concerning the taxes at issue. B advises A that the taxes are fully deductible. A, in preparing his own tax return, claims a deduction for the taxes. Absent other facts, and assuming the facts and circumstances surrounding B's advice and A's reliance on such advice satisfy the requirements of paragraph (c) of this section, A is considered to have demonstrated good faith by seeking the advice of a professional tax advisor, and to have shown reasonable cause for any underpayment attributable to the deduction claimed for the taxes. However, if A had sought advice from someone that A knew, or should have known, lacked knowledge in the relevant aspects of Federal tax law, or if other facts demonstrate that A failed to act reasonably or in good faith, A would not be considered to have shown reasonable cause or to have acted in good faith.

* * * * *

(c) *Reliance on opinion or advice*—(1) *Facts and circumstances; minimum requirements.* All facts and circumstances must be taken into account in determining whether a taxpayer has reasonably relied in good faith on advice (including the opinion of a professional tax advisor) as to the treatment of the taxpayer (or any entity, plan or arrangement) under Federal tax law. However, in no event will a taxpayer be considered to have reasonably relied in good faith on advice unless the requirements of this paragraph (c)(1) are satisfied. The fact that these requirements are satisfied will not necessarily establish that the taxpayer reasonably relied on the advice (including the opinion of a professional tax advisor) in good faith. For example, reliance may not be reasonable or in good faith if the taxpayer knew, or should have known, that the advisor lacked knowledge in the relevant aspects of Federal tax law.

(i) *All facts and circumstances considered.* The advice must be based upon all material facts and circumstances, including, for example, the taxpayer's purposes (and the relative weight of such purposes) for entering into a transaction and for structuring a transaction in a particular manner.

(ii) *No unreasonable assumptions.* The advice must not be based on unreasonable factual or legal assumptions (including assumptions as to future events) and must not unreasonably rely on the representations, statements, findings or agreements of the taxpayer or any other person. For example, the advice must not be based upon a representation or assumption which the taxpayer knows or has reason to know is unlikely to be true, such as an inaccurate representation or assumption as to the taxpayer's purposes for entering into a transaction or for structuring a transaction in a particular manner.

(iii) *Law is related to actual facts.* The advice must be based on the law as it relates to the actual facts.

(2) *Definitions*—(i) *Advice. Advice* is any communication, including the opinion of a professional tax advisor, setting forth the analysis or conclusion of a person, other than the taxpayer, provided to (or for the benefit of) the taxpayer and on which the taxpayer relies, directly or indirectly, with respect to the imposition of the section 6662 accuracy-related penalty. Advice does not have to be in any particular form.

(ii) *Material.* A fact is material if it reasonably could be expected, based upon information available at the time the advice is given, to be relevant to the proper tax treatment of the item or the taxpayer's exposure to the accuracy-related penalty under section 6662.

(d) *Pass-through items.* The determination of whether a taxpayer acted with reasonable cause and in good faith with respect to an underpayment that is related to an item reflected on the return of a pass-through entity shall be made on the basis of all pertinent facts and circumstances, including the taxpayer's own actions, as well as the actions of the pass-through entity.

(e) *Special rules for substantial understatement penalty attributable to tax shelter items of corporations*—(1) *In general; facts and circumstances.* The determination of whether a corporation acted with reasonable cause and in good faith in its treatment of a tax shelter item (as defined in § 1.6662–4(g)(3)) is based on all pertinent facts and circumstances. Paragraphs (e)(2), (3) and (4) of this section set forth rules which apply, in the case of a penalty attributable to a substantial understatement of income tax (within the meaning of section 6662(d)), in determining whether a corporation acted with reasonable cause and in good faith with respect to a tax shelter item.

(2) *Reasonable cause based on legal justification*—(i) *Minimum requirements.* A corporation's legal justification (as described in paragraph (e)(2)(ii) of this section) may be taken into account, as appropriate, in establishing that the corporation acted with reasonable cause and in good faith in its treatment of a tax shelter item only if the authority requirement of paragraph (e)(2)(i)(A) of this section and the belief requirement of paragraph (e)(2)(i)(B) of this section are satisfied (the *minimum requirements*). Thus, a failure to satisfy the minimum requirements will preclude a finding of reasonable cause and good faith based (in whole or in part) on the corporation's legal justification.

(A) *Authority requirement.* The authority requirement is satisfied only if there is substantial authority (within the meaning of § 1.6662–4(d)) for the tax treatment of the item.

(B) *Belief requirement.* The belief requirement is satisfied only if, based on all facts and circumstances, the corporation reasonably believed, at the time the return was filed, that the tax treatment of the item was more likely than not the proper treatment. For purposes of the preceding sentence, a corporation is considered reasonably to believe that the tax treatment of an item is more likely than not the proper tax treatment if (without taking into account the possibility that a return will not be audited, that an issue will not be raised on audit, or that an issue will be settled)—

(*1*) The corporation analyzes the pertinent facts and authorities in the manner described in § 1.6662–4(d)(3)(ii), and in reliance upon that analysis, reasonably concludes in good faith that there is a greater than 50-percent likelihood that the tax treatment of the item will be upheld if challenged by the Internal Revenue Service; or

(*2*) The corporation reasonably relies in good faith on the opinion of a professional tax advisor, if the opinion is based on the tax advisor's analysis of the pertinent facts and authorities in the manner described in § 1.6662–4(d)(3)(ii) and unambiguously states that the tax advisor concludes that there is a greater than 50-percent likelihood that the tax treatment of the item will be upheld if challenged by the Internal Revenue Service. (See paragraph (c) of this section for certain rules governing reliance upon the opinion of a professional tax advisor.)

(ii) *Legal justification defined.* For purposes of this paragraph (e), *legal justification* includes any justification relating to the treatment or characterization under the Federal tax law of the tax shelter item or of the entity, plan or arrangement that gave rise to the item. Thus, a taxpayer's belief (whether independently formed or based on the advice of others) as to the merits of the taxpayer's underlying position is a legal justification.

(3) *Minimum requirements not dispositive.* Satisfaction of the minimum requirements of paragraph (e)(2) of this section is an important factor to be considered in determining whether a corporation acted with reasonable cause and in good faith, but is not necessarily dispositive.

(4) *Other factors.* Facts and circumstances other than a corporation's legal justification may be taken into account, as appropriate, in determining whether the corporation acted with reasonable cause and in good faith with respect to a tax shelter item regardless of whether the minimum requirements of paragraph (e)(2) of this section are satisfied.

* * * * *

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95–120 Filed 1–3–95; 8:45 am]

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Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4, 5, and 7

[Notice No. 803; CRD–94–8]

RIN AB32

Alteration of Labels on Containers of Distilled Spirits, Wine, and Beer

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: ATF is proposing to amend the regulations in 27 CFR Parts 4, 5, and 7 which implement section 205(e) of the Federal Alcohol Administration Act of 1935, which makes it unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand or label on wine, distilled spirits, or malt beverages held for sale in interstate or foreign commerce or after shipment therein. The proposed amendments will reinstate a requirement that ATF approval be obtained before relabeling distilled spirits, and will make it unlawful to relabel a distilled spirits, wine, or malt beverage container if the effect of such action is to remove from the container or label any information required by ATF regulations, or a product identification code placed on the product by the producer for tracing purposes.

DATES: Written comments must be received on or before March 6, 1995.

ADDRESSES: Send written comments to: Chief, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco Firearms, P.O. Box 50221, Washington, DC 20091–0221. [Attn: Notice No. 803.]

FOR FURTHER INFORMATION CONTACT: Daniel J. Hiland, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8210).

SUPPLEMENTARY INFORMATION:

Background

Several producers and importers of alcoholic beverages have complained to the Bureau of Alcohol, Tobacco and Firearms (ATF) that product identification code markings placed on containers and labels of wines and distilled spirits by producers for tracing purposes are being removed or mutilated after the product has left the producer's premises. Such alterations of labels or packages have been permitted in foreign trade zones and Customs bonded warehouses, because ATF regulations do not specifically address such activities, and because product identification codes are not mandatory information under our regulations. However, the effect of such action is to make it impossible for the producers to rely on production codes to trade mislabeled, adulterated, or unsafe products.

Federal Alcohol Administration Act

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. § 205(e), authorizes ATF to prescribe regulations relating to the packaging, marking, branding, labeling, and size and fill of container as will prohibit deception of the consumer with respect to such products or the quantity thereof.

In order to prevent the sale or shipment or other introduction of distilled spirits, wine, or malt beverages in interstate or foreign commerce which are not bottled, packaged, or labeled in compliance with the regulations, the FAA Act requires that prior to bottling distilled spirits, wines, or malt beverages, the producer or bottler must obtain a certificate of label approval covering the product. Similarly, the law provides that no person shall remove bottled distilled spirits, wines, or malt beverages from Customs custody for consumption in bottles, for sale or any other commercial purposes, without having first obtained a certificate of label approval covering the product.

Thus, the certificate of label approval requirement ensures that mislabeled distilled spirits, wines, or malt beverages cannot be introduced in interstate or foreign commerce. To ensure that products with proper labels were not altered once such products had been removed from bond, section 205(e) further provides as follows:

> It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label upon distilled spirits, wine, or malt beverages held for sale in interstate or foreign commerce or after shipment therein, except as authorized by Federal law or except pursuant to regulations of the Secretary of the Treasury authorizing relabeling for purposes of compliance with the requirements of this subsection or of State law.

Regulations which implement these provisions of the FAA Act, as they relate to wine, distilled spirits, and malt beverages, are set forth in title 27, Code of Federal Regulations (CFR), Parts 4, 5, and 7, respectively. These regulations provide for relabeling in certain circumstances.

Sections 4.30 and 7.20 provide that someone wanting to relabel must receive prior permission from the Regional Director (Compliance). Section 5.31 does not currently require prior approval for the relabeling of distilled spirits, as long as such relabeling is done in accordance with an approved certificate of label approval.

The regulations provide that distilled spirits, wines and malt beverages may be relabeled as authorized by Federal law. Such products may also be relabeled for purposes of compliance with the requirements of the regulations, or of State law. Finally, there may be added to wine and distilled spirits bottles, after removal from Customs custody, or prior to or after removal from bonded premises, without application for permission to relabel, a label identifying the wholesale or retail distributor thereof, and containing no reference whatever to the characteristics of the product.

Customs Bonded Warehouses and Foreign Trade Zones

The statutory prohibition against the alteration or mutilation of distilled spirits, wine, or malt beverage labels applies to all products held for sale in interstate or foreign commerce. The terms of the statute thus apply to nontaxpaid domestic and imported products held for storage or manipulation in a Customs bonded warehouse or foreign trade zone.

However, since domestic nontaxpaid alcoholic beverages bottled for exportation are exempt from the certificate of label approval requirement, and certificates of label approval are not required for imported alcoholic beverages until they are withdrawn from Customs custody for consumption in the United States, ATF has previously taken the position that relabeling activities could occur in a Customs bonded warehouse or foreign trade zone without prior ATF approval. ATF regulations authorize the relabeling of alcoholic beverages in Customs custody in order to bring such products in compliance with a certificate of label approval prior to withdrawal for consumption. However, current regulations do not specifically set forth the limitations on other types of relabeling activities in Customs bonded warehouses or foreign trade zones. In general, ATF saw no need to scrutinize labeling activities involving such products unless and until they were withdrawn from Customs custody for consumption in the United States.

While ATF has not required that persons relabeling alcoholic beverages in Customs bonded warehouses or foreign trade zones obtain prior approval, such activities are subject to regulation by the United States Customs Service (''Customs''). Because the

current regulations do not clarify the scope of the prohibition against alteration of labels, there has been considerable confusion as to what types of labeling activities are authorized in a Customs bonded warehouse or foreign trade zone.

ATF has taken the position that there are restrictions as to the removal of mandatory information from domestic nontaxpaid distilled spirits, wines, and malt beverages. Pursuant to Parts 19, 24, and 25, such products must be marked with certain mandatory information, which is necessary to protect the revenue, and to ensure the tracing of the product in the event of diversion. Thus, it has been ATF's policy that such mandatory information may not be removed from products, regardless of the fact that they are in a Customs bonded warehouse or foreign trade zone awaiting exportation. However, this policy is not set forth in the current regulations.

ATF is thus proposing to amend the regulations in parts 4, 5, and 7 to clarify that the prohibition against alteration or mutilation of labels applies to products held in a foreign trade zone or customs bonded warehouse. The proposed amendments will specify the type of relabeling activities permissible for both domestic nontaxpaid alcoholic beverages and imported alcoholic beverages stored in a Customs bonded warehouse or foreign trade zone. Since current regulations do not authorize removal of domestic nontaxpaid malt beverages to Customs bonded warehouses pending exportation, the relabeling of malt beverages in Customs bonded warehouses is not discussed.

The proposed regulations will provide that relabeling of distilled spirits, wines, and malt beverages in Customs bonded warehouses or foreign trade zones can be accomplished without obtaining permission from ATF, as long as such relabeling is done under the supervision of Customs officials, in compliance with Customs requirements, and does not involve the removal from the label or package of information made mandatory by ATF regulations. The proposed language concerning the supervision of Customs officials and compliance with Customs requirements is not intended to impose any new requirements; instead, this language merely recognizes current requirements under Customs regulations. See, generally 19 C.F.R. 19.11 and 146.51.

Product Identification Codes

The complaints about the mutilation of product identification codes in Customs bonded warehouses and foreign trade zones brought to the surface an issue which ATF had previously been considering—whether lot identification numbers or product identification codes should be made mandatory information on consumer packages of alcoholic beverages. Such codes are not currently required under the regulations. Instead, labels on domestic distilled spirits, wines, and malt beverages are merely required to list the name and address of the bottler. For imported products, the name and address of the importer is required information on the label.

Obviously, these requirements provide enough information so that if a product is mislabeled, adulterated, or poses a health hazard, it is possible to determine the source of the product. However, this does not allow either ATF or the producer to trace a particular consumer package back to a bottling line or production shift.

Current regulations in Parts 19, 24 and 25 promulgated pursuant to the Internal Revenue Code require certain markings on cases of distilled spirits, wines, and malt beverages. Cases of distilled spirits and wines must be marked with serial numbers. These markings are required in order to protect the revenue, and to facilitate tracing in the event of the diversion of nontaxpaid goods. However, case markings have limited value in tracing consumer packages such as bottles and cans. Once the product is removed from the case, those markings are obviously of no value in tracing the product.

The purpose of product identification codes (*i.e.,* lot identification numbers, bottling dates, freshness dates, etc.) on labels or packages of products is to facilitate the tracing of a product for safety, compliance or quality control issues. For example, if an alcoholic beverage product is found to have been tampered with, or contaminated, any type of code which would enable the tracing of the product back to the bottling line or production batch would be extremely valuable in determining how the tampering or contamination occurred, and in allowing the producer to make an informed decision as to the extent of the problem, and the need for product recalls.

For this reason, ATF believes that product identification codes are useful as a consumer protection measure. Safety, labeling and quality control problems often come to light by virtue of consumer complaints or market place testing of products by ATF. In such instances, case markings will generally be of no avail. However, the use of product identification codes can help to readily identify the hazardous or defective product, and, in the event that a health hazard exists, assist in a speedier and more orderly recall of these products from the marketplace.

The use of lot identification numbers has already been mandated by the Council of the European Communities, in Council Directive 89/396/EEC, dated June 14, 1989. In view of the fact that many European countries now require such markings, and many large producers in the United States voluntarily place such codes on product labels or containers, ATF raised the issue of mandatory product identification codes at an industry meeting held in Washington, D.C. on July 26, 1994.

The purpose of raising this issue with industry members was to gather information on current industry practices regarding product identification codes. ATF has learned that many domestic and foreign producers of alcoholic beverages voluntarily place product identification codes or lot identification numbers on the labels or containers of wines, distilled spirits, and malt beverages. Typically, the label or container of the product will be marked with a code indicating the batch from which the product was made, a bottling date, a production shift code, or some other type of mark which will enable the producer to trace the consumer package to a specific production batch or bottling line.

While large producers are more likely to have their own system of product codes, small producers often find that such a system is unnecessary, because their own records will enable them to do any necessary tracing. At the industry meeting, questions were raised as to whether it was necessary to impose a product identification code.

Rather than impose a mandatory product identification code requirement on all producers, ATF is proposing to leave the decision as to whether to place product identification codes on consumer packages to the producer. At this time, we believe that the consumer is adequately protected by the information required under the current regulations. However, in order to allow producers to efficiently develop a system in which they can ensure the tracing of their own products, we believe that the voluntary placement of product identification codes on consumer packages by producers should be protected by regulation. This will address the specific problem currently faced by producers—the removal of product identification codes by distributors or other third parties.

If a producer believes that the only way it can efficiently trace products is

to put product identification codes on the consumer packages, ATF does not believe it should allow the intent of the producer to be frustrated by third parties. It is the producer who will have to bear the costs of recalls if product identification codes have been obliterated by distributors. It is the consumer who will suffer if the obliteration of such marks makes it impossible to trace problems with contaminated products. Finally, such actions make it more difficult for ATF to trace problems with products already in the market place.

Thus, ATF is proposing an amendment to the regulations which will specifically prohibit the labeling or relabeling of products if the effect of such action is to remove from labels or containers ''product identification codes'' placed on the label or container by the producer for tracing purposes. The term ''product identification code'' is defined to include any numbers, letters, symbols, dates, or other codes placed on the label or container by which the producer may be able to trace a product back to a particular production lot or batch, bottling line, or date of removal.

Under the proposed regulations, if it is necessary for anyone but the producer to remove the original label from the product, the product identification code must be put back on the new label. ATF believes that this proposal will adequately address the problem before us, without imposing an undue burden on any part of the industry. Most importantly, it will ensure that an important consumer protection mechanism voluntarily placed on consumer packages by manufacturers will not be thwarted.

Although ATF is not proposing to require product identification codes on labels or packages, it is the opinion of the Bureau that such codes are useful, and should be encouraged. If at any time we find that the lack of such codes is hampering the exercise of our consumer protection function, we may wish to reconsider this option.

Products Bottled for Exportation

Although products which are bottled for exportation are not required to be covered by certificates of label approval, ATF believes that the prohibition on alteration of labels applies to such products. The alteration or mutilation of required information on labels, as well as product identification codes, would hamper ATF's efforts in tracing the illegal diversion of nontaxpaid alcoholic beverages which were intended for exportation. One of the purposes of the FAA Act was to aid in the collection of taxes on distilled spirits, wines, and malt beverages. Thus, we have authority under the FAA Act to extend these provisions to products which are intended to be exported.

Prior Approval for Relabeling Distilled Spirits

The amendments to Part 5, relating to the labeling of distilled spirits products, would also resolve a problem which was inadvertently created by T.D. ATF–198, 50 FR 8456 (1985). In that amendment to the regulations, the requirement that ATF give prior approval for the relabeling of distilled spirits was removed, as long as the products were relabeled in accordance with an approved label. This created an unintended inconsistency with Parts 4 and 7, which do require prior approval for the relabeling of wines and malt beverages, respectively.

The proposed amendment would reinstate in section 5.31 the requirement that approval be obtained from ATF prior to relabeling distilled spirits. ATF does not believe that this is a burdensome requirement, in light of the statutory provision prohibiting any relabeling unless done in accordance with regulations issued by the Secretary. However, the proposed regulations will specify that such permission need not be obtained for relabeling products in Customs bonded warehouses or foreign trade zones, as long as such relabeling is done under the supervision of Customs officers, in compliance with all applicable Customs requirements, and the effect of the relabeling is not to remove from the container or label any information which is mandatory under ATF regulations, or any product identification code placed on the container or label by the producer for tracing purposes.

Miscellaneous

ATF is also proposing to add to section 7.20 a provision which is already found in slightly different forms in sections 4.30 and 5.31. This provision authorizes, without prior approval from ATF, the addition of a label identifying the wholesale or retail distributor, or identifying the purchaser or consumer, as long as the label contains no reference whatever to the characteristics of the product. The proposed regulations will standardize this provision for wines, distilled spirits, and malt beverages. Furthermore, the approval procedure in all three sections is also standardized for the sake of consistency. Although the current regulations in sections 4.30 and 7.20 do not specifically condition approval for relabeling on the existence of a certificate of label approval for the new labels, such a policy has always been enforced by ATF. The proposed regulations will spell out this requirement.

Executive Order 12866

It has been determined that this proposed regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this Executive Order.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant impact on a substantial number of small entities. This notice requests comments on a proposal to make it unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand or label on wine, distilled spirits, or malt beverages held for sale in interstate or foreign commerce or after shipment therein, including products held in a foreign trade zone or Customs bonded warehouse. if the effect of such action is to remove mandatory information required by ATF regulations, or to remove a product identification code placed on the label or container by the producer for tracing purposes. The proposal would also reinstate a requirement for prior approval for relabeling of distilled spirits products. This proposal does not mandate new labeling requirements, but merely protects and preserves mandatory information already required under the regulations, and product identification codes which a producer voluntarily chooses to put on the product. Thus, the proposal should not have a significant economic impact on a substantial number of small entities.

Accordingly, a regulatory flexibility analysis is not required because the proposal, if promulgated as a final rule, is not expected: (1) to have significant secondary or incidental effects on a substantial number of small entities, or (2) to impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3504(h).

Comments on the collection of information should be directed to the

Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to: Reports Management Officer, Information Programs Branch, Room 3450, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226.

The collections of information in this regulation are in 27 CFR 4.30, 5.31, and 7.20. These sections require that persons who wish to alter approved labels must apply for permission to ATF. This information is required by the Bureau of Alcohol, Tobacco and Firearms to ensure that alterations of labels are done in compliance with the regulations. The likely respondents are businesses or other for-profit institutions, including small businesses or organizations. This information collected requirement is included in OMB Control Number 1512–0092, which covers the requirement to obtain prior approval from ATF for all labels on distilled spirits, wines, and beer. This requirement for prior approval of labels is mandated by statute (27 U.S.C. 205(e)).

The estimated total number of label approvals issued annually under Control Number 1512–0092 is 54,601. Based on an estimated average time of 30 minutes to complete the application for label approval, the total annual burden associated with Control Number 1512–0092 is 27,300 hours. We estimate that ATF receives about 180 applications for permission to relabel distilled spirits, wines, and malt beverages every year.

The amendments proposed in this document will not change the estimated number of 54,601 responses, because any person wanting to relabel an alcoholic beverage product is already required to obtain a certificate of label approval. The requirement for obtaining prior approval from the regional director will not change the estimated average time of 30 minutes to complete the application for a certificate of label approval, because only about 180 of the 54,601 responses will involve relabeling. The additional time required for those 180 responses is not significant enough to affect the estimated average time of 30 minutes to complete the application for label approval. Thus, the total burden estimated associated with Control Number 1512–0092 is not affected by the amendments proposed in this document.

Public Participation

ATF requests comments from all interested persons concerning the amendments proposed by this notice. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received or or before the closing date. ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting the comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on the proposed amendments to the regulations should submit his or her request, in writing, to the Director within the 60-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, if a public hearing is necessary.

Disclosure

Copies of this notice and the written comments will be available for public inspection during normal business hours at: ATF Public Reading Room, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226

Drafting Information

The principal author of this document is Daniel J. Hiland, Revenue Programs Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 4

Advertising, Consumer Protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and Containers, Wine.

27 CFR Part 5

Advertising, Consumer Protection, Customs duties and inspection, Imports, Liquors, Packaging and containers.

27 CFR Part 7

Advertising, Consumer Protection, Customs duties and inspection, Imports, Labeling.

Issuance

Title 27, Chapter I, is proposed to be amended as follows:

PART 4—LABELING AND ADVERTISING OF WINE

Paragraph 1. The authority citation for 27 CFR Part 4 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Section 4.30(b) is revised, and new paragraphs (c) and (d) are added to read as follows:

§ 4.30 General.

* * * * *

(b) *Alteration of labels.* (1) it shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label upon wine held for sale in interstate or foreign commerce or after shipment therein, including wine held in Customs bonded warehouses or foreign trade zones, except as authorized by Federal law, or as provided for in this section.

(2) *Approval procedure.* (i) The regional director (compliance) may, upon written application, permit additional labeling or relabeling of wine in containers for purposes of compliance with the requirements of this subpart or of State law. Permission to relabel shall not be given if the effect of the relabeling is to remove from the container or label a product identification code placed on the container or label by the producer for tracing purposes. For purposes of this section, the term ''product identification code'' includes any numbers, letters, symbols, dates, or other codes placed on the label or container by which the producer may be able to trace a product back to a particular production lot or batch, bottling line, or date of removal.

(ii) Application for permission to relabel shall be accompanied by two complete sets of the old labels and two complete sets of any proposed new labels, together with a statement of the reasons for relabeling, the quantity and the location of the wine, and the name and address of the person by whom the wine will be relabeled. In addition, the person desiring to relabel the wine must provide evidence that the proposed new labels are covered by a certificate of label approval, ATF F 5100.31.

(3) *Labels identifying wholesale or retail distributor.* There may be added to the container, after removal from customs custody, or prior to or after removal from the premises where bottled or packed, without application for permission to relabel, a label identifying the wholesale or retail distributor thereof or identifying the purchaser or consumer, and containing no references whatever to the characteristics of the products.

(c) *Customs bonded warehouses.* (1) Domestic wines which have been removed without payment of tax for transfer to a Customs bonded warehouse pending exportation may be relabeled without permission from ATF, as long as such relabeling is done under the supervision of Customs officers, in compliance with all applicable Customs requirements, and the effect of the relabeling is not to remove from the container or label any markings which are required under Part 24 of this chapter, or any product identification code placed on the container or label by the producer for tracing purposes.

(2) Imported wines held in a Customs bonded warehouse may be relabeled without permission from ATF, as long as such relabeling is done under the supervision of Customs officers, in compliance with all applicable Customs requirements, and the effect of the relabeling is not to remove from the container or label any product identification code placed on the container or label by the producer for tracing purposes. As provided in § 4.40, imported beverage wine in containers shall not be released from Customs custody for consumption without a certificate of label approval.

(d) *Foreign trade zones.* (1) Domestic wines which have been withdrawn without payment of tax for deposit in a foreign trade zone pending exportation may be relabeled without permission from ATF as long as such relabeling is done under the supervision of Customs officers, in compliance with all applicable Customs requirements, and the effect of the relabeling is not to remove from the container or label any markings required by Part 24 of this chapter, or any product identification code placed on the container or label by the producer for tracing purposes.

(2) Imported wines which have been entered into a foreign trade zone may be relabeled without receiving prior permission from ATF, as long as such relabeling is done under Customs supervision and in compliance with Customs requirements, and the effect of such relabeling is not to remove from the label or container any product identification code placed on the label or container by the producer for tracing purposes. As provided in § 4.40, imported beverage wine in containers shall not be released from Customs custody for consumption without a certificate of label approval.

Par. 3. Section 4.80 is revised to read as follows:

§ 4.80 Exports.

With the exception of the regulations at § 4.30(b), (c), and (d), the regulations in this part shall not apply to wine exported in bond.

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

Par. 4. The authority citation for 27 CFR Part 5 continues to read as follows:

Authority. 26 U.S.C. 5301, 7805; 27 U.S.C. 205.

Par. 5. Section 5.1 is revised to read as follows:

§ 5.1 General.

The regulations in this part relate to the labeling and advertising of distilled spirits. This part applies to the several States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. With the exception of the regulations at § 5.31(b), (c), and (d), the regulations in this part do not apply to distilled spirits for export.

Par. 6. Section 5.31(b) is revised, and new paragraphs (c) and (d) are added to read as follows:

§ 5.31 General.

* * * * *

(b) *Alteration of labels.* (1) It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label upon distilled spirits held for sale in interstate or foreign commerce or after shipment therein, including distilled spirits held in Customs bonded warehouses or foreign trade zones, except as authorized by Federal law, or as provided in this section.

(2) *Approval procedure.* (i) The regional director (compliance) may, upon written application, permit additional labeling or relabeling of distilled spirits in containers for purposes of compliance with the requirements of this subpart or of State law. Permission to relabel shall not be given if the effect of the relabeling is to remove from the container or label a product identification code placed on the container or label by the producer for tracing purposes. For purposes of this section, the term ''product identification code'' includes any numbers, letters, symbols, dates, or other codes placed on the label or container by which the producer may be able to trace a product back to a particular production lot or batch, bottling line, or date of removal.

(ii) Application for permission to reliable shall be accompanied by two complete sets of the old labels and two complete sets of any proposed new labels, together with a statement of the reasons for relabeling, the quantity and the location of the distilled spirits, and the name and address of the person by whom the distilled spirits will be relabeled. In addition, the person desiring to relabel the distilled spirits must provide evidence that the proposed new labels are covered by a certificate of label approval, ATF F 5100.31.

(3) *Labels identifying wholesale or retail distributor.* There may be added to the bottle, after removal from customs custody, or prior to or after removal from bonded premises, without application for permission to relabel, a label identifying the wholesale or retail distributor thereof or identifying the purchaser or consumer, and containing no references whatever to the characteristics of the product.

(c) *Customs bonded warehouses.* (1) Domestic distilled spirits which have been removed without payment of tax for transfer to a Customs bonded warehouse pending exportation may be relabeled without permission from ATF, as long as such relabeling is done under the supervision of Customs officers, in compliance with all applicable Customs requirements, and the effect of the relabeling is not to remove from the container or label any markings which are required under Part 19 of this chapter, or any product identification code placed on the container or label by the producer for tracing purposes.

(2) Imported distilled spirits held in a Customs bonded warehouse may be relabeled without permission from ATF, as long as such relabeling is done under the supervision of Customs officers, in compliance with all applicable Customs requirements, and the effect of the relabeling is not to remove from the container or label any product identification code placed on the container or label by the producer for tracing purposes. As provided in § 5.51, bottled distilled spirits shall not be released from Customs custody for consumption without a certificate of label approval.

(d) *Foreign trade zones.* (1) Domestic distilled spirits which have been withdrawn without payment of tax for deposit in a foreign trade zone pending exportation may be relabeled without permission from ATF as long as such relabeling is done under the supervision of Customs officers, in compliance with all applicable Customs requirements, and the effect of the relabeling is not to remove from the container or label any markings required by Part 19 of this chapter, or any product identification code placed on the container or label by the producer for tracing purposes.

(2) Imported distilled spirits which have been entered into a foreign trade zone may be relabeled without receiving prior permission from ATF, as long as

such relabeling is done under Customs supervision and in compliance with Customs requirements, and the effect of such relabeling is not to remove from the label or container any product identification code placed on the label or container by the producer for tracing purposes. As provided in § 5.51, bottled distilled spirits shall not be released from Customs custody for consumption without a certificate of label approval.

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

Par. 7. The authority citation for 27 CFR Part 7 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 8. Section 7.20 is amended by revising paragraph (c), and adding new paragraph (d) and (e) to read as follows:

§ 7.20 General.

* * * * *

(c) *Alteration of labels.* (1) It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label upon malt beverages held for sale in interstate or foreign commerce or after shipment therein, including malt beverages held in Customs bonded warehouses or foreign trade zones, except as authorized by Federal law, or as provided in this section.

(2) *Approval procedure.* (i) The regional director (compliance) may, upon written application, permit additional labeling or relabeling of malt beverages in containers for purposes of compliance with the requirements of this subpart or of State law. Permission to relabel shall not be given if the effect of the relabeling is to remove from the container or label a product identification code placed on the container or label by the producer for tracing purposes. For purposes of this section, the term ''product identification code'' includes any numbers, letters, symbols, dates, or other codes placed on the label or container by which the producer may be able to trace a product back to a particular production lot or batch, bottling line, or date of removal.

(ii) Application for permission to relabel shall be accompanied by two complete sets of the old labels and two complete sets of any proposed new labels, together with a statement of the reasons for relabeling, the quantity and the location of the malt beverages, and the name and address of the person by whom they will be relabeled. In addition, the person desiring to relabel the malt beverages must provide evidence that the proposed new labels are covered by a certificate of label approval, ATF F 5100.31.

(3) *Labels identifying wholesale or retail distributor.* There may be added to the bottle, after removal from customs custody, or prior to or after removal from bonded premises, without application for permission to relabel, a label identifying the wholesale or retail distributor thereof or identifying the purchaser or consumer, and containing no references whatever to the characteristics of the product.

(d) *Customs bonded warehouses.* Imported malt beverages held in a Customs bonded warehouse may be relabeled without permission from ATF, as long as such relabeling is done under the supervision of Customs officers, in compliance with all applicable Customs requirements, and the effect of the relabeling is not to remove from the container or label any product identification code placed on the container or label by the producer for tracing purposes. As provided in § 7.31, no imported malt beverages in containers shall be released from Customs custody for consumption without a certificate of label approval.

(e) *Foreign trade zones.* (1) Domestic malt beverages which have been withdrawn without payment of tax for deposit in a foreign trade zone pending exportation may be relabeled without permission from ATF as long as such relabeling is done under the supervision of Customs officers, in compliance with all applicable Customs requirements, and the effect of the relabeling is not to remove from the container or label any markings required by Part 25 of this chapter or any product identification code placed on the container or label by the producer for tracing purposes.

(2) Imported malt beverages which have been entered into a foreign trade zone may be relabeled without receiving prior permission from ATF, as long as such relabeling is done under Customs supervision and in compliance with Customs requirements, and the effect of such relabeling is not to remove from the label or container any product identification code placed on the label or container by the producer for tracing purposes. As provided in § 7.31, no imported malt beverages in containers shall be released from Customs custody for consumption without a certificate of label approval.

Par. 9. Section 7.60 is revised to read as follows:

§ 7.60 Exports.

With the exception of the regulations at § 7.20(c), (d) and (e), the regulations in this part shall not apply to malt beverages exported in bond.

Dated: September 9, 1994.

John W. Magaw,

Director.

Approved: September 28, 1994.

John P. Simpson,

Deputy Assistant Secretary, (Enforcement).

[FR Doc. 95–138 Filed 1–3–95; 8:45 am]

BILLING CODE 4810–31–M

Fiscal Service

31 CFR Part 209

RIN 1510–AA30

Payment to Financial Institutions for Credit to Accounts of Employees and Beneficiaries

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to remove part 209 from title 31. This part governs the regular remittance to financial institutions of Federal payments which are for credit to the accounts of employees and beneficiaries. Regulations implemented July 1, 1994, require that financial institutions receive Government ACH transactions through electronic means. This regulatory change to 31 CFR part 210 made a separate part 209 regarding checks unnecessary. In addition, proposed revisions to 31 CFR part 210, Federal Government Participation in the Automated Clearing House, make substantive changes that supersede the savings allotment provisions of part 209, because savings allotment and recurring benefit payments formerly under the terms of part 209 are made by the ACH method under the terms of part 210.

DATES: Comments must be received on or before February 3, 1995.

ADDRESSES: Comments may be mailed to the Cash Management Policy and Planning Division, Financial Management Service, U.S. Department of the Treasury, Room 420, Liberty Center, 401 14th Street, SW., Washington, DC 20227.

FOR FURTHER INFORMATION CONTACT: John Galligan (202) 874–6657 (Director, Cash Management Policy and Planning Division).

SUPPLEMENTARY INFORMATION:

Background

This amendment removes part 209 from title 31 of the Code of Federal Regulations. This action renders moot the two recently proposed amendments to part 209. On December 4, 1992, the Financial Management Service

published a Notice of Proposed Rulemaking revising 31 CFR part 209 (57 FR 57400). That notice invited comments for a 30 day period ending January 4, 1993. No comments were received. A review of part 209 conducted independently of the formal notice and comment procedure determined that an additional revision to the language of part 209, not included in the December 4, 1992, notice, was necessary. Thus a Supplemental Proposed Rule was published on August 4, 1993 (58 FR 41449). That notice invited comments for a 30 day period ending September 3, 1993. No comments were received.

Since then, other actions have occurred which make 31 CFR part 209 obsolete. First, regulations implemented July 1, 1994, require that financial institutions receive Government ACH transactions through electronic means. (58 FR 21634). This regulatory change to 31 CFR part 210 made a separate part 209 regarding checks unnecessary. Second, revisions have been proposed for 31 CFR part 210, which define the responsibilities and liabilities of the Federal Government, Federal Reserve Banks, financial institutions, receivers, and originators doing business with the Government through the ACH system (59 FR 50112). The 3 revisions proposed for part 210 supersede the savings allotment provisions of part 209 because savings allotment and recurring benefit payments formerly made under the terms of part 209 are made by the ACH method under the terms of part 210.

Rulemaking Analysis

Treasury has determined that this regulation is not a significant regulatory action as defined in Executive Order 12866. Accordingly, a regulatory assessment is not required. It is hereby certified that this revision will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The included changes are expected to result in improvements to the ACH process with advantages to institutions and recipients.

List of Subjects in 31 CFR Part 209

Automated Clearing House, Banks, Banking, Electronic funds transfer, Federal Reserve Banks, Financial institution, Government employees, Wages.

Accordingly, Part 209 of Title 31 of the Code of Federal Regulations is proposed to be removed.

Dated: October 5, 1994.

Russell D. Morris,

Commissioner.

[FR Doc. 95–53 Filed 1–3–95; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 169a

[DoD Instruction 4100.33]

Commercial Activities Program Procedures

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Proposed rule.

SUMMARY: This part proposes to remove the requirement to place every DoD employee in a comparable position prior to converting a function with 10 full time equivalents or less to contract and adjust minor administrative corrections. It also proposes to establish procedures and criteria for use by DoD Components to determine whether DoD commercial activities should be performed by DoD personnel in-house or by contract with commercial sources.

DATES: Comments must be received on or before March 6, 1995.

ADDRESSES: Send comments to the Office of the Assistant Secretary of Defense (Economic Security), Installations, 3300 Defense Pentagon, Room 3E808, Washington, DC 20301–3300.

FOR FURTHER INFORMATION CONTACT: Earl DeHart, Program Manager, 400 Army/Navy Drive, Suite 206, Arlington, Virginia 22202–2884, telephone (703) 604–5806.

SUPPLEMENTARY INFORMATION: On July 1, 1992, the Department of Defense published an amendment to 32 CFR part 169a in the **Federal Register** (57 FR 29207) bringing DoD guidance on commercial activities up-to-date. Comments will be available for public inspection by request. Because of the anticipated number of comments, the Department of Defense does not plan to acknowledge or respond to individual comments. However, the Department of Defense will respond to comments in the Supplementary Information of the final rule of this document. It has been certified that this proposed rule is not a significant regulation action.

The rule does not:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; planned by another agency;

(2) Create a serious inconsistency or otherwise interfere with an action taken or

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. Further, it has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because the Services and Department agencies administering the rule will show a reduction in administrative costs and other burdens resulting from the simplification and clarification of direct conversion policies when this proposed rule is issued as a final rule. Finally, it has been certified that this proposed rule does not impose any additional reporting or record keeping requirements prohibited under the Paperwork Reduction Act of 1980.

List of Subjects in 32 CFR Part 169a

Armed forces, Government procurement.

Accordingly, 32 CFR Part 169a is proposed to be amended as follows:

PART 169a—COMMERCIAL ACTIVITIES PROGRAM PROCEDURES

1. The authority citation for Part 169a continues to read as follows:

Authority: 5 U.S.C. 301 and 552.

2. Section 169a.21 is proposed to be amended in paragraph (a) by removing ''DD–P&L 1540'' and adding in its place ''DD–A&T(A) 1540'', in paragraph (b) by removing ''DD–P&L 1542'' and adding in its place ''DD–A&T(Q) 1542'', in paragraph (c)(3) by removing ''ASD(P&L)'' adding in its place ''ASD(ES)'', by revising paragraph (c) introductory text, and by adding a sentence at the end of paragraph (c)(2) to read as follows:

§ 169a.21 Reporting requirements.

* * * * *

(c) Congressional Data Reports on CA (Report Control Symbol DD–A&T(A&AR) 1949) and Reports on savings on Costs from Increased Use of DoD Civilian Personnel (Report Control Symbol DD–A&T(AR) 1950). To insure consistent application of the requirements stated in 10 U.S.C. 2461 and 2463, the following guidance is provided:

(2) * * * 10 U.S.C. 2463 applies to conversions from contract to in-house involving 50 or more contractor employees.

* * * * *

3. Appendix B to Part 169a is proposed to be amended in section A.1 by removing ''DD–P&L(A) 1540'' and adding in its place ''DD–A&T(A) 1540'' and section A.5 is amended by removing the word ''or'' and adding in its place ''of''.

4. Appendix C to Part 169a is proposed to be amended in sections C.6. and C.7.a.(4) by removing ''room 3E787'' by adding in its place ''room 3E813,'' section C.8. by removing ''Public Law 102–172'' and adding in its place ''Public Law 103–139'' and by revising section B.4 and adding a heading to section C.8. to read as follows:

APPENDIX C TO PART 169a—[AMENDED]

* * * * *

B. * * *

4. The installation commander must attempt to place or retain displaced DoD civilian employees by:

a. Placing or retraining employees in available permanent vacant positions, or

b. Assigning displaced employees to valid temporary or over-hire positions in similar activities for gainful employment until permanent vacancies are available. The type of employee appointment (e.g., career, career-conditional, etc., or change from competitive to excepted service or vice versa) must not change, or

c. Certifying where no vacancies exist or are not projected, that employees will be offered retraining opportunities under the Job Training Partnership Act or similar retraining programs for transitioning into the private sector.

C. * * *

8. Most Efficient and Cost-Effective Analysis for Contractor Performance of an Activity (Report Control Symbol DD–A&T(AR) 1951. * * *

5. Appendix D to Part 169a is proposed to be amended by adding a new entry at the end of each listing under the heading CAMIS ENTRY AND UPDATE INSTRUCTIONS, Part I, Section One, item [3] and under the heading CAMIS ENTRY AND UPDATE INSTRUCTION, Part II, Section One, item [3] to read as follows:

Appendix D to Part 169a—[Amended]

* * * * *

Camis Entry and Update Instruction

Part I * * *

Section One * * *

[3] * * *

4—Defense Technical Information Center (DTIC)

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Camis Entry and Update Instruction

Part II * * *

Section One * * *

[3] * * *

4—Defense Technical Information Center (DTIC)

* * * * *

Dated: December 16, 1994.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 95–174 Filed 1–3–95; 8:45 am]

BILLING CODE 5000–04–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[FRL–J132–2]

Open Meeting of the Negotiated Rulemaking Advisory Committee for Small Nonroad Engine Regulations

AGENCY: Environmental Protection Agency.

ACTION: FACA Committee Meeting—Negotiated Rulemaking on Small Nonroad Engine Regulations.

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), EPA is giving notice of the next meeting of the Advisory Committee to negotiate a rule to reduce air emissions from small nonroad engines. The meeting is open to the public without advance registration. Agenda items for the meeting include reports from the task groups and discussions of the draft ''single text'' strawman.

DATES: The committee will meet on January 23, 1995 from 10:00 a.m. to 6:00 p.m., and on January 24, 1995 from 8:00 a.m. to 4:00 p.m.

ADDRESSES: The location of the meeting will be the Courtyard by Marriott, 3205 Boardwalk, Ann Arbor, MI 48108; phone: (313) 995–5900.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on the substantive matters of the rule should contact Lucie Audette, National Vehicle and fuel Emissions Laboratory, 2565 Plymouth Rd., Ann Arbor, Michigan 48105, (313) 741–7850. Persons needing further information on committee procedural matters should call Deborah Dalton, Consensus and Dispute Resolution Program, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260–5495, or the Committee's facilitators, Lucy Moore or John Folk-Williams, Western Network, 616 Don Gaspar, Santa Fe, New Mexico, 87501 (505) 982–99805.

Dated: December 27, 1994.

Deborah Dalton,

Designated Federal Official.

[FR Doc. 95–83 Filed 1–3–95; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[NE–6–1–6445b; FRL–5115–4]

Approval and Promulgation of Implementation Plans and Delegation of 112(l) Authority; State of Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Nebraska. The state's request for a revision to the SIP includes the creation of a Class II operating permit program, Part D (nonattainment) new source review rule changes, SO_2 rule corrections, and the use of enhanced monitoring. In the final rules section of the **Federal Register**, the EPA is approving the state's SIP revision as a direct-final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments must be received on or before February 3, 1995.

ADDRESSES: Comments may be mailed to Christopher D. Hess, Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Christopher D. Hess at (913) 551–7213.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: November 10, 1994.

William Rice,

Acting Regional Administrator.

[FR Doc. 95–147 Filed 1–3–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 230

[FRL–5132–4]

RIN 2040–AC14

Comparison of Dredged Material to Reference Sediment

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to revise the Clean Water Act Section 404(b)(1) Guidelines (Guidelines) to provide for comparison of dredged material proposed for discharge with ''reference sediment,'' for the purposes of conducting chemical, biological, and physical evaluations and testing. Under this proposed revision, the testing provisions of the Guidelines would be improved by directing that dredged material proposed for discharge be compared to reference sediment. ''Reference sediment'' would be defined as sediment that reflects the conditions at the disposal site had no dredged material disposal ever occurred there. Adoption of the reference sediment approach would allow the regulatory program to better assess the potential cumulative impacts of dredged material discharges, and would make testing of dredged material proposed for discharge in waters of the U.S. more consistent with current methods used for testing dredged material proposed for ocean disposal.

DATES: Written comments must be submitted on or before March 6, 1995.

ADDRESSES: Written comments should be submitted to: Reference Sediment Docket (4502F), Wetlands and Aquatic Resources Regulatory Branch, U.S. EPA, 401 M Street SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Details are available from Mr. John Goodin at (202) 260–9910.

SUPPLEMENTARY INFORMATION:

Statutory and Regulatory Background

The Federal Water Pollution Control Act of 1972 (amended in 1977 as the Clean Water Act) established, in Section 404, a permit program for the regulation of proposed discharges of dredged or fill material into waters of the United States, including wetlands. Section 404(a) authorizes the Secretary of the Army, acting through the Chief of Engineers, to issue permits specifying disposal sites in waters of the U.S. in accordance with regulatory requirements of the Section 404(b)(1) Guidelines (Guidelines). The Guidelines, which were published by EPA as final regulations on December 24, 1980 (45 FR 85336), are the substantive environmental criteria used in evaluating discharges of dredged or fill material under Section 404 of the Clean Water Act.

The Guidelines provide general restrictions at § 230.10 that must be met before a permit can be issued authorizing a discharge of dredged or fill material into waters of the U.S. In order to reach conclusions regarding these restrictions, a variety of factual determinations are made concerning the potential environmental effects of a proposed discharge. Sections 230.60 and 230.61 of the Guidelines outline the chemical, biological, and physical evaluation and testing procedures that are to be used to make several of these determinations. These testing procedures are designed to determine the degree to which the material proposed for discharge may introduce, relocate, or increase the availability of contaminants and how this may impact the aquatic ecosystem and organisms. Section 230.61(c) of the Guidelines outlines procedures for comparing ''excavation'' and ''disposal'' sites. This comparison is made to ascertain the potential for adverse environmental impacts at the disposal site due to the proposed discharge of dredged material. Markedly different concentrations of contaminants or toxicological responses of test organisms between sediment from the excavation and disposal sites may indicate the potential for adverse environmental impacts.

A fundamental precept surrounding all evaluations under the Guidelines is that a ''discharge will not have an unacceptable adverse impact either individually or in combination with known and/or probable impacts of other activities affecting the ecosystems of concern.'' (§ 230.1(c)) The Guidelines require the consideration of both cumulative and secondary effects on the aquatic ecosystem, as part of the factual determinations made to assess compliance (see § 230.11). If repetitive disposal occurs at a site, testing that employs the disposal site as a point of comparison may not facilitate an adequate evaluation of potential cumulative adverse effects, and thus may not provide the comprehensive data desired for factual determinations and ultimately, Guidelines compliance decisions.

The key standard established in the Guidelines is that dredged material disposal may not have an ''unacceptable adverse impact'' on the disposal site. As discussed below, use of disposal site sediments as a point of comparison for subsequent evaluations of dredged material proposed for discharge there could contribute to the incremental contamination of the site over time, by continually degrading that point of comparison. This could occur without any of the individual discharges causing an ''unacceptable adverse impact.''

Current Practice

Current practice for most dredged material disposal is to use, to the maximum extent practicable, the same dredged material disposal site for successive discharge activities. In this manner, that portion of the total aquatic ecosystem impacted by dredged material discharges is limited, as is the repetition of associated regulatory procedures (i.e., specification of a disposal site). However, use of sediment from the disposal site as the point of comparison for subsequent evaluations of dredged material proposed for discharge at the same site could result in long term changes in the nature of disposal site, if contaminants incrementally accumulate there. For example, increasingly contaminated sediments could be discharged at a site even though a given discharge might have exceeded the ''unacceptable adverse impact'' threshold had this discharge been permitted earlier in the life of the disposal site when contamination levels were not as high. In this manner, cumulative adverse effects of individual dredged material discharges at a disposal site may not be adequately assessed.

In addition, using sediment from the disposal site as a point of comparison as currently required under the Guidelines represents an inconsistency between how discharges of dredged material are regulated under the Clean Water Act, which has jurisdiction in waters of the U.S., and the Marine Protection, Research, and Sanctuaries Act, which has jurisdiction in the territorial seas and ocean waters. The latter uses a reference sediment comparison in conducting dredged material testing, whereas the former currently does not. Although the two programs regulate dredged material disposal under different statutes, there is considerable overlap in terms of practical implementation. EPA and the Corps of Engineers support consistent testing that facilitates environmental comparisons

when a number of dredged material disposal alternatives are being considered. Furthermore, consistent testing helps ensure that decisions regarding disposal are not driven by an artifact of different regulations which were envisioned to acquire similar effects information.

Definition of Reference Sediment

Today's proposed rule addresses the problem of using the disposal site as a point of comparison for proposed discharges of dredged material by providing for those comparisons to be made to reference sediment instead. The term ''reference sediment'' is defined as:

sediment that reflects the conditions at the disposal site had no dredged material disposal ever occurred there. Reference sediment serves as a point of comparison to identify potential environmental effects of a discharge of dredged material. Reference sediment shall be collected taking into account the following considerations: (1) to obtain physical characteristics, including grain size, as similar as practicable as the dredged material proposed for discharge, (2) to avoid areas in the immediate vicinity of, including depositional zones of, spills, outfalls, or other significant sources of contaminants, and (3) to be as close as practicable to, and subject to the same hydrologic influences as, the disposal site, but removed from areas which are subject to sediment migration of previous dredged material discharges. If existing information that provides an easy-to-interpret indication of the presence of bioavailable contaminants in the reference sediment and in the sediment from the disposal site waterbody is not available, sediment testing (e.g., toxicity testing) is necessary to ensure that the reference sediment accurately reflects the conditions of the sediment from the disposal site waterbody.

Specifically, § 230.3 of the Guidelines would be amended by adding the above definition of ''reference sediment'' as paragraph (u), and § 230.61(c) of the Guidelines would be amended by changing two applications of the term ''disposal site'' to reflect incorporation of the reference sediment approach.

Selection of Reference Sediment

The three considerations listed in the definition are designed to ensure that the reference sediment selected has appropriate physical characteristics and accurately reflects the sediment from the disposal site waterbody, absent the influence of previous dredged material discharges. Evaluation of each of these factors is necessary in the selection of an appropriate reference sediment. In light of the many factors that may affect it, the selection of appropriate reference sediment must be identified in the proposed sampling plan for testing associated with a proposed discharge and approved by the relevant Corps of Engineers District (or State, if they are the permitting authority) in coordination with the EPA Region.

First, the dredged material proposed for discharge and the reference sediment should possess similar physical characteristics, including grain size, which is important from both chemical and biological standpoints. For example, substrate preference of benthic organisms, larval settlement, and contaminant partitioning are specific to geophysical characteristics of the sediment. The presence of contaminants, and their bioavailability to the organisms that come into contact with them, are a direct function of characteristics (e.g., organic carbon in the surrounding sediment) which are often influenced by the grain size of the surrounding sediment.

Second, in selecting reference sediment, efforts should be made to avoid areas in the immediate vicinity of, including depositional zones of, spills, outfalls, or other significant sources of contaminants, in addition to areas that are subject to sediment migration of previous dredged material discharges, to prevent the selection of reference sediment that reflects either an area of increased contamination in a waterbody or reflects the impacts of previous dredged material discharges. In this regard, reference sediments should be substantially free of contaminants. However, it is recognized that a particular waterbody may be influenced by, and its sediments may therefore contain, a variety of chemical constituents or other characteristics, that are the result of natural or non-dredged material disposal influences. Therefore, ''substantially free of contaminants'' does not equate to ''pristine'' or ''absence of contaminants.''

The reference sediment comparison is designed to assess the potential impacts of a proposed discharge relative to the ambient conditions of the waterbody of the proposed disposal site (i.e., ''dredged or fill material should not be discharged into the aquatic ecosystem unless it can be demonstrated that such a discharge will not have an unacceptable adverse impact * * * [on] the ecosystems of concern.'' 40 CFR 230.1(c)). The reference sediment comparison yields data on the proposed discharge's impact at the disposal site, in light of any contaminants already present as the result of non-point runoff, point source discharges, air deposition, and various other sources outside the influence of the dredged material discharger. Thus, a ''pristine'' standard may not reflect the ambient conditions of the disposal site, the impacts upon which are to be evaluated under the Guidelines.

Third, selection of reference sediment should be in as close proximity as practicable to the disposal site sediment, while best reflecting the other considerations listed. This helps to maintain control for variables such as hydrologic influences that might otherwise differ between the disposal site and the location from which reference sediment is obtained.

An evaluation of the presence of contaminants is part of the overall evaluation to affirm that the reference sediment is similar to sediment in the disposal site waterbody (absent the impacts of any previous dredged material discharge). In circumstances where existing information that provides an easy-to-interpret indication of the presence of bioavailable contaminants in the reference sediment and in the sediment from the disposal site waterbody is not available, sediment testing (e.g., toxicity testing) is necessary to ensure that the reference sediment accurately reflects the conditions of the sediment from the disposal site waterbody. The evaluation of an appropriate reference sediment provides the basis for a valid demonstration that the reference sediment accurately reflects the characteristics of the sediment at the disposal site waterbody, including specifically an evaluation of the potential presence of contaminants, while providing the necessary flexibility for determining when additional information must be collected to support this demonstration.

A wide variety of site specific circumstances exist that affect what method or methods are appropriate or necessary for demonstrating the selection of suitable reference sediment. For example, in a particular circumstance, the information value of benthic bioassay results may be more useful in affirming an accurate reference sediment in cases where the suite of potential contaminants in the disposal site waterbody is very large, whereas information on several chemical contaminants of concern may be sufficient in other cases. Guidance on recommended methods will be described in the testing manual for proposed discharges of dredged material into waters of the U.S., and will be revised as necessary to ensure that these methods are current and sound. These procedures are intended to ensure that appropriate flexibility is provided to the Corps, or State that has assumed the Section 404 permit program, to require testing on a case-by-case basis where it

may be necessary to affirm the selection of an accurate reference sediment.

Benefits of Reference Sediment

Although the mention of ''reference sediment,'' *per se*, currently is absent from the Guidelines, this concept is inherent in both the general purpose and specific determinations required by these regulations, and provides the most effective approach to address current shortcomings in the existing testing protocol. Comparison of dredged material proposed for discharge to reference sediment provides a more effective basis for addressing cumulative effects at a site subject to previous disposal because the comparison would be made to sediment which has only been influenced by ambient conditions, i.e., the point of comparison would not be subject to alteration by previous dredged material discharges. As subsequent evaluations of dredged material proposed for discharge at a particular site would be made in comparison to reference sediment, potential difficulties with the use of the disposal site as a point of comparison would be addressed. Furthermore, as the sources of contamination in a waterbody such as agricultural and urban runoff are decreased, the reference sediment, and thus the point of comparison for proposed discharges of dredged material, should reflect this improvement, rather than continuing to reflect past dredged material discharges.

Adoption of the reference sediment approach also establishes greater consistency with testing conducted for the ocean disposal of dredged material. A technically appropriate reference sediment definition that reflects repetitive use site conditions is an important component of the Marine Protection, Research, and Sanctuaries Act's ocean dumping program. The reference sediment approach is integral to this program's testing guidance, ''Evaluation of Dredged Material for Ocean Disposal: Testing Manual,'' commonly known as the Ocean Dumping Testing Manual or Green Book, which was revised and published by EPA and the Corps of Engineers in February 1991. In their review of the Green Book (Science Advisory Board. 1992. Technical review of ''Evaluation of Dredged Materials Proposed for Ocean Disposal—Testing Manual.'' Washington, D.C. EPA–SAB–EPEC–92–014. 20pp.), EPA's Science Advisory Board indicated their support for the reference sediment concept, but noted that reference areas must be better defined and quantified. In their review of a companion draft testing manual for waters of the U.S. (Science Advisory Board. 1994. ''An SAB report: Evaluation of a Testing Manual for Dredged Material Proposed for Discharge in Inland and Coastal Waters.'' Washington, D.C. EPA–SAB–EPEC–94–007. 16pp.), the Science Advisory Board concluded that ''criteria for the selection of reference [sediment] are much too vague and subjective.'' EPA concurs that these criteria need to be clearly articulated and will revise the draft testing manual accordingly upon final promulgation of this proposed rule. As a practical matter, the reference sediment approach has been used by the ocean dumping program to evaluate hundreds of proposed discharges. This experience has demonstrated the reference sediment approach to be a protective and scientifically defensible means of predicting impacts.

The reference sediment approach has also been applied with similar results in waters of the U.S. where Green Book methods were applied. As noted above, EPA and the Corps are currently developing a Section 404 Testing Manual to detail the technical evaluation and testing requirements outlined in the testing provisions of the Guidelines (§ 230.60 and § 230.61). The draft, entitled ''Evaluation of Dredged Material Proposed for Discharge in Waters of the U.S.—Testing Manual (Draft),'' adopts the same tiered testing approach as the Green Book. While details of the Section 404 Testing Manual will necessarily be somewhat different from the Green Book, the Green Book's framework and concepts are an appropriate paradigm for use in waters of the U.S. The Section 404 Testing Manual was made available for public review and comment on July 21, 1994 (59 FR 37234).

Executive Order 12866 and the Regulatory Flexibility Act

Under Executive Order 12866, [58 **Federal Register** 51,735 (October 4, 1993)] the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review. Current testing regulations for evaluating potential chemical, biological, and physical impacts of a proposed discharge require comparison of the material proposed for discharge with sediment collected from the disposal site. Under the proposed revisions, the location of the site from which sediment is collected for comparison may differ from current practice. However, this substitution is not expected to impose an additional regulatory burden, as sampling and analysis costs should remain equivalent.

A reference approach could increase the number of cases in which test results indicate an increased likelihood of a toxic or bioaccumulative effect from a proposed dredged material discharge. In a subset of these cases, that increased likelihood could lead to a factual determination regarding potential contaminant effects that is of greater environmental concern. In a subset of these cases, that determination could lead to the use of some management measure (e.g., placement of a ''cap'' of relatively clean dredged material over the proposed discharge or use of a confined disposal facility) to comply with the Guidelines. In such cases, a regulated party could incur additional expenditures. However, EPA does not anticipate that this circumstance would occur in more than a small number of cases.

A reference approach could increase the efficiency of the dredged material disposal program and lower the costs to the regulated community. In cases where ocean disposal and waters of the U.S. disposal alternatives are considered, evaluation of test results would be based on comparable testing methodologies, thus facilitating the evaluation of disposal alternatives. Furthermore, one reference sediment may accurately characterize a number of potential disposal sites. In such cases, a regulated party could reduce testing expenditures by sampling one reference location and not each disposal site.

The net impact of the above potential effects is not expected to be significant. EPA invites the public to comment on the potential impacts of this proposed rule.

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Environmental Protection Agency certifies that this regulation will not have a significant impact on a substantial number of small entities (see above discussion).

Paperwork Reduction Act

Today's rule places no additional information collection or recordkeeping burden on respondents. Therefore, an information collection request has not been prepared and submitted to the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). Information collection activities for Clean Water Act section 404 permits are conducted under the U.S. Army Corps of Engineers information collection request number: 0710–003.

List of Subjects in 40 CFR Part 230

Environmental protection, Dredged material, Water pollution control, Wetlands.

Dated: December 23, 1994.

Carol M. Browner,

Administrator, Environmental Protection Agency.

Accordingly, 40 CFR part 230 is proposed to be amended as follows:

PART 230—SECTION 404(b)(1) GUIDELINES FOR SPECIFICATION OF DISPOSAL SITES FOR DREDGED OR FILL MATERIAL

1. The authority citation for part 230 continues to read as follows:

Authority: Secs. 404(b) and 501(a) of the Clean Water Act of 1977 (33 U.S.C. 1344(b) and 1361(a)).

2. Section 230.3 is amended by adding paragraph (u) to read as follows:

§ 230.3 Definitions.

* * * * *

(u) The term *reference sediment* means a sediment that reflects the conditions at the disposal site had no dredged material disposal ever occurred there. Reference sediment serves as a point of comparison to identify potential environmental effects of a discharge of dredged material. Reference sediment shall be collected taking into account the following considerations:

(1) To obtain physical characteristics, including grain size, as similar as practicable as the dredged material proposed for discharge,

(2) To avoid areas in the immediate vicinity of, including depositional zones of, spills, outfalls, or other significant sources of contaminants, and

(3) To be as close as practicable to, and subject to the same hydrologic influences as, the disposal site, but removed from areas which are subject to sediment migration of previous dredged material discharges.

If existing information that provides an easy-to-interpret indication of the presence of bioavailable contaminants in the reference sediment and in the sediment from the disposal site waterbody is not available, sediment testing (e.g., toxicity testing) is necessary to ensure that the reference sediment accurately reflects the conditions of the sediment from the disposal site waterbody.

3. Section 230.61 is amended by revising paragraph (c)(1) and the first sentence of paragraph (c)(2) to read as follows:

§ 230.61 Chemical, biological, and physical evaluation and testing.

* * * * *

(c) * * *

(1) When an inventory of the total concentration of contaminants would be of value in comparing sediment at the dredging site with sediment at the disposal site, the permitting authority may require sediment chemical analysis. Markedly different concentrations of contaminants between the material from the excavation site and the reference sediment (§ 230.3(u)) may aid in making an environmental assessment of the proposed disposal operation. Such differences should be interpreted in terms of the potential for harm as supported by any pertinent scientific literature.

(2) When an analysis of biological community structure will be of value to assess the potential for adverse environmental impact at the proposed disposal site, a comparison of the biological characteristics between the material from the excavation site and the reference sediment (§ 230.3(u)) may be required by the permitting authority.

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[FR Doc. 95–00066 Filed 1–3–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 300

[FRL–5127–9]

Intent To Delete Crystal City Airport Superfund Site, Crystal City, Zavala County, Texas From the National Priorities List

AGENCY: United States Environmental Protection Agency.

ACTION: Intent to delete the Crystal City Airport Superfund site from the National Priorities List: request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 announces its intent to delete the Crystal City Airport Superfund site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of Texas (Texas Natural Resource Conservation Commission) have determined that all appropriate actions under CERCLA have been implemented and that no further cleanup is appropriate. Moreover, EPA and the State have determined that response activities conducted at the site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning this site may be submitted on or before January 30, 1995.

ADDRESSES: Comments may be mailed to: Ms. Olivia Rodriguez, Community Relations Coordinator, U.S. EPA, Region 6 (6H–MC), 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6584 or 1–800–533–3508.

Comprehensive information on this site is available through the EPA Region 6 public docket, which is located at EPA's Region 6 library office and is available for viewing from 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays. The office address is: U.S. EPA, Region 6, Library, 12th Floor, 1445 Ross Avenue, Dallas, Texas 75202, (214) 665–6424 or 665–6427.

Background information from the Regional public docket is available for viewing at the Crystal City Airport Superfund site information repositories located at:

Crystal City Public Library, 101 E. Dimmit, Crystal City, TX 78839.

Environmental Protection Agency, Library, 12th Floor, 1445 Ross Avenue, Dallas, Texas 75202.

Texas Natural Resource Conservation Commission, 12118 North 1H–35, Building D, Room 190, Austin, Texas 78753, (512) 239–2920.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest R. Franke, Remedial Project Manager, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8521 or 1–800–533–3508.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. History and Basis for Intended Site Deletion

I. Introduction

The U.S. Environmental Protection Agency (EPA) Region 6 announces its intent to delete Crystal City Airport Superfund site, Crystal City, Zavala County, Texas, from the National Priorities List (NPL), which constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR Part 300 (NCP), and requests comments on the proposed deletion. EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Response Trust Fund (Fund). Pursuant to Section 300.425(e)(3) of the NCP, a site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

EPA will accept comments concerning this proposal for 30 days after publication of this notice in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures EPA is using for this action. Section IV discusses the history of the site and explains how it meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes criteria which EPA references to delete sites from the NPL. In accordance with 40 CFR Section 300.425(e)(1), sites may be deleted from or recategorized on the NPL where no further response is appropriate. In making a determination to delete a site from the NPL, EPA shall consider in consultation with the state, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment and therefore, taking of remedial measures is not appropriate.

Prior to deciding to delete a site from the NPL, EPA must determine that the remedy, or existing site conditions at sites where no action is required, is protective of public health, welfare and the environment.

Deletion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions if future site conditions warrant such actions. Section 300.425(e)(3) of the NCP states Fund-financed actions may be taken at sites which are deleted from the NPL.

III. Deletion Procedures

Upon determination that at least one criteria described in section 300.425(e)(1) is met, EPA may formally begin deletion procedures. The following procedures were used for the proposed deletion of this site:

1. EPA Region 6 has recommended deletion and prepared the relevant documents.
2. The State of Texas has concurred with the deletion decision.
3. Concurrent with this National Notice of Intent to Delete, a notice will be published in local newspapers and will be distributed to appropriate federal, state and local officials and other interested parties. This local notice announces a 30-day public comment period on the deletion package, which starts two weeks from the date of the notice.
4. Region 6 has made all relevant documents available in the Regional office, local site and State of Texas information repositories.

These procedures have been completed for the Crystal City Airport Superfund site. The **Federal Register** notice and concurrent notice in the local newspaper in the vicinity of the site announce the initiation of a 30-day public comment period and the availability of the Notice of Intent to Delete. The public is asked to comment on EPA's intention to delete the site from the NPL; all critical documents needed to evaluate EPA's decision are included in the information repositories and deletion docket.

Upon completion of the 30-day public comment period, EPA Region 6 will evaluate these comments before the final decision to delete. If necessary, EPA Region 6 will prepare a Responsiveness Summary to address those concerns raised by the comments received during the public comment period. The responsiveness summary will be made available to the public at the information repositories. Members of the public are welcome to contact EPA Region 6 to obtain a copy of the responsiveness summary when available. If EPA still determines deletion from the NPL is appropriate after receiving public comments, a final notice of deletion will be published in the **Federal Register**. However, deletion from the NPL will not occur until a notice of deletion is published in the **Federal Register.**

IV. History and Basis for Intended Site Deletion

The following summary provides the Agency's rationale for deletion of the Crystal City Airport Superfund site from the NPL.

The Crystal City Airport (CCA) Superfund site is located within the city limits of Crystal City, Zavala County, in the South-Central geographic area of Texas. The population density in the region is low and the economy is principally comprised of agriculture, oil and gas production. Crystal City is the county seat of Zavala County with approximately 8,000 residents from a total county population of approximately 11,500. The nearest major population center is San Antonio, located about 100 miles northeast of Crystal City.

The CCA site is owned by the City of Crystal City and encompasses approximately 120 acres. Airport facilities include: 3,550-foot asphalt runway, an elevated tower equipped with rotating beacon, a windsock, paved taxiways, several buildings and foundations. The land surrounding the airport property has a variety of uses. A closed municipal landfill, also owned by the City of Crystal City, is located directly adjacent to the northeast. To the north, the land is used as pasture land. Directly west of the site is a private residential area and public housing project. Southwest of the site is an elementary school, high school and associated athletic fields. South of the site is a second residential area. Southeast of the site is more agricultural grazing land.

During World War II, the airport site was owned and operated primarily for housing persons detailed by the U.S. Military. The U.S. Government deeded the property to the city in 1949. The City of Crystal City has operated the facility as a municipal airport since 1949. Under lease arrangements with Crystal City, several private companies operated aerial pesticide application businesses at CCA in the early 1950's. By 1982, pesticide application operations were discontinued at the airport and former aerial applicators declared bankruptcy, abandoning various equipment and numerous deteriorated drums on site.

The Texas Department of Water Resources (TDWR), the predecessor

agency to both the Texas Water Commission (TWC) and the Texas Natural Resource Conservation Commission (TNRCC), initiated a preliminary site investigation on April 25, 1983, as requested by local officials acting on behalf of concerned citizens. On June 13 and June 23, 1983, additional investigations were conducted to characterize the type and extent of contamination. At least 50 drums of various pesticides and herbicides were observed and extensive soil staining was indicative of poor handling and transferring practices. An Immediate Removal Action was initiated by EPA on October 31, 1983. This action focused on removal of the most highly contaminated materials consisting of approximately 40 cubic yards of waste. Between 50–70 drums were mixed with lime and capped with clay and placed in two temporary disposal cells onsite. This removal action was structured to mitigate short term risks and scheduled to be incorporated into the permanent remedial action at a later date. Further followup inspections on December 15, 1983, February 14, 1984, and March 29, 1984 by the TWDR, EPA and Texas Air Control Board resulted in an additional removal action to further reduce short-term risks posed by the site. In May 1984, an additional 19 drums were transported for disposal to an offsite permitted treatment, storage and disposal facility. A fence was constructed around the site to limit public access and warning signs were posted.

A Hazard Ranking System (HRS) package for Crystal City Airport was finalized in June 1984. The overall site score was 32.26. EPA and TWC (TNRCC), entered into a Cooperative Agreement (CA) on September 28, 1995 for a state-lead Remedial Investigation and Feasibility Study (RI/FS). The site was proposed for the NPL on October 5, 1985. The site was formally placed on the NPL on May 20, 1986. In June 1986, TNRCC contracted Ebasco Services Incorporated to perform the RI/FS. Phase I of the RI fieldwork lasted from September through October 1986; Phase II fieldwork was conducted during January and February 1987. The RI and FS reports were finalized in June and July 1987, respectively.

The Regional Administrator signed the Record of Decision (ROD) for the Crystal City Airport Superfund site on September 29, 1987, selecting onsite consolidation in a disposal cell with a cap meeting requirements of regulations promulgated under the Resource Conservation and Recovery Act (RCRA). This method was chosen to prevent spread of contaminants. EPA selected a remedy which eliminated the principal threat posed by site conditions by eliminating the possibility of human exposure to contaminants of concern.

The funds to conduct Remedial Design and Remedial Action (RD/RA) were awarded by EPA to the State of Texas on March 31, 1988 through a Cooperative Agreement with TWC (TNRCC). On June 14, 1988, TNRCC entered into a contract with Ebasco Services, the engineering firm which conducted the RI/FS, to perform Remedial Design work and prepare detailed construction plans and specifications for a bid package. The bid package was completed and an Invitation for Bids was issued on January 31, 1989. Eleven qualified bids were received, evaluated, and a contract was awarded to the lowest qualified bidder, Qualtec Incorporated. The contract was executed by TNRCC on April 21, 1989. Qualtec attempted to mobilize onsite in June 1989, but was denied entry by local officials. Due to defiance to repeated requests for access on behalf of Qualtec by both EPA and TNRCC, a Section 104 Unilateral Administrative Order under CERCLA authority was issued to Crystal City by EPA in November 1989, and TNRCC issued a Notice to Proceed to Qualtec on January 5, 1990. Qualtec began onsite mobilization on February 5, 1990. The following contract activities were conducted during the 120-day contract duration:

- construction of the consolidated cell,
- excavation and consolidation of contaminated material in the cell,
- verification monitoring,
- placement, compaction, grading, and seeding of clean backfill,
- stormwater control,
- building decontamination, and asphalt floor removal,
- demolition of building B–3,
- recontruction of airport facilities to meet or exceed existing conditions including replacement of asphalt floor slabs with concrete and reconstruction of taxiways in contaminated areas,
- construction of the RCRA cap over the consolidation cell as specified by contract documents,
- continuous air monitoring and dust control,
- continuous health and safety and quality assurance/quality control operations,
- construction of a security fence around the consolidated cell.

Pre-final inspections were held on May 31, 1990 and June 6, 1990 to close out site work. The Certificate of Substantial Completion was issued July 3, 1990, signifying completion of all work except the vegetative topcover growth required by the contract specifications. The final work product acceptance occurred on September 25, 1990 after a joint TNRCC and EPA inspection reflecting the vegetative requirements had been met. The Remedial Action (RA) Report was finalized on May 23, 1991, and approved by the Region 6 Hazardous Waste Management Division Director on June 6, 1991.

In December 1991 a site Close Out Report was prepared in which EPA, in consultation with the State of Texas (TNRCC), determined all appropriate response actions required to ensure the protectiveness of human health and the environment at the Crystal City Airport had been implemented.

Pursuant to 40 CFR Section 300.510 of the NCP, the State (TNRCC) has assumed all responsibility for Operation and maintenance (O&M) at this site. TNRCC has implemented the EPA approved O&M plan requiring analysis of the city water well adjacent to the airport. In addition, air sampling for particulate arsenic and pesticides has been conducted. Since inception of the program in 1991, all samples taken to date are below the detection limits for all chemicals of concern.

The Agency for Toxic Substance and Disease Registry (ATSDR) issued a Site Review and Update (SRU) report for the CCA site on February 18, 1994. The SRU concluded ''because contaminated soils and drums have been enclosed in the capped cell and other contaminated materials have been removed to an offsite hazardous waste landfill, the potential for exposure to on-site contaminants no longer exists.'' No further actions or evaluations were recommended.

Hazardous substances encapsulated in the cell on the site, however, are above health-based levels that do not allow for unlimited use of and unrestricted access to the consolidation cell area. Therefore, EPA will conduct a statutory five-year review, schedule for February 1995 (five years after the commencement of the RA), pursuant to OSWER Directive 9355.7–02, ''Structure and Components of Five-Year Reviews.''

Although the first five-year review has not been completed at the site, EPA believes it is appropriate to proceed with site deletion. Based on the successful encapsulation of hazardous substances in the consolidation cell, the results of O&M monitoring to date, and ATSDR's review, EPA has determined the remedy is protective and no further response action is necessary. This is consistent with current EPA policy as

discussed on page 66601 of the December 24, 1991, **Federal Register**, 40 CFR Part 300 which states sites should not be retained on the NPL which are otherwise eligible to be deleted simply because they haven't had a five year review. Of course, state-funded O&M and EPA-funded five-year reviews will continue in the future, but site deletion should proceed since applicable deletion criteria have been satisfied.

EPA, with concurrence of the State of Texas, has determined all appropriate Fund-financed responses under CERCLA at the Crystal City Airport Superfund site have been completed, and no further cleanup by responsible parties is appropriate. Moreover, EPA and the State of Texas have determined remedial actions conducted at the site to date are protective of public health, welfare, and the environment.

Dated: November 1, 1994.

Approved By:

Allyn Davis,

Regional Administrator.

- After Action Report, Crystal City Airport Site, Environmental Protection Agency, Region VI Emergency Response Branch, June 1984.
- Hazard Ranking System package for the Crystal City Airport Site, Environmental Protection Agency, Region VI, April 1984.
- Site Review and Update, Crystal City Airport, Agency for Toxic Substances and Disease Registry, February 18, 1994.
- Health Assessment for the Crystal City Airport Site, Agency for Toxic Substances and Disease Registry, May 1988.
- Remedial Investigation, Final Report, Crystal City Airport Site, prepared by Ebasco Services Incorporated for the Texas Water Commission in cooperation with the Environmental Protection Agency, June 1987.
- Feasibility Study, Final Report, Crystal City Airport Site, prepared by Ebasco Services Incorporated for the Texas Water commission in cooperation with the Environmental Protection Agency, July 1987.
- Record of Decision, Crystal City Airport Site, Environmental Protection Agency, Region VI, September 28, 1987.
- Revised Community Relations Plan, Jacobs Engineering Group Inc., August 1989.
- Remedial Design, Final Report, Crystal City Airport Site, prepared by Ebasco Services Incorporated for the Texas Water Commission in cooperation with the Environmental Protection Agency, December 1988.
- Remedial Design, Bid Specifications, Crystal City Airport Site, prepared by Ebasco Services Incorporated for the Texas Water Commission in cooperation with the Environmental Protection Agency, December 1988.
- Operations and Maintenance Plan, Crystal City Airport Site, Prepared by Ebasco Services Incorporated for the Texas Water Commission in cooperation with the Environmental Protection Agency, December 1988.
- Remedial Action Report, Crystal City Airport Site, prepared by Ebasco Services Incorporated for the Texas Water Commission in cooperation with the Environmental Protection Agency, December 1990.
- First Operations and Maintenance Quarterly Report, Crystal City Airport Site, prepared by Ebasco Services Incorporated for the Texas Water Commission, December 17, 1990.
- Second Operations and Maintenance Quarterly Report, Crystal City Airport Site, prepared by Ebasco Services Incorporated for the Texas Water Commission, March 19, 1991.
- Third Operations and Maintenance Quarterly Report, Crystal City Airport Site, prepared by Ebasco Services Incorporated for the Texas Water Commission, July 9, 1991.
- Fourth Operations and Maintenance Quarterly Report, Crystal City Airport Site, prepared by Ebasco Services Incorporated for the Texas Water Commission, November 7, 1991.
- Superfund Site Close Out Report, Crystal City Airport, Environmental Protection Agency, Region 6, December 1991.
- Crystal City Airport Federal Superfund Site, Quarterly State Funded O & M Sampling and Inspection Reports, Texas Natural Resource Conservation Commission, November 1991 through June 1994.
- Cooperative Agreements:

Description	No.	Date
(1) Forward Planning (FP).	V–006461–01–7	5–14–86
(2) RI/FS	V–006461–01–7	5–14–86
(3) FP (increase)	V–006461–01–9	3–31–87
(4) RI/FS (increase).	V–006461–01–9	3–31–87
(5) RD	V–006461–01–13	3–31–88
(6) RD (transfer)	V–006461–01–M	3–06–91
(7) RA	V–006567–01–0	12–29–88
(8) O&M	V–006567–01–2	6–19–90

Other documents related to site activities are also available for review in the site repositories,

[FR Doc. 95–4 Filed 1–3–95; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on the 90-day Finding for the Petition to List the Queen Charlotte Goshawk as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Status Review; Reopening of Comment Period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) provides notice that the comment period on the proposal is reopened. The Queen Charlotte goshawk (*Accipiter gentilis laingi*) is found in forested areas of British Columbia and southeast Alaska. All interested parties are invited to submit comments regarding this species' status.

DATES: The comment period, which originally closed November 25, 1994, now closes February 9, 1995.

ADDRESSES: Data, information, comments or questions concerning the status of the petitioned species described below should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services, 3000 Vintage Blvd., Suite 201, Juneau, Alaska 99801. The petition, findings, and supporting data are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John Lindell, Endangered Species Biologist (see **ADDRESSES** above) (907)/586–7240).

SUPPLEMENTARY INFORMATION:

Background

The Queen Charlotte goshawk occurs from Vancouver Island British Columbia, Canada, northward through insular British Columbia, insular and adjacent mainland Alaska west of the coastal mountain range, to the northern portions of the Alexander Archipelago, in southeast Alaska. The subspecies may be endangered by past and planned removal and fragmentation of mature forest habitat by clearcut logging.

The comment period for the status review originally closed on November

25, 1994. Since that date many parties have expressed interest in submitting substantive comments. In order to accommodate these parties, the Service is extending the comment period until February 9, 1995. Written comments may be submitted to the Service office in the **ADDRESSES** section.

Author

The primary author of this notice is John Lindell, U.S. Fish and Wildlife Service, Ecological Services Field Office, Juneau, Alaska 99801.

Authority

The authority of this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: December 23, 1994.

David B. Allen,

Regional Director, Region 7, Fish and Wildlife Service.

[FR Doc. 95–126 Filed 1–3–95; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 60, No. 2

Wednesday, January 4, 1995

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

December 29, 1994.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) Who will be required or asked to report; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency peson named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

- Animal and Plant Health Inspection Service Virus-Serum-Toxin Act and Regulations in 9 CFR, Subchapter E, Parts 101–124

APHIS Forms 2001, 2003, 2005, 2007, 2008, 2008A, 2015, & 2020 State or local governments; Businesses or other for-profits; Small businesses or organizations; 33,293 responses; 75,138 hours

David A. Espeseth (301) 436–8245

Larry K. Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 95–127 Filed 1–3–95; 8:45 am]

BILLING CODE 3410–01–M

Office of the Secretary

Uruguay Round Agricultural Safeguard Trigger Levels

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of product coverage and trigger levels for safeguard measures provided for in the Uruguay Round Agreement on Agriculture.

SUMMARY: This notice lists the products which may be subject to additional import duties under the safeguard provisions of the Uruguay Round Agreement on Agriculture. It also includes the effective dates and quantity and price trigger levels applicable to each of those products.

EFFECTIVE DATE: January 1, 1995 or such other date as may be proclaimed by the President to be the date of entry into force of the Uruguay Round Agreements for the United States, whichever is later.

FOR FURTHER INFORMATION CONTACT: Robert J. Spitzer, Multilateral Trade Policy Affairs Division, Foreign Agricultural Service, room 5540-South Building, U.S. Department of Agriculture, Washington, DC 20250–1000 or telephone at (202) 720–6064.

SUPPLEMENTARY INFORMATION: Article 5 of the Uruguay Round Agreement on Agriculture provides that additional import duties may be imposed on imports of products subject to tariffication during the Uruguay Round if certain conditions are met. The agreement permits additional duties to be charged if the price of an individual shipment of imported products falls below the average price for similar goods imported during the years 1986–88 by a specified percentage. It also permits additional duties to be imposed if the volume of imports of an article exceeds the average of the most recent three years for which data is available by 25 percent. These additional duties may not be imposed on quantities for which minimum or current access commitments were made during the Uruguay Round negotiations, and only one type of safeguard, price or quantity based, may be applied at any given time to an article.

Section of 405 of the Uruguay Round Agreements Act requires that the President cause to be published in the **Federal Register** the agricultural products subject to safeguards, the price and quantity trigger levels which will be applied to these products, and the relevant period for the quantity based safeguard for each product. The President delegated this duty to the Secretary of Agriculture in Presidential Proclamation No. 6763, dated December 23, 1994. Additional information on the levels of the additional duties and how they will be applied is provided in subchapter IV of chapter 99 of the Harmonized Tariff Schedule of the United States (HTS). These duties become effective on the date the President proclaims as the date of entry into force of the Uruguay Round Agreements for the United States. It is anticipated that this date will be January 1, 1995.

As provided in section 405 of the Uruguay Round Agreements Act, consistent with Article 5 of the Agreement On Agriculture, additional duties may be applied in accordance with provisions of subchapter IV of chapter 99 of the HTS for the products, and under the conditions described in the annex to this notice.

Issued at Washington, DC this 28th day of December, 1994.

Mike Espy,

Secretary of Agriculture.

Annex

Beef

Definition

For purposes of this and future notifications of quantity based safeguard trigger levels, the term Beef shall mean the aggregate of goods described in additional U.S. note 3 to chapter 2 of the HTS plus goods described in the tariff provisions listed under the value based safeguard trigger provisions below.

Quantity Based Safeguard Trigger

Additional duties may apply if imports of Beef entered, or withdrawn from warehouse for consumption, on or after January 1, 1995 and before the close of December 31, 1995, inclusive exceed 888,803 tons.

Value Based Safeguard Triggers

Additional duties may apply if the customs unit value of any shipment entered into the U.S. customs territory under the tariff provisions listed below is lower than the respective customs unit value indicated therefor:

Short description	Tariff provision	Customs unit value
Fresh or Chilled carcass	0201.10.50	$1.71/kg

Short description	Tariff provision	Customs unit value
Fresh or Chilled, bone-in	0201.20.80	1.71/kg
Fresh or Chilled boneless	0201.30.80	1.97/kg
Frozen carcass	0202.10.50	1.81/kg
Frozen, bone-in	0202.20.80	1.81/kg
Frozen boneless	0202.30.80	1.97/kg

Mutton

Definition

For purposes of this and future notifications of quantity based safeguard trigger levels, the term Mutton shall mean the aggregate of goods in tariff provisions 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40 and 0204.43.40.

Quantity Based Safeguard Trigger

Additional duties may apply if imports of Mutton entered, or withdrawn from warehouse for consumption, on or after January 1, 1995 and before the close of December 31, 1995, inclusive exceed 9,146 tons.

Cream

Definition

For purposes of this and future notifications of quantity based safeguard trigger levels, the term Cream shall mean the aggregate of goods described in additional U.S. note 5 to chapter 4 of the HTS plus goods described in the tariff provisions listed under the value based safeguard trigger provisions below.

Quantity Based Safeguard Trigger

Additional duties may apply if imports of Cream entered, or withdrawn from warehouse for consumption, on or after January 1, 1995 and before the close of December 31, 1995, inclusive exceed 4,056,497 liters.

Value Based Safeguard Triggers

Additional duties may apply if the customs unit value of any shipment entered into the U.S. customs territory under the tariff provisions listed below is lower than the respective customs unit value indicated therefor:

Short description	Tariff provision	Customs unit value
Cream not over 45% fat	0401.30.25	$1.42/liter
Sour cream not over 45% fat	0403.90.16	1.42/liter

Evaporated or Condensed Milk

Definition

For purposes of this and future notifications of quantity based safeguard trigger levels, the term Evaporated or Condensed Milk shall mean the aggregate of goods described in additional U.S. note 11 to chapter 4 of the HTS plus goods described in the tariff provisions listed under the value based safeguard trigger provisions below.

Quantity Based Safeguard Trigger

Additional duties may apply if imports of Evaporated or Condensed Milk entered, or withdrawn from warehouse for consumption, on or after January 1, 1995 and before the close of December 31, 1995, inclusive exceed 1,531,938 kilograms.

Value Based Safeguard Triggers

Additional duties may apply if the customs unit value of any shipment entered into the U.S. customs territory under the tariff provisions listed below is lower than the respective customs unit value indicated therefor:

Short description	Tariff provision	Customs unit value
Unsweetened, airtight containers	0402.91.70	$0.72/kg
Other unsweetened	0402.91.90	0.72/kg
Sweet condensed, airtight cont	0402.99.45	1.27/kg
Other sweet condensed	0402.99.55	1.27/kg

Nonfat Dry Milk

Definition

For purposes of this and future notifications of quantity based safeguard trigger levels, the term Nonfat Dry Milk shall mean the aggregate of goods described in additional U.S. note 7 to chapter 4 of the HTS plus goods described in the tariff provisions listed under the value based safeguard trigger provisions below.

Quantity Based Safeguard Trigger

Additional duties may apply if imports of Nonfat Dry Milk entered, or withdrawn from warehouse for consumption, on or after January 1, 1995 and before the close of December 31, 1995, inclusive exceed 1,013,646 kilograms.

Value Based Safeguard Triggers

Additional duties may apply if the customs unit value of any shipment entered into the U.S. customs territory under the tariff provisions listed below is lower than the respective customs unit value indicated therefor:

Short description	Tariff provision	Customs unit value
Milk powder under 1.5% fat	0402.10.50	1.02/kg
Milk powder 1.5%–3% fat	0402.21.25	1.02/kg

Dried Whole Milk

Definition

For purposes of this and future notifications of quantity based safeguard trigger levels, the term Dried Whole Milk shall mean the aggregate of goods described in additional U.S. note 8 to chapter 4 of the HTS plus goods described in the tariff provisions listed under the value based safeguard trigger provisions below.

Quantity Based Safeguard Trigger

The additional duties described above may apply if imports of Dried Whole Milk entered, or withdrawn from warehouse for consumption, on or after January 1, 1995 and before the close of December 31, 1995, inclusive exceed 3,917 kilograms.

Value Based Safeguard Triggers

Additional duties may apply if the customs unit value of any shipment entered into the U.S. customs territory under the tariff provisions listed below is lower than the respective customs unit value indicated therefor:

Short description	Tariff provision	Customs unit value
Dried milk 3–35% fat	0402.21.50	0.95/kg
Dried sour cream not over 35% fat	0403.90.55	0.95/kg

Dried Cream

Definition

For purposes of this and future notifications of quantity based safeguard trigger levels, the term Dried Cream shall mean the aggregate of goods described in additional U.S. note 9 to chapter 4 of the HTS plus goods described in the tariff provisions listed under the value based safeguard trigger provisions below.

Quantity Based Safeguard Trigger

Additional duties may apply if imports of Dried Cream entered, or withdrawn from warehouse for consumption, on or after January 1, 1995 and before the close of December 31, 1995, inclusive exceed 0 kilograms.

Value Based Safeguard Triggers

Additional duties may apply if the customs unit value of any shipment entered into the U.S. customs territory under the tariff provisions listed below is lower than the respective customs unit value indicated therefor:

Short description	Tariff provision	Customs unit value
Dried milk over 35% fat	0402.21.90	$2.36/kg
Dried sour cream over 35% fat	0403.90.65	2.36/kg

Dried Whey/Buttermilk

Definition

For purposes of this and future notifications of quantity based safeguard trigger levels, the term Dried Whey/Buttermilk shall mean the aggregate of goods described in additional U.S. note 12 to chapter 4 of the HTS plus goods described in the tariff provisions listed under the value based safeguard trigger provisions below.

Quantity Based Safeguard Trigger

Additional duties may apply if imports of Dried Whey/Buttermilk entered, or withdrawn from warehouse for consumption,

on or after January 1, 1995 and before the close of December 31, 1995, inclusive exceed 245,885 kilograms.

Value Based Safeguard Triggers

Additional duties may apply if the customs unit value of any shipment entered into the U.S. customs territory under the tariff provisions listed below is lower than the respective customs unit value indicated therefor:

Short description	Tariff provision	Customs unit value
Dried buttermilk	0403.90.45	$0.92/kg
Dried whey	0404.10.90	0.46/kg

Butter

Definition

For purposes of this and future notifications of quantity based safeguard trigger levels, the term Butter shall mean the aggregate of goods described in additional U.S. note 6 to chapter 4 of the HTS plus goods described in the tariff provisions listed under the value based safeguard trigger provisions below.

Quantity Based Safeguard Trigger

Additional duties may apply if imports of Butter entered, or withdrawn from warehouse for consumption, on or after January 1, 1995 and before the close of December 31, 1995, inclusive exceed 377,255 kilograms.

Value Based Safeguard Triggers

Additional duties may apply if the customs unit value of any shipment entered into the U.S. customs territory under the tariff provisions listed below is lower than the respective customs unit value indicated therefor:

Short description	Tariff provision	Customs unit value
Cream over 45% fat	0401.30.75	$2.78/kg
Sour cream over 45% fat	0403.90.78	2.78/kg
Butter	0405.00.40	2.78/kg

Butter Oil and Butter Substitutes

Definition

For purposes of this and future notifications of quantity based safeguard trigger levels, the term Butter Oil and Butter Substitutes shall mean the aggregate of goods described in additional U.S. note 14 to chapter 4 of the HTS plus goods described in the tariff provisions listed under the value based safeguard trigger provisions below.

Quantity Based Safeguard Trigger

Additional duties may apply if imports of Butter Oil and Butter Substitutes entered, or withdrawn from warehouse for consumption, on or after January 1, 1995 and before the close of December 31, 1995, inclusive exceed 684,554 kilograms.

Value Based Safeguard Triggers

Additional duties may apply if the customs unit value of any shipment entered into the U.S. customs territory under the tariff provisions listed below is lower than the respective customs unit value indicated therefor:

Short description	Tariff provision	Customs unit value
Butteroil	0405.00.90	$2.33/kg
Butter substitutes over 10% milk	2106.90.26	2.33/kg
Butter substitutes under 10% milk	2106.90.36	2.33/kg

Dairy Mixtures

Definition

For purposes of this and future notifications of quantity based safeguard trigger levels, the term Dairy Mixtures shall mean the aggregate of goods described in additional U.S. note 10 to chapter 4 of the HTS plus goods described in the tariff provisions listed under the value based safeguard trigger provisions below.

Quantity Based Safeguard Trigger

Additional duties may apply if imports of Dairy Mixtures entered, or withdrawn from warehouse for consumption, on or after January 1, 1995 and before the close of December 31, 1995, inclusive exceed 334,985 kilograms.

Value Based Safeguard Triggers

Additional duties may apply if the customs unit value of any shipment entered into the U.S. customs territory under the tariff provisions listed below is lower than the respective customs unit value indicated therefor:

Short description	Tariff provision	Customs unit value
Sweetened milk powder	0402.29.50	$2.63/kg
Sweetened evaporated milk	0402.99.90	2.63/kg
Dried yogurt	0403.10.50	2.63/kg
Dried fermented milk	0403.90.95	2.63/kg
Modified whey	0404.10.15	1.78/kg
Other Milk mixtures	0404.90.50	1.80/kg
Dairy spreads	1517.90.60	1.78/kg
Dairy confectionery	1704.90.58	1.78/kg
Bulk cocoa preps under 21% milk	1806.20.82	1.78/kg
Bulk cocoa preps over 21% milk	1806.20.83	1.78/kg
Block cocoa preps under 21% milk	1806.32.70	1.78/kg
Block cocoa preps over 21% milk	1806.32.80	1.78/kg
Other cocoa preps under 21% milk	1806.90.08	1.78/kg
Other cocoa preps over 21% milk	1806.90.10	1.78/kg
Other infant preps over 10% milk	1901.10.40	2.63/kg
Other infant preps under 10% milk	1901.10.85	2.63/kg
Mixes/doughs over 25% fat	1901.20.15	1.78/kg
Mixes/doughs under 25% fat	1901.20.50	1.78/kg
Other dairy preps over 10% milk	1901.90.43	1.80/kg
Other dairy preps under 10% milk	1901.90.47	1.80/kg
Edible ice containing milk	2105.00.40	1.80/kg
Lowfat dairy mixtures	2106.90.09	2.92/kg
Other dairy preps over 10% milk	2106.90.66	1.78/kg
Other dairy preps under 10% milk	2106.90.87	1.78/kg
Milk based drinks	2202.90.28	2.63/kg

Blue Cheese

Definition

For purposes of this and future notifications of quantity based safeguard trigger levels, the term Blue cheese shall mean the aggregate of goods described in additional U.S. note 17 to chapter 4 of the HTS plus goods described in the tariff provisions listed under the value based safeguard trigger provisions below.

Quantity Based Safeguard Trigger

Additional duties may apply if imports of Blue cheese entered, or withdrawn from warehouse for consumption, on or after January 1, 1995 and before the close of December 31, 1995, inclusive exceed 2,771,885 kilograms.

Value Based Safeguard Triggers

Additional duties may apply if the customs unit value of any shipment entered into the U.S. customs territory under the tariff provisions listed below is lower than the respective customs unit value indicated therefor:

Short description	Tariff provision	Customs unit value
Fresh Blue cheese	0406.10.18	$4.05/kg
Grated or powdered	0406.20.28	4.05/kg
Powdered mixtures	0406.20.63	4.05/kg
Processed Blue cheese	0406.30.18	4.05/kg
Processed mixtures	0406.30.63	4.05/kg
Blue cheese	0406.40.70	4.05/kg
Other mixtures	0406.90.74	4.05/kg

Cheddar Cheese

Definition

For purposes of this and future notifications of quantity based safeguard

trigger levels, the term Cheddar cheese shall mean the aggregate of goods described in additional U.S. note 18 to chapter 4 of the HTS plus goods described in the tariff provisions listed under the value based safeguard trigger provisions below.

Quantity Based Safeguard Trigger

Additional duties may apply if imports of Cheddar cheese entered, or withdrawn from warehouse for consumption, on or after January 1, 1995 and before the close of December 31, 1995, inclusive exceed 6,813,125 kilograms.

Value Based Safeguard Triggers

Additional duties may apply if the customs unit value of any shipment entered into the U.S. customs territory under the tariff provisions listed below is lower than the respective customs unit value indicated therefor:

Short description	Tariff provision	Customs unit value
Fresh	0406.10.28	$2.18/kg
Grated or powdered	0406.20.33	2.18/kg
Powdered mixtures	0406.20.67	2.18/kg
Processed	0406.30.28	2.18/kg
Processed mixtures	0406.30.67	2.18/kg
Cheddar cheese	0406.90.12	2.18/kg
Other mixtures	0406.90.78	2.18/kg

American Type Cheese

Definition

For purposes of this and future notifications of quantity based safeguard trigger levels, the term American type cheese shall mean the aggregate of goods described in additional U.S. note 19 to chapter 4 of the HTS plus goods described in the tariff provisions listed under the value based safeguard trigger provisions below.

Quantity Based Safeguard Trigger

Additional duties may apply if imports of American type cheese entered, or withdrawn from warehouse for consumption, on or after January 1, 1995 and before the close of December 31, 1995, inclusive exceed 4,203,663 kilograms.

Value Based Safeguard Triggers

Additional duties may apply if the customs unit value of any shipment entered into the U.S. customs territory under the tariff provisions listed below is lower than the respective customs unit value indicated therefor:

Short description	Tariff provision	Customs unit value
Fresh	0406.10.38	$1.88/kg
Powdered Colby	0406.20.39	1.88/kg
Powdered mixtures	0406.20.71	1.88/kg
Processed Colby	0406.30.38	1.88/kg
Processed mixtures	0406.30.71	1.88/kg
Colby	0406.90.54	1.88/kg
Other mixtures	0406.90.84	1.88/kg

Edam/Gouda Cheese

Definition

For purposes of this and future notifications of quantity based safeguard trigger levels, the term Edam/Gouda cheese shall mean the aggregate of goods described in additional U.S. note 20 to chapter 4 of the HTS plus goods described in the tariff provisions listed under the value based safeguard trigger provisions below.

Quantity Based Safeguard Trigger

Additional duties may apply if imports of Edam/Gouda cheese entered, or withdrawn from warehouse for consumption, on or after January 1, 1995 and before the close of December 31, 1995, inclusive exceed 6,416,732 kilograms.

Value Based Safeguard Triggers

Additional duties may apply if the customs unit value of any shipment entered into the U.S. customs territory under the tariff provisions listed below is lower than the respective customs unit value indicated therefor:

Short description	Tariff provision	Customs unit value
Fresh	0406.10.48	$3.20/kg
Grated or powdered	0406.20.48	3.20/kg
Powdered mixtures	0406.20.75	3.20/kg
Processed	0406.30.48	3.20/kg
Processed mixtures	0406.30.75	3.20/kg
In original loaves	0406.90.18	3.20/kg
Other mixtures	0406.90.88	3.20/kg

Italian-Type Cheese

Definition

For purposes of this and future notifications of quantity based safeguard trigger levels, the term Italian Type Cheese shall mean the aggregate of goods described in additional U.S. note 21 to chapter 4 of the HTS plus goods described in the tariff provisions listed under the value based safeguard trigger provisions below.

Quantity Based Safeguard Trigger

Additional duties may apply if imports of Italian-Type Cheese entered, or withdrawn from warehouse for consumption, on or after January 1, 1995 and before the close of December 31, 1995, inclusive exceed 10,153,966 kilograms.

Value Based Safeguard Triggers

Additional duties may apply if the customs unit value of any shipment entered into the U.S. customs territory under the tariff provisions listed below is lower than the respective customs unit value indicated therefor:

Short description	Tariff provision	Customs unit value
Fresh	0406.10.58	$3.82/kg
Grated or powdered	0406.20.53	3.82/kg
Powdered mixtures	0406.20.79	3.82/kg
Processed mixtures	0406.30.79	3.82/kg
Goya	0406.90.32	3.82/kg
Sbrinz	0406.90.37	3.82/kg
Other	0406.90.42	3.82/kg
Other mixtures	0406.90.68	3.82/kg

Swiss Cheese With Eye Formation

Definition

For purposes of this and future notifications of quantity based safeguard trigger levels, the term Swiss Cheese with Eye Formation shall mean the aggregate of goods described in additional U.S. note 25 to chapter 4 of the HTS plus goods described in the tariff provision listed under the value based safeguard trigger provisions below.

Quantity Based Safeguard Trigger

Additional duties may apply if imports of Swiss Cheese with Eye Formation entered, or withdrawn from warehouse for consumption, on or after January 1, 1995 and before the close of December 31, 1995, inclusive exceed 33,950,335 kilograms.

Value Based Safeguard Triggers

Additional duties may apply if the customs unit value of any shipment entered into the U.S. customs territory under the tariff provisions listed below is lower than the respective customs unit value indicated therefor:

Short description	Tariff provision	Customs unit value
Swiss cheese	0406.90.48	$3.34/kg

Gruyere Process Cheese

Definition

For purposes of this and future notifications of quantity based safeguard trigger levels, the term Gruyere Process Cheese shall mean the aggregate of goods described in additional U.S. note 22 to chapter 4 of the HTS plus goods described in the tariff provisions listed under the value based safeguard trigger provisions below.

Quantity Based Safeguard Trigger

Additional duties may apply if imports of Gruyere Process Cheese entered, or withdrawn from warehouse for consumption, on or after January 1, 1995 and before the close of December 31, 1995, inclusive exceed 7,687,023 kilograms.

Value Based Safeguard Triggers

Additional duties may apply if the customs unit value of any shipment entered into the U.S. customs territory under the tariff provisions listed below is lower than the respective customs unit value indicated therefor:

Short description	Tariff provision	Customs unit value
Fresh	0406.10.68	$2.46/kg

Short description	Tariff provision	Customs unit value
Powdered mixtures	0406.20.83	2.46/kg
Processed	0406.30.53	2.46/kg
Processed mixtures	0406.30.83	2.46/kg
Other mixtures	0406.90.92	2.46/kg

Lowfat Cheese

Definition

For purposes of this and future notifications of quantity based safeguard trigger levels, the term Lowfat Cheese shall mean the aggregate of goods described in additional U.S. note 23 to chapter 4 of the HTS plus goods described in the tariff provisions listed under the value based safeguard trigger provisions below.

Quantity Based Safeguard Trigger

Additional duties may apply if imports of Lowfat Cheese entered, or withdrawn from warehouse for consumption, on or after January 1, 1995 and before the close of December 31, 1995, inclusive exceed 5,165,125 kilograms.

Value Based Safeguard Triggers

Additional duties may apply if the customs unit value of any shipment entered into the U.S. customs territory under the tariff provisions listed below is lower than the respective customs unit value indicated therefor:

Short description	Tariff provision	Customs unit value
Fresh	0406.10.78	$2.00/kg
Powdered mixtures	0406.20.87	2.00/kg
Processed	0406.30.87	2.00/kg
Other mixtures	0406.90.94	2.00/kg
Margarine cheese	1901.90.36	2.00/kg

NSPF Cheese

Definition

For purposes of this and future notifications of quantity based safeguard trigger levels, the term NSPF Cheese shall mean the aggregate of goods described in additional U.S. note 16 to chapter 4 of the HTS plus goods described in the tariff provisions listed under the value based safeguard trigger provisions below.

Quantity Based Safeguard Trigger

Additional duties may apply if imports of NSPF Cheese entered, or withdrawn from warehouse for consumption, on or after January 1, 1995 and before the close of December 31, 1995, inclusive exceed 48,982,310 kilograms.

Value Based Safeguard Triggers

Additional duties may apply if the customs unit value of any shipment entered into the U.S. customs territory under the tariff provisions listed below is lower than the respective customs unit value indicated therefor:

Short description	Tariff provision	Customs unit value
Chongos	0406.10.08	$2.68/kg
Fresh	0406.10.88	2.68/kg
Powdered mixtures	0406.20.91	2.68/kg
Processed	0406.30.91	2.68/kg
Other mixtures	0406.90.97	2.68/kg

Peanuts

Definition

For purposes of this and future notifications of quantity based safeguard trigger levels, the term Peanuts shall mean the aggregate of goods described in additional U.S. note 2 to chapter 12 of the HTS plus goods described in the tariff provision listed under the value based safeguard trigger provisions below.

Quantity Based Safeguard Trigger

Additional duties may apply if imports of Peanuts entered, or withdrawn from warehouse for consumption, on or after April 1, 1995 and before the close of March 31, 1996, inclusive exceed 969 tons.

For the period commencing on the date of entry into force of the Uruguay Round Agreements for the United States and ending on March 31, 1995, inclusive, such additional duties may apply if imports of Peanuts entered, or withdrawn from warehouse for consumption, exceed the quantity of 0 tons.

Value Based Safeguard Triggers

Additional duties may apply if the customs unit value of any shipment entered into the U.S. customs territory under the tariff provisions listed below is lower than the respective customs unit value indicated therefor:

Short description	Tariff provision	Customs unit value
In-shell peanuts	1202.10.80	$0.34/kg
Shelled peanuts	1202.20.80	1.24/kg
Blanched peanuts	2008.11.35	1.24/kg
Otherwise prepared peanuts	2008.11.60	1.24/kg

Peanut Butter/Paste

Definition

For purposes of this and future notifications of quantity based safeguard trigger levels, the term Peanut Butter/Paste shall mean the aggregate of goods described in additional U.S. note 5 to chapter 20 of the HTS plus goods described in the tariff provision listed under the value based safeguard trigger provisions below.

Quantity Based Safeguard Trigger

Additional duties may apply if imports of Peanut Butter/Paste entered, or withdrawn from warehouse for consumption, on or after January 1, 1995 and before the close of December 31, 1995, inclusive exceed 15,828 tons.

Value Based Safeguard Triggers

Additional duties may apply if the customs unit value of any shipment entered into the U.S. customs territory under the tariff provision listed below is lower than the respective customs unit value indicated therefor:

Short description	Tariff provision	Customs unit value
Peanut butter/paste	2008.11.15	$0.92/kg

Raw Cane Sugar

Definition

For purposes of this and future notifications of quantity based safeguard trigger levels, the term Raw Cane Sugar shall mean the aggregate of goods described in additional U.S. note 5 to chapter 17 of the HTS plus goods described in the tariff provision listed under the value based safeguard trigger provisions below.

Quantity Based Safeguard Trigger

Additional duties may apply if imports of Raw Cane Sugar entered, or withdrawn from warehouse for consumption, on or after October 1, 1995 and before the close of September 30, 1996, inclusive exceed 1,508,557 tons.

For the period commencing on the date of entry into force of the Uruguay Round Agreements for the United States and ending on September 30, 1995, inclusive, such additional duties may apply if imports of Raw Cane Sugar plus imports of Refined Sugar and Syrups (defined below) entered, or withdrawn from warehouse for consumption, exceed the quantity of 1,557,204 tons reduced by the quantity of imports of goods classified in the comparable tariff provisions of the 1994 HTS between October 1, 1994 and the day prior to the date of entry into force of the Uruguay Round Agreements for the United States, inclusive.

Value Based Safeguard Triggers

Additional duties may apply if the customs unit value of any shipment entered into the U.S. customs territory under the tariff provision listed below is lower than the respective customs unit value indicated therefor:

Short description	Tariff provision	Customs unit value
Raw cane sugar	1701.11.50	$0.33/kg

Refined Sugar and Syrups

Definition

For purposes of this and future notifications of quantity based safeguard trigger levels, the term Refined Sugar and Syrups shall mean the aggregate of goods described in additional U.S. note 5 to chapter 17 of the HTS plus goods described in the tariff provisions listed under the value based safeguard trigger provisions below.

Quantity Based Safeguard Trigger

Additional duties may apply if imports of Refined Sugar and Syrups entered, or withdrawn from warehouse for consumption, on or after October 1, 1995 and before the

close of September 30, 1996, inclusive exceed 48,647 tons.

For the period commencing on the date of entry into force of the Uruguay Round Agreements for the United States and ending on September 30, 1995, inclusive, such additional duties may apply if imports of Refined Sugar and Syrups plus imports of Raw Cane Sugar (defined above) entered, or withdrawn from warehouse for consumption, exceed the quantity of 1,557,204 tons reduced by the quantity of imports of goods classified in the comparable tariff provisions of the 1994 HTS between October 1, 1994 and the day prior to the date of entry into force of the Uruguay Round Agreements for the United States, inclusive.

Value Based Safeguard Triggers

Additional duties may apply if the customs unit value of any shipment entered into the U.S. customs territory under the tariff provisions listed below is lower than the respective customs unit value indicated therefor:

Short description	Tariff provision	Customs unit value
Raw beet sugar ..	1701.12.50	$0.50/kg
Colored sugar	1701.91.30	0.50/kg
Refined sugar	1701.99.50	0.50/kg
Sugar syrup	1702.90.20	0.50/kg
Colored syrup	2106.90.46	0.50/kg

Blended Syrups

Definition

For purposes of this and future notifications of quantity based safeguard trigger levels, the term Blended Syrups shall mean the aggregate of goods described in additional U.S. note 9 to chapter 17 of the HTS plus goods described in the tariff provisions listed under the value based safeguard trigger provisions below.

Quantity Based Safeguard Trigger

Additional duties may apply if imports of Blended Syrups entered, or withdrawn from warehouse for consumption, on or after October 1, 1995 and before the close of September 30, 1996, inclusive exceed 0 tons.

For the period commencing on the date of entry into force of the Uruguay Round Agreements for the United States and ending on September 30, 1995, inclusive, such additional duties may apply if imports of Blended Syrups entered, or withdrawn from warehouse for consumption, exceed the quantity of 0 tons.

Value Based Safeguard Triggers

Additional duties may apply if the customs unit value of any shipment entered into the U.S. customs territory under the tariff provisions listed below is lower than the respective customs unit value indicated therefor:

Short description	Tariff provision	Customs unit value
Maple syrup, blended	1702.20.28	$0.44/kg
Glucose, blended	1702.30.28	0.44/kg
Glucose/fructose, blended	1702.40.28	0.44/kg
Fructose, blended	1702.60.28	0.44/kg
Other blended syrups	1702.90.58	0.44/kg
Bulk choc. syrups	1806.20.94	0.44/kg
Other cocoa syrups	1806.90.39	0.44/kg
Coffee syrups	2101.10.38	0.44/kg
Tea syrups	2101.20.38	0.44/kg
Other syrups over 10% milk	2106.90.72	0.44/kg
Other syrups under 10% milk	2106.90.91	0.44/kg

Articles Over 65% Sugar

Definition

For purposes of this and future notifications of quantity based safeguard trigger levels, the term Articles Over 65% Sugar shall mean the aggregate of goods described in additional U.S. note 7 to chapter 17 of the HTS plus goods described in the tariff provisions listed under the value based safeguard trigger provisions below.

Quantity Based Safeguard Trigger

Additional duties may apply if imports of Articles Over 65% Sugar entered, or withdrawn from warehouse for consumption, on or after October 1, 1995 and before the close of September 30, 1996, inclusive exceed 0 tons.

For the period commencing on the date of entry into force of the Uruguay Round Agreements for the United States and ending on September 30, 1995, inclusive, such additional duties may apply if imports of Articles Over 65% Sugar entered, or withdrawn from warehouse for consumption, exceed the quantity of 0 tons.

Value Based Safeguard Triggers

Additional duties may apply if the customs unit value of any shipment entered into the U.S. customs territory under the tariff provisions listed below is lower than the respective customs unit value indicated therefor:

Short description	Tariff provision	Customs unit value
Flavored sugar over 65% sugar	1701.91.48	$0.48/kg
Other sugars over 65% sugar	1702.90.68	0.48/kg
Sugar confection over 65% sugar	1704.90.68	0.48/kg
Bulk cocoa powder over 65% sugar	1806.10.28	0.58/kg
Bulk cocoa powder over 90% sugar	1806.10.55	0.58/kg
Chocolate preps over 65% sugar	1806.20.73	0.48/kg
Other cocoa preps over 65% sugar	1806.90.49	0.48/kg
Doughs >65% sugar >25% milkfat	1901.20.25	0.88/kg
Doughs >65% sugar <25% milkfat	1901.20.60	0.88/kg
Starch preps over 65% sugar	1901.90.54	0.48/kg
Coffee preps >65% sugar	2101.10.48	0.48/kg
Tea preps >65% sugar	2101.20.48	0.48/kg
Other food preps >65% sugar	2106.90.76	0.48/kg
Other food preps >65% sugar	2106.90.94	0.48/kg

Articles Over 10% Sugar

Definition

For purposes of this and future notifications of quantity based safeguard trigger levels, the term Articles Over 10% Sugar shall mean the aggregate of goods described in additional U.S. note 8 to chapter 17 of the HTS plus goods described in the tariff provisions listed under the value based safeguard trigger provisions below.

Quantity Based Safeguard Trigger

Additional duties may apply if imports of Articles Over 10% Sugar entered, or withdrawn from warehouse for consumption, on or after October 1, 1995 and before the close of September 30, 1996, inclusive exceed 88,016 tons.

For the period commencing on the date of entry into force of the Uruguay Round Agreements for the United States and ending on September 30, 1995, inclusive, such additional duties may apply if imports of Articles Over 10% Sugar plus imports of Mixed Condiments and Seasonings (described below) entered, or withdrawn from warehouse for consumption, exceed the quantity of 88,180 tons reduced by the quantity of imports of goods classified in the comparable tariff provisions of the 1994 HTS between October 1, 1994 and the day prior to the date of entry into force of the Uruguay Round Agreements for the United States, inclusive.

Value Based Safeguard Triggers

Additional duties may apply if the customs unit value of any shipment entered into the U.S. customs territory under the tariff provisions listed below is lower than the respective customs unit value indicated therefor:

Short description	Tariff provision	Customs unit value
Flavored sugar >10% sugar	1701.91.58	$0.48/kg
Sugar confectionery >10% sugar	1704.90.78	0.48/kg
Bulk cocoa preps over 10% sugar	1806.20.77	0.48/kg
Bulk cocoa preps >10% sugar	1806.20.98	0.48/kg
Other cocoa preps >10% sugar	1806.90.59	0.48/kg

Short description	Tariff provision	Customs unit value
Starch preps >10% sugar	1901.90.58	0.48/kg
Coffee preps >10% sugar	2101.10.58	0.48/kg
Tea preps >10% sugar	2101.20.58	0.48/kg
Other food preps >10% sugar	2106.90.80	0.48/kg
Other food preps >10% sugar	2106.90.97	0.48/kg

Sweetened Cocoa Powder

Definition

For purposes of this and future notifications of quantity based safeguard trigger levels, the term Sweetened Cocoa Powder shall mean the aggregate of goods described in additional U.S. note 1 to chapter 18 of the HTS plus goods described in the tariff provision listed under the value based safeguard trigger provisions below.

Quantity Based Safeguard Trigger

Additional duties may apply if imports of Sweetened Cocoa Powder entered, or withdrawn from warehouse for consumption, on or after October 1, 1995 and before the close of September 30, 1996, inclusive exceed 2,968 tons.

For the period commencing on the date of entry into force of the Uruguay Round Agreements for the United States and ending on September 30, 1995, inclusive, such additional duties may apply if imports of Cocoa Powder entered, or withdrawn from warehouse for consumption, exceed the quantity of 2,968 tons reduced by the quantity of imports of goods classified in the comparable tariff provisions of the 1994 HTS between October 1, 1994 and the day prior to the date of entry into force of the Uruguay Round Agreements for the United States, inclusive.

Value Based Safeguard Triggers

Additional duties may apply if the customs unit value of any shipment entered into the U.S. customs territory under the tariff provisions listed below is lower than the respective customs unit value indicated therefor:

Short description	Tariff provision	Customs unit value
Cocoa powder, >10% sugar	1806.10.15	$0.58/kg
Cocoa powder, >65% sugar, retail	1806.10.38	0.58/kg
Cocoa powder, >90% sugar, retail	1806.10.75	0.58/kg

Chocolate Crumb

Definition

For purposes of this and future notifications of quantity based safeguard trigger levels, the term Chocolate Crumb shall mean the aggregate of goods described in additional U.S. note 2 to chapter 18 of the HTS plus goods described in the tariff provisions listed under the value based safeguard trigger provisions below.

Quantity Based Safeguard Trigger

Additional duties may apply if imports of Chocolate Crumb entered, or withdrawn from warehouse for consumption, on or after January 1, 1995 and before the close of December 31, 1995, inclusive exceed 7,663,920 kilograms.

Value Based Safeguard Triggers

Additional duties may apply if the customs unit value of any shipment entered into the U.S. customs territory under the tariff provisions listed below is lower than the respective customs unit value indicated therefor:

Short description	Tariff provision	Customs unit value
Bulk chocolate under 21% milk	1806.20.26	$1.24/kg
Bulk chocolate over 21% milk .	1806.20.28	1.24/kg
Chocolate bars under 21% milk	1806.32.06	1.24/kg
Chocolate bars over 21% milk .	1806.32.08	1.24/kg
Other chocolate under 21% milk	1806.90.18	1.24/kg
Other chocolate over 21% milk .	1806.90.20	1.24/kg

Lowfat Chocolate Crumb

Definition

For purposes of this and future notifications of quantity based safeguard trigger levels, the term Lowfat Chocolate Crumb shall mean the aggregate of goods described in additional U.S. note 3 to chapter 18 of the HTS plus goods described in the tariff provisions listed under the value based safeguard trigger provisions below.

Quantity Based Safeguard Trigger

Additional duties may apply if imports of Lowfat Chocolate Crumb entered, or withdrawn from warehouse for consumption, on or after January 1, 1995 and before the close of December 31, 1995, inclusive exceed 299,286 kilograms.

Value Based Safeguard Triggers

Additional duties may apply if the customs unit value of any shipment entered into the U.S. customs territory under the tariff provisions listed below is lower than the respective customs unit value indicated therefor:

Short description	Tariff provision	Customs unit value
Bulk chocolate under 21% milk	1806.20.36	$1.29/kg
Bulk chocolate over 21% milk .	1806.20.38	1.29/kg
Bulk cocoa preps under 21% milk	1806.20.87	1.29/kg
Bulk cocoa preps over 21% milk .	1806.20.89	1.29/kg
Chocolate bars under 21% milk	1806.32.16	1.29/kg
Chocolate bars over 21% milk .	1806.32.18	1.29/kg
Other chocolate under 21% milk	1806.90.28	1.29/kg
Other chocolate over 21% milk .	1806.90.30	1.29/kg

Infant Formula Containing Oligosaccharides

Definition

For purposes of this and future notifications of quantity based safeguard trigger levels, the term Infant Formula Containing Oligosaccharides shall mean the aggregate of goods described in additional U.S. note 2 to chapter 19 of the HTS plus goods described in the tariff provisions listed under the value based safeguard trigger provisions below.

Quantity Based Safeguard Trigger

Additional duties may apply if imports of Infant Formula Containing Oligosaccharides entered, or withdrawn from warehouse for consumption, on or after January 1, 1995 and before the close of December 31, 1995, inclusive exceed 0 kilograms.

Value Based Safeguard Triggers

Additional duties may apply if the customs unit value of any shipment entered into the U.S. customs territory under the tariff provisions listed below is lower than the respective customs unit value indicated therefor:

Short description	Tariff provision	Customs unit value
Infant formula over 10% milk .	1901.10.30	$2.63/kg
Infant formula under 10% milk	1901.10.75	2.63/kg

Mixes and Doughs

Definition

For purposes of this and future notifications of quantity based safeguard trigger levels, the term Mixes and Doughs shall mean the aggregate of goods described in additional U.S. note 3 to chapter 19 of the HTS plus goods described in the tariff provisions listed under the value based safeguard trigger provisions below.

Quantity Based Safeguard Trigger

Additional duties may apply if imports of Mixes and Doughs entered, or withdrawn from warehouse for consumption, on or after October 1, 1995 and before the close of September 30, 1996, inclusive exceed 342 tons.

For the period commencing on the date of entry into force of the Uruguay Round Agreements for the United States and ending on September 30, 1995, inclusive, such additional duties may apply if imports of Mixes and Doughs entered, or withdrawn from warehouse for consumption, exceed the quantity of 342 tons reduced by the quantity of imports of goods classified in the comparable tariff provisions of the 1994 HTS between October 1, 1994 and the day prior

to the date of entry into force of the Uruguay Round Agreements for the United States, inclusive.

Value Based Safeguard Triggers

Additional duties may apply if the customs unit value of any shipment entered into the U.S. customs territory under the tariff provisions listed below is lower than the respective customs unit value indicated therefor:

Short description	Tariff provision	Customs unit value
Doughs >10% sugar >25% milkfat	1901.20.35	$0.88/kg
Doughs >10% sugar <25% milkfat	1901.20.70	0.88/kg

Mixed Condiments and Seasonings

Definition

For purposes of this and future notifications of quantity based safeguard trigger levels, the term Mixed Condiments and Seasonings shall mean the aggregate of goods described in additional U.S. note 4 to chapter 21 of the HTS plus goods described in the tariff provision listed under the value based safeguard trigger provisions below.

Quantity Based Safeguard Trigger

Additional duties may apply if imports of Mixed Condiments and Seasonings entered, or withdrawn from warehouse for consumption, on or after October 1, 1995 and before the close of September 30, 1996, inclusive exceed 164 tons.

For the period commencing on the date of entry into force of the Uruguay Round Agreements for the United States and ending on September 30, 1995, inclusive, such additional duties may apply if imports of Mixed Condiments and Seasonings plus imports of Articles Over 10% Sugar (described above) entered, or withdrawn from warehouse for consumption, exceed the quantity of 88,180 tons reduced by the quantity of imports of goods classified in the comparable tariff provisions of the 1994 HTS between October 1, 1994 and the day prior to the date of entry into force of the Uruguay Round Agreements for the United States, inclusive.

Value Based Safeguard Triggers

Additional duties may apply if the customs unit value of any shipment entered into the U.S. customs territory under the tariff provisions listed below is lower than the respective customs unit value indicated therefor:

Short description	Tariff provision	Customs unit value
Mixed condiments/ seasonings.	2103.90.78	0.48/ kg

Ice Cream

Definition

For purposes of this and future notifications of quantity based safeguard trigger levels, the term Ice Cream shall mean the aggregate of goods described in additional U.S. note 5 to chapter 21 of the HTS plus goods described in the tariff provision listed under the value based safeguard trigger provisions below.

Quantity Based Safeguard Trigger

Additional duties may apply if imports of Ice Cream entered, or withdrawn from warehouse for consumption, on or after January 1, 1995 and before the close of December 31, 1995, inclusive exceed 707 liters.

Value Based Safeguard Triggers

Additional duties may apply if the customs unit value of any shipment entered into the U.S. customs territory under the tariff provision listed below is lower than the respective customs unit value indicated therefor:

Short description	Tariff provision	Customs unit value
Ice cream	2105.00.20	$0.97/liter

Animal Feed Containing Milk

Definition

For purposes of this and future notifications of quantity based safeguard trigger levels, the term Animal Feeds Containing Milk shall mean the aggregate of goods described in additional U.S. note 2 to chapter 23 of the HTS plus goods described in the tariff provisions listed under the value based safeguard trigger provisions below.

Quantity Based Safeguard Trigger

Additional duties may apply if imports of Animal Feeds Containing Milk entered, or withdrawn from warehouse for consumption, on or after January 1, 1995 and before the close of December 31, 1995, inclusive exceed 5,406,346 kilograms.

Value Based Safeguard Triggers

Additional duties may apply if the customs unit value of any shipment entered into the U.S. customs territory under the tariff provisions listed below is lower than the respective customs unit value indicated therefor:

Short description	Tariff provision	Customs unit value
Animal feed over 10% milk	2309.90.28	$0.96/kg
Animal feed under 10% milk	2309.90.48	0.96/kg

Short Staple Cotton

Definition

For purposes of this and future notifications of quantity based safeguard trigger levels, the term Short Staple Cotton shall mean the aggregate of goods described in additional U.S. note 5 to chapter 52 of the HTS plus goods described in the tariff provision listed under the value based safeguard trigger provisions below.

Quantity Based Safeguard Trigger

Additional duties may apply if imports of Short Staple Cotton entered, or withdrawn from warehouse for consumption, on or after September 20, 1995 and before the close of September 19, 1996, inclusive exceed 852,547 kilograms.

For the period commencing on the date of entry into force of the Uruguay Round Agreements for the United States and ending on September 19, 1995, inclusive, such additional duties may apply if imports of Short Staple Cotton entered, or withdrawn from warehouse for consumption, exceed the quantity of 852,547 kilograms reduced by the quantity of imports of goods classified in the comparable tariff provisions of the 1994 HTS between September 20, 1994 and the day prior to the date of entry into force of the Uruguay Round Agreements for the United States, inclusive.

Value Based Safeguard Triggers

Additional duties may apply if the customs unit value of any shipment entered into the U.S. customs territory under the tariff provision listed below is lower than the respective customs unit value indicated therefor:

Short description	Tariff provision	Customs unit value
Short staple cotton	5201.00.18	$1.60/kg

Harsh or Rough Cotton

Definition

For purposes of this and future notifications of quantity based safeguard trigger levels, the term Harsh or Rough Cotton shall mean the aggregate of goods described in additional U.S. note 6 to chapter 52 of the HTS plus goods described in the tariff provision listed under the value based safeguard trigger provisions below.

Quantity Based Safeguard Trigger

Additional duties may apply if imports of Harsh or Rough Cotton entered, or withdrawn from warehouse for consumption, on or after August 1, 1995 and before the close of July 31, 1996, inclusive, exceed 0 tons.

For the period commencing on the date of entry into force of the Uruguay Round Agreements for the United States and ending on July 31, 1995, inclusive, such additional duties may apply if imports of Harsh or Rough Cotton entered, or withdrawn from warehouse for consumption, exceed the quantity of 0 tons.

Value Based Safeguard Triggers

Additional duties may apply if the customs unit value of any shipment entered into the U.S. customs territory under the tariff provision listed below is lower than the respective customs unit value indicated therefor:

Short description	Tariff provision	Customs unit value
Harsh or rough cotton	5201.00.28	$1.12/kg

Medium Staple Cotton

Definition

For purposes of this and future notifications of quantity based safeguard trigger levels, the term Medium Staple Cotton shall mean the aggregate of goods described in additional U.S. note 7 to chapter 52 of the HTS plus goods described in the tariff provision listed under the value based safeguard trigger provisions below.

Quantity Based Safeguard Trigger

Additional duties may apply if imports of Medium Staple Cotton entered, or withdrawn from warehouse for consumption, on or after August 1, 1995 and before the close of July 31, 1996, inclusive exceed 732,820 kilograms.

For the period commencing on the date of entry into force of the Uruguay Round Agreements for the United States and ending on July 31, 1995, inclusive, such additional duties may apply if imports of Medium Staple Cotton entered, or withdrawn from warehouse for consumption, exceed the quantity of 732,820 kilograms reduced by the quantity of imports of goods classified in the comparable tariff provisions of the 1994 HTS between August 1, 1994 and the day prior to the date of entry into force of the Uruguay Round Agreements for the United States, inclusive.

Value Based Safeguard Triggers

Additional duties may apply if the customs unit value of any shipment entered into the U.S. customs territory under the tariff provision listed below is lower than the respective customs unit value indicated therefor:

Short description	Tariff provision	Customs unit value
Medium staple cotton	5201.00.38	$1.20/kg

Extra Long Staple Cotton

Definition

For purposes of this and future notifications of quantity based safeguard trigger levels, the term Extra Long Staple Cotton shall mean the aggregate of goods described in additional U.S. note 8 to chapter 52 of the HTS plus goods described in the tariff provision listed under the value based safeguard trigger provisions below.

Quantity Based Safeguard Trigger

Additional duties may apply if imports of Extra Long Staple Cotton entered, or withdrawn from warehouse for consumption, on or after August 1, 1995 and before the close of July 31, 1996, inclusive exceed 247,506 kilograms.

For the period commencing on the date of entry into force of the Uruguay Round Agreements for the United States and ending on July 31, 1995, inclusive, such additional duties may apply if imports of Extra Long Staple Cotton entered, or withdrawn from warehouse for consumption, exceed the quantity of 247,506 kilograms reduced by the quantity of imports of goods classified in the comparable tariff provisions of the 1994 HTS between August 1, 1994 and the day prior to the date of entry into force of the Uruguay Round Agreements for the United States, inclusive.

Value Based Safeguard Triggers

Additional duties may apply if the customs unit value of any shipment entered into the U.S. customs territory under the tariff provision listed below is lower than the respective customs unit value indicated therefor:

Short description	Tariff provision	Customs unit value
Extra long staple cotton	5201.00.80	$2.75/kg

Cotton Waste

Definition

For purposes of this and future notifications of quantity based safeguard trigger levels, the term Cotton Waste shall mean the aggregate of goods described in additional U.S. note 9 to chapter 52 of the HTS plus goods described in the tariff provision listed under the value based safeguard trigger provisions below.

Quantity Based Safeguard Trigger

Additional duties may apply if imports of Cotton Waste entered, or withdrawn from warehouse for consumption, on or after September 20, 1995 and before the close of September 19, 1996, inclusive exceed 157,189 kilograms.

For the period commencing on the date of entry into force of the Uruguay Round Agreements for the United States and ending on September 19, 1995, inclusive, such additional duties may apply if imports of Cotton Waste entered, or withdrawn from warehouse for consumption, exceed the quantity of 157,189 kilograms reduced by the quantity of imports of goods classified in the comparable tariff provisions of the 1994 HTS between September 20, 1994 and the day prior to the date of entry into force of the Uruguay Round Agreements for the United States, inclusive.

Value Based Safeguard Triggers

Additional duties may apply if the customs unit value of any shipment entered into the U.S. customs territory under the tariff provision listed below is lower than the respective customs unit value indicated therefor:

Short description	Tariff provision	Customs unit value
Cotton waste	5202.99.30	$8.15/kg

Cotton Processed, Not Spun

Definition

For purposes of this and future notifications of quantity based safeguard trigger levels, the term Cotton Processed, Not Spun shall mean the aggregate of goods described in additional U.S. note 10 to chapter 52 of the HTS plus goods described in the tariff provision listed under the value based safeguard trigger provisions below.

Quantity Based Safeguard Trigger

Additional duties may apply if imports of Cotton Processed, Not Spun entered, or withdrawn from warehouse for consumption, on or after September 11, 1995 and before the close of September 10, 1996, inclusive exceed 71 kilograms.

For the period commencing on the date of entry into force of the Uruguay Round Agreements for the United States and ending on September 10, 1995, inclusive, such additional duties may apply if imports of Cotton Processed, Not Spun entered, or withdrawn from warehouse for consumption, exceed the quantity of 71 kilograms reduced by the quantity of imports of goods classified in the comparable tariff provisions of the 1994 HTS between September 11, 1994 and the day prior to the date of entry into force of the Uruguay Round Agreements for the United States, inclusive.

Value Based Safeguard Triggers

Additional duties may apply if the customs unit value of any shipment entered into the U.S. customs territory under the tariff provision listed below is lower than the respective customs unit value indicated therefor:

Short description	Tariff provision	Customs unit value
Cotton processed, not spun	5203.00.30	$0.64/kg

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BILLING CODE 3410–10–P

Forest Service

Environmental Assessment for the Eagle Cap Stewardship Plan and Minam Wild and Scenic River Management Plan, Wallowa-Whitman National Forest, Baker, Union, and Wallowa Counties, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: On December 19, 1994, Bruce L. McMillan signed a Decision Notice acting for Wallowa-Whitman Forest Supervisor, R.M. Richmond, which adopted into the Forest Plan the Minam River Wild and Scenic River Management Plan which required an amendment to the Wallowa-Whitman Forest Plan.

This management plan outlines use levels, development levels, resource protection measures, and outlines a general management direction for the river corridor. This amendment is necessary to implement the Wild and

Scenic Rivers Act which required the Forest Service to develop a management plan for the Minam River. Interim direction was identified in the Forest Plan as Management Area 7 (Wild and Scenic Rivers). The environmental assessment documents the analysis of alternatives to managing the Minam River Wild and Scenic River in accordance with the Wild and Scenic Rivers Act.

This decision is subject to appeal pursuant to Forest Service regulations 36 CFR part 217. Appeals must be filed within 45 days from the date of publication in the Baker City Herald. Notices of Appeals must meet the requirement of 36 CFR 217.9.

The environmental assessment for the Eagle Cap Wilderness-Minam River Wild and Scenic River Management Plan is available for the public review at the Wallowa-Whitman National Forest Supervisor's Office in Baker City, Oregon.

EFFECTIVE DATE: Implementation of this decision shall not occur within 30 days following publication of the legal notice of the decision in the Baker City Herald.

FOR FURTHER INFORMATION CONTACT: For further information, contact Gay Brockus (503–523–1250) or Steve Davis (503–523–1316), at the Wallowa-Whitman National Forest, P.O. Box 907, Baker City, Oregon 97814.

Dated: December 21, 1994.

R.M. Richmond,

Forest Supervisor.

[FR Doc. 95–56 Filed 1–3–95; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Federal Subsistence Management Program in Alaska Meetings

AGENCY: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Notice of Meetings.

TIMES, DATES AND LOCATIONS: The Federal Subsistence Board announces the forthcoming Subsistence Regional Advisory Council (Regional Council) meetings:

Regional council meetings:	
Yukon-Kuskokwim Delta Regional Council, Community Hall, Mountain Village, AK	Jan. 25–26, 1995.
Northwest Arctic Regional Council, Alaska Technical Center, Kotzebue, AK	Feb. 2, 1995.
Southeast Regional Council, Hoonah, AK	Feb. 8–10, 1995.
Bristol Bay Regional Council, Naknek, AK	Feb. 15–17, 1995.
Kodiak/Aleutians Regional Council, Old Harbor, AK	Feb. 16–17, 1995.
North Slope Regional Council, Barrow, AK	Feb. 16–17, 1995.
Seward Peninsula Regional Council, White Mountain, AK	Feb. 23–24, 1995.
Western Interior Regional Council, Huslia, AK	Feb. 23–24, 1995.
Southcentral Regional Council, Anchorage, AK	Feb. 27–Mar. 1, 1995.
Eastern Interior Regional Council, Northway, AK	Mar. 1–3, 1995.

Specific times and locations will be published in local and Statewide newspapers as soon as available. All meetings are subject to change due to adverse weather restricting travel.

SUMMARY: The public is invited to participate in these upcoming Regional Council meetings. After the public testimony, individuals will be able to listen to the Regional Council's deliberation on the agenda items.

MATTERS TO BE CONSIDERED: The Regional Councils will make recommendations on proposals for Federal subsistence seasons and harvest limits for the 1995–1996 regulatory year. The Regional Councils may also discuss other issues concerning the Federal Subsistence Management Program.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o Richard Pospahala, Office of Subsistence Management, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907)–786–3447.

SUPPLEMENTARY INFORMATION: The Regional Councils have been established in accordance with Section 805 of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and Subsistence Management Regulations for Public Lands in Alaska, subparts A, B, and C (57 FR 22940–22964). They advise the Federal Government on all matters related to the subsistence taking of fish and wildlife on public lands in Alaska and operate in accordance with provisions of the Federal Advisory Committee Act. The public is invited to participate in the Regional Council meetings.

The Federal Subsistence Board was established in accordance with Section 814 of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and Subsistence Management Regulations for Public Lands in Alaska, subparts A, B, and C (57 FR 22940–22964). The Secretary of the Interior and Secretary of Agriculture delegated responsibility for administering the subsistence taking and use of fish and wildlife on public lands to this body. Their meetings are open and the public is invited to participate.

Dated: December 19, 1994.

William L. Hensley,

Chair, Federal Subsistence Board.

[FR Doc. 95–82 Filed 1–3–95; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–834]

Preliminary Determination of Critical Circumstances: Disposable Pocket Lighters From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice.

EFFECTIVE DATE: January 4, 1995.

FOR FURTHER INFORMATION CONTACT: Julie Anne Osgood or Cynthia Thirumalai, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–0167 or 482–4087, respectively.

Preliminary Determination of Critical Circumstances

On December 5, 1994, the Department of Commerce (the Department) preliminarily determined that disposable pocket lighters from the People's Republic of China (PRC) are

being, or are likely to be, sold in the United States at less than fair value (59 FR 64191, December 13, 1994). On November 23, 1994, petitioner alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of subject merchandise. In accordance with 19 CFR 353.16(b)(2)(ii), since this allegation was filed later than 20 days before the scheduled date of the preliminary determination, we must issue our preliminary critical circumstances determination not later than 30 days after the allegation was submitted.

Section 733(e)(1) of the Tariff Act of 1930, as amended (the Act), provides that the Department will determine that there is a reasonable basis to believe or suspect that critical circumstances exist if:

(A) (i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

History of Dumping

In this investigation, the first criterion of analysis is addressed in petitioner's May 9, 1994, submission. Exhibit 30 to the petition provides documentation indicating that the European Community imposed antidumping duties on such or similar merchandise produced and exported from the PRC in November 1991. Therefore, petitioner has established that there is a history of dumping elsewhere of such lighters by PRC producers/exporters.

Importer Knowledge

With respect to the alternative first criterion, we have consistently determined that preliminary antidumping duty margins in excess of 25 percent on U.S. purchase price sales are sufficient to impute importer knowledge of sales at less than fair value. *See, Final Determination of Sales at Less Than Fair Value: Silicon Metal from China* (56 FR 18570, April 23, 1991) and *Final Determination of Sales at Less Than Fair Value: Extruded Rubber Thread from Malaysia* (57 FR 38465, August 25, 1992). In this investigation, China National Overseas Trading Corporation (Ningbo)(''COTCO''), Guangdong Light Industrial Products Import & Export Corporation (''GLIP''), PolyCity Industrial Ltd. (''PolyCity''), and all non-responding companies received preliminary antidumping duty margins in excess of 25 percent. Therefore, we preliminarily determine that importers either knew or should have known that such exporters were selling disposable pocket lighters at less than fair value.

Massive Imports

Because we have preliminarily found that the first statutory criterion is met for finding critical circumstances in that there is a history of dumping of the subject merchandise and, alternatively, there is actual or imputed importer knowledge of sales at less than fair value for certain companies, we must consider the second statutory criterion: whether imports of the merchandise have been massive over a relatively short period.

According to 19 CFR 353.16(f) and 353.16(g), we consider the following to determine whether imports have been massive over a relatively short period of time: 1) volume and value of the imports; 2) seasonal trends (if applicable); and 3) the share of domestic consumption accounted for by the imports.

When examining volume and value data, the Department typically compares the export volume for equal periods immediately preceding and following the filing of the petition. Under 19 CFR 353.16(f)(2), unless the imports in the comparison period have increased by at least 15 percent over the imports during the base period, we will not consider the imports to have been ''massive.''

To determine whether there have been massive imports over a relatively short period of time, the Department examines shipment information submitted by the respondent or import statistics when respondent-specific shipment information is not available.

On December 9, 1994, the Department sent respondents requests for information regarding shipments of disposable pocket lighters for the period January 1992 to December 1994. We received the requested information filed in proper form on December 19, 1994, for COTCO, GLIP, Gao Yao (HK) Hua Fa Industrial Co., Ltd. (''Gao Yao''), and PolyCity. For these responding companies, we used company-specific shipment data in this investigation and the related analysis. Cli-Claque Company, Ltd. (''Cli-Claque'') did not submit information for this preliminary critical circumstances determination.

To determine whether or not imports of disposable pocket lighters have been massive over a relatively short period, we compared each respondent's export volume for the seven months subsequent to the filing of the petition (May through November 1994) to that during the seven months prior to the filing of the petition (October 1993 through April 1994). This period was selected based on the Department's practice of using the longest period for which information is available from the month that the petition was submitted through the effective date of the preliminary determination of sales at less than fair value, which in this investigation was December 5, 1994. See *Preliminary Affirmative Determination of Critical Circumstances; Silicon Carbide From the People's Republic of China* (59 FR 16795, April 8, 1994). We were unable to consider the share of domestic consumption accounted for by the imports, pursuant to 353.16(f)(1)(iii), because the available data did not permit such a post-filing analysis. In addition, we found no evidence of seasonality, pursuant to 19 CFR 353.16(f)(i)(ii), with respect to PRC exports of disposable pocket lighters to the United States.

Respondents have argued that any increases in PRC lighter imports after the filing of the petition were in anticipation of the Consumer Product Safety Commission child-proof lighter requirements due to become effective on July 12, 1994. (See *Safety Standard for Cigarette Lighters* (58 FR 37557, July 12, 1993).) The evidence on the record at this time is insufficient to support the legal and factual bases for this argument. We will address this argument further in our final determination.

Based on the responding companies' shipment information, we preliminarily find that imports of disposable pocket lighters from the PRC have been massive over a relatively short period for COTCO. We preliminarily find that imports were not massive with respect to Gao Yao, GLIP, and PolyCity. (See business proprietary memorandum from team to file, dated December 23, 1994.)

Therefore, because there is a history of dumping of such or similar merchandise, and, alternatively, importers knew or should have known that the exporter was selling the merchandise at less than its fair value, and imports of disposable pocket lighters have been massive over a relatively short period of time, we preliminarily determine that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of disposable pocket lighters from COTCO. Because imports from Gao Yao, GLIP and PolyCity have not been massive, we preliminarily

determine that there is not a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of disposable pocket lighters from these three companies. In addition, with respect to Cli-Claque, and all non-responding producers/exporters of disposable pocket lighters from the PRC, we preliminarily determine, as best information available, that critical circumstances exist.

We will make a final determination concerning critical circumstances when we make our final determination of sales at less than fair value in this investigation.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: December 23, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–161 Filed 1–3–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–821–807]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of the Final Determination: Ferrovanadium and Nitrided Vanadium from the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 4, 1995.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4136 or (202) 482–1769, respectively.

Preliminary Determination:

We preliminarily determine that imports of ferrovanadium and nitrided vanadium from the Russian Federation (Russia) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since initiation of the investigation on June 20, 1994 (59 FR 32952, June 27, 1994), the following events have occurred.

On July 15, 1994, the U.S. International Trade Commission (ITC) notified the Department of Commerce (the Department) of its preliminary determination that there was a reasonable indication that an industry in the United States is materially injured, or threatened with material injury, by reason of imports of ferrovanadium and nitrided vanadium from Russia.

On July 29, 1994, the Russian Ministry for Foreign Economic Relations (MINFER) advised us that the only producers of the subject merchandise are SC Vanadium Tulachermet (Tulachermet) and Chusavoy Metallurgical Works (Chusavoy).

On August 10, 1994, we sent the antidumping questionnaire to the Embassy of the Russian Federation, as well as to Tulachermet and Chusavoy. (The antidumping questionnaire was divided into three sections: section A requesting general information on each company; section C requesting information on, and a listing of, U.S. sales made during the period of investigation (POI); and, section D requesting information on the production process, including specific amounts of each input used in manufacturing ferrovanadium and nitrided vanadium). We requested the Embassy's assistance in forwarding the questionnaire to all Russian exporters and producers of ferrovanadium and nitrided vanadium and submitting complete questionnaire responses on their behalf.

In September, we received responses to Section A of the questionnaire from Tulachermet, Chusavoy, and Odermet Limited (Odermet), an exporter of the subject merchandise headquartered in the United Kingdom. Based on information in these responses, as well as additional information submitted by the petitioner, we issued the antidumping questionnaire (limited to Sections A and C) during September, October, and November to trading companies operating in various European countries and the Russian Federation, which may have exported the subject merchandise to the United States during the POI.

In response to these questionnaires, Gesellschaft fhr Elektrometallurgie m.b.H. (GfE)(a German subsidiary of Metallurg, Inc. and related party to Shieldalloy Metallurgical Corporation (Shieldalloy)), submitted a Section A response in October 1994. Five trading companies—AIOC, Axel Johnson AB (which is related to AIOC), VVO Tiajpromexport, VO Promsyrioimport, and Technoinvest—indicated that they did not sell the subject merchandise during the POI. Three companies did not respond to the questionnaire: Marc Rich Co., AG, Wogan Resources, Ltd., and one Russian trading company that cannot be named in this notice because its identity is deemed business proprietary information.

Two other questionnaires sent to Russian trading companies were returned to us as undeliverable. Finally, we received an unsolicited Section A response from Galt Alloys, Inc.(Galt), an exporter of the subject merchandise, in November 1994.

On September 28, 1994, the Department postponed its preliminary determination until December 27, 1994 (59 FR 50559, October 4, 1994).

In October and November, 1994, the Department received responses to questionnaire section C from Galt, GfE, Odermet, and Tulachermet, and to questionnaire section D from Chusavoy and Tulachermet. In addition, Odermet claimed that it should be considered a reseller of ferrovanadium under section 773(f) of the Act, and that its foreign market value should be determined on the basis of its sales to Germany, the intermediate country in which the subject merchandise was sold. Accordingly, Odermet also submitted a questionnaire response for its sales to Germany.

During October and November 1994, the Department requested clarifications of the submitted responses from Chusavoy, Galt, GfE, Odermet, and Tulachermet. In addition, the Department presented to GfE section E–2 of the antidumping questionnaire, regarding information on further manufacturing performed in the United States, because GfE reported that all of its sales in the U.S. were further manufactured by its related affiliate, Shieldalloy, prior to sale to unrelated parties in the United States. Responses to these supplemental information requests were received during November and December. Additional information concerning GfE's Section E–2 was requested and received in December 1994.

In November 1994, the Department provided interested parties with the opportunity to submit publicly-available, published information for the Department to consider when valuing the factor inputs (see ''Foreign Market Value'' section below). Responses to this request were submitted during December 1994.

On December 19, 1994, the Department received a letter from Marc Rich Co. A.G., (now known as Glencore International A.G. (Glencore)) requesting that the Department provide it with a second questionnaire and

analyze its sales for this proceeding. The Department rejected Glencore's request as untimely on December 27, 1994.

On December 20, 1994, Tulachermet requested that it be granted a separate rate in this determination. This request is discussed below under ''Suspension of Liquidation''.

Postponement of Final Determination

Pursuant to section 735(a)(2)(A) of the Act, on December 19, 1994, Galt, Tulachermet, and Odermet, exporters accounting for a significant portion of the merchandise in this proceeding, requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone the final determination to 135 days after the date of publication of the affirmative preliminary determination. The Department finds no compelling reason to deny these requests and is, accordingly, postponing the final determination until the 135th day after the publication of this notice in the **Federal Register**, pursuant to 19 CFR 353.20 (b).

Scope of Investigation

The products covered by this investigation are ferrovanadium and nitrided vanadium, regardless of grade, chemistry, form or size, unless expressly excluded from the scope of this investigation. Ferrovanadium includes alloys containing ferrovanadium as the predominant element by weight (*i.e.*, more weight than any other element, except iron in some instances) and at least 4 percent by weight of iron. Nitrided vanadium includes compounds containing vanadium as the predominant element, by weight, and at least 5 percent, by weight, of nitrogen. Excluded from the scope of this investigation are the vanadium additives other than ferrovanadium and nitrided vanadium, such as vanadium-aluminum master alloys, vanadium chemicals, vanadium waste and scrap, vanadium-bearing raw materials, such as slag, boiler residues and fly ash, and vanadium oxides.

The products subject to these investigations are currently classifiable under subheadings 7202.92.00, 7202.99.5040, 8112.40.3000, and 8112.40.6000 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Period of Investigation

The period of investigation (POI) in this proceeding is December 1, 1993, through May 31, 1994.

Nonmarket Economy Country Status

Pursuant to section 773(c) of the Act, Russia has been treated as a nonmarket economy country (NME), for the purposes of determining foreign market value, in all past antidumping investigations (*see, e.g., Preliminary Determination of Sales at Less than Fair Value: Pure Magnesium and Alloy Magnesium from the Russian Federation*, 59 FR 55427 (November 7, 1994) (*Magnesium from Russia*)). No information has been provided in this proceeding that would lead us to change this designation. Therefore, in accordance with section 771(18)(c) of the Act, we have treated Russia as an NME for purposes of this investigation.

Surrogate Country

In accordance with section 773(c)(4) of the Act, we must, to the extent possible, value the factors of production in one or more market economy countries that (1) are at a level of economic development comparable to that of the NME economy country, and (2) are significant producers of comparable merchandise. Initially, the Department identified five countries as possible surrogates: Algeria, Poland, Thailand, Turkey and Tunisia (see July 29, 1994, Memorandum from the Office of Policy to Gary Taverman). We subsequently determined, after a further review of economic and production data, that South Africa is also at a level of economic development comparable to Russia. Therefore, given its economic comparability to Russia, and the fact that it is a significant producer of merchandise identical to that being investigated, (see December 22, 1994, Memorandum from Office of Policy to Gary Taverman), we have based FMV on the appropriate factors of production as valued in South Africa, except for those factors for which we were unable to obtain a suitable value from South Africa. We have obtained and relied upon published, publicly-available information, wherever possible. For a few factors, we were unable to find appropriate South African values. In these instances, as discussed below in the ''FMV'' section of this notice, we used values from publicly-available, published information pertaining to Turkey, or values pertaining to Brazil and Germany as included in the petition.

Fair Value Comparisons

A. Participating Respondents

To determine whether sales to the United States of ferrovanadium and nitrided vanadium by Galt, GfE, Odermet and Tulachermet, were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the ''United States Price'' and ''Foreign Market Value'' sections of this notice.

B. Non-participating Respondents

All exporters to which a questionnaire was issued are considered mandatory respondents in this proceeding. We consider those mandatory respondents that did not respond to the questionnaire to be uncooperative respondents, and we have based the less-than-fair-value margin for those companies on the best information available (BIA) in accordance with section 776(c) of the Act. For this preliminary determination, we consider Marc Rich Co. and Wogan Resources to be uncooperative respondents because they did not provide timely responses to our questionnaire. Accordingly, we have based these companies' LTFV margins on an uncooperative BIA rate.

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents that cooperated in an investigation and margins based on more adverse assumptions for those respondents which did not cooperate in an investigation. As outlined in the *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Belgium*, 58 FR 37083 (July 9, 1993), when a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of (a) the highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation. Here, we are assigning as BIA to these uncooperative exporters a margin of 108.00 percent for ferrovanadium and nitrided vanadium. This margin represents the highest margin in the petition, as recalculated by the Department at initiation.

C. All Other Companies

We are basing the LTFV margins for all other companies, including those companies which reported that they did not sell the subject merchandise to the United States during the POI, on a simple average of the rates assigned the mandatory respondents, and the rates based on BIA. Given our concern about the role that Shieldalloy may play as both petitioner and as respondent with its related affiliate, GfE, we have

excluded GfE's rate from the calculation of the ''all others'' rate. A simple average, rather than a weighted-average, is applied because we do not have sufficient data to weight the individual margins.

United States Price

We based United States Price (USP) for Odermet and Tulachermet on purchase price (PP), in accordance with section 772(b) of the Act, because the subject merchandise was sold directly by the exporters to unrelated parties in the United States prior to importation and because the exporters sales price (ESP) methodology was not indicated by other circumstances. We calculated purchase price based on packed, CIF, FOB, or ex-factory prices to unrelated purchasers in the United States, and made the following deductions (where appropriate): for Odermet, foreign inland freight, foreign brokerage and handling, ocean freight containerization, and marine insurance; for Tulachermet, foreign inland freight and foreign brokerage and handling.

We based USP for Galt and GfE on ESP, in accordance with section 772(c) of the Act, because the subject merchandise was sold to the first unrelated purchaser after importation into the United States. We calculated ESP based on packed delivered prices, where appropriate. For Galt, we made deductions, where appropriate, for foreign brokerage and handling, ocean freight, marine insurance, U.S. inland freight, U.S. duties, and U.S. brokerage and handling. For GfE, we made deductions for foreign inland freight, foreign brokerage and handling, ocean freight, marine insurance, U.S. duties, U.S. brokerage and handling, inland freight, and inland insurance.

In addition, for Galt, GfE, and Tulachermet, we deducted foreign inland freight between the factory and the reported intermediate destination (*e.g.,* Rotterdam) using reported distances and transport modes to calculate an appropriate surrogate factory-to-border or port freight amount on the basis of surrogate freight rates in South Africa. In addition, for certain sales made by Tulachermet, as well as certain shipments by GfE, we deducted port loading charges incurred in Russia based on port charges in South Africa. For all other movement expenses, we deducted the reported expenses as these services were reported to have been provided by market economy suppliers and paid in freely convertible market economy currencies. We made no deduction from USP to account for either export taxes paid by Russian companies to the Russian government or commissions paid by Russian companies to other Russian companies because (a) the actual amounts paid are an internal expense within an NME country, and (b) there is no quantifiable good or service factor for which a surrogate value can be determined.

Further, for GfE, we made additional deductions, where appropriate, for all value added to the ESP sales of the subject merchandise in the United States, pursuant to section 772(e)(3) of the Act. The value added consists of the costs associated with the production of the further manufactured products, other than the costs associated with the imported merchandise, and a proportional amount of any profit related to the further manufacture. Profit was calculated by deducting from the sales price of the finished product the total cost of production of the imported product, based on the factors of production methodology described below, as well as all applicable movement charges. The total profit was then allocated proportionately to all components of cost. Only the profit attributable to the value added was deducted. GfE did not report the value added for certain sales. As BIA, we applied the highest amount of value added reported for all other U.S. sales.

Foreign Market Value

In accordance with section 773(c) of the Act, except for sales by Odermet, we calculated FMV for ferrovanadium and nitrided vanadium based on a valuation of factors of production reported by the factories in Russia which produced the subject merchandise. The factors used to produce ferrovanadium and nitrided vanadium include materials, labor, and energy. To calculate FMV, the reported quantities were multiplied by the appropriate surrogate values for the different inputs. (For a discussion of the complete analysis of surrogate values, see our Valuation Memorandum dated December 27, 1994.) We then added amounts for general expenses and profit, the cost of containers and coverings, and other expenses incident to placing the merchandise in condition packed and ready for shipment to the United States.

To value the raw materials, we used publicly available information for South Africa from *South Africa's Mineral Industry 1993/94* and *Southern African Customs Union Trade Statistics (SACU Trade Statistics).*

To value vanadium slag, we used a price quote for South African vanadium slag submitted in the petition because we were unable to determine if the prices available from public sources were for unprocessed or processed material. Among the surrogate values we had obtained, the price quote in the petition was for the material most similar to that used by the Russian producers.

To value sulfuric acid, we determined that the value derived from *SACU Trade Statistics* was inconsistent with all other values obtained for this factor. Therefore, we valued this factor based on the unit value derived from the *United Nations Trade Commodity Statistics* for Turkey. We used a Turkish value because Turkey is among those countries considered economically comparable to Russia, as noted above.

To value nitrogen, we used the Brazilian price quote from the petition, as this value was the only one available to us, and Brazil has been determined to be among those countries within a range of economic comparability to Russia in past cases (*see, e.g., Magnesium from Russia*).

To value natural gas, we used the Brazilian price included in the petition because we were unable to locate a suitable surrogate value in cubic meters to apply to the factor data reported in cubic meters. The Brazilian value was accepted for the same reasons described for nitrogen.

To value electricity, we used a rate published by the South African electrical company, ESKOM, in their 1993 annual report.

To value hourly labor rates in South Africa, we used data from *South African Central Statistics Service News Release* for labor rates in the metal manufacturing sector. As this information did not distinguish between skilled and unskilled labor, we applied a single labor value to all reported labor factors.

We were unable to obtain an appropriate factory overhead percentage based on South African experience. Accordingly, for purposes of this determination, we calculated factory overhead based on information in the petition concerning the experience of a German producer of the subject merchandise that is related to the petitioner. We used this information because the German producer's production process is similar to the Russian manufacturers', and we had no other information available.

For selling, general and administrative (SG&A) expenses, we used the statutory minimum (section 773(e)(i)(B)(i)) of ten percent of material, labor, energy, and factory overhead because we could not obtain information based on any surrogate country's experience. For profit, we used the statutory minimum of eight percent of materials, labor, factory

overhead, and SG&A expenses for the same reason.

To value packing materials, we used information from *SACU Trade Statistics.* We added surrogate freight costs from South Africa for the delivery of inputs to the factories producing ferrovanadium and nitrided vanadium, except where this cost was already included in the surrogate value.

Tulachermet failed to report its labor factors of production. As BIA, we used the labor factors in the petition. In addition, Chusavoy and Tulachermet failed to report the distances between factory and suppliers of certain inputs. As BIA, we applied the farthest distance from all other suppliers in order to calculate the freight cost for those inputs.

FMV for Sales by Odermet

In accordance with Section 773(f) of the Act, Odermet claims that its U.S. sales should be compared to its sales to a third country because: (1) it is a reseller of the subject merchandise; (2) the Russian manufacturer does not know at the time of the sale to Odermet the country to which Odermet intends to export the merchandise; (3) the merchandise is exported by Odermet to a country other than the United States; (4) the merchandise enters the commerce of an intermediate country (Germany) but is not substantially transformed there; and (5) the merchandise is subsequently exported to the United States. Based on the information on the record to date, we have determined that, for purposes of the preliminary determination, Odermet has met the statutory criteria to consider basing its FMV on its sales to the intermediate country, Germany. We based its FMV on the methodology described below.

Cost of Production

In accordance with section 773(b) of the Act, whenever the Department has reasonable grounds to believe or suspect that sales in the home market or third country have been made at prices less than the cost of production, it shall determine whether such sales were made at less than the cost of production. Because the price from the Russian producer to Odermet, the third country reseller, is not based on market-determined factors, we have reasonable grounds to believe or suspect that Odermet's sales in Germany also are not based on market-determined factors and are at prices less than the cost of producing the merchandise (see Import Administration Policy Bulletin 94–1, dated March 25, 1994).

A. Calculation of COP

We calculated COP based on the factors of production for materials, labor, energy, factory overhead, SG&A, and packing reported by Odermet's supplier, Tulachermet, and valued in a surrogate country as described above.

B. Test of Third Country Sale Prices

After calculating COP, we tested whether third country sales of the subject merchandise were at prices below COP.

We compared COP to reported prices that were net of movement charges. If over 90 percent of a respondent's sales were at prices above the COP, we did not disregard any below-cost sales because we determined that the respondent's below-cost sales were not made in substantial quantities. If between ten and 90 percent of a respondent's sales were at prices above the COP, we discarded only the below-cost sales if made over an extended period of time. Where we found that more than 90 percent of respondent's sales were at prices below the COP over an extended period of time, we disregarded all sales and calculated FMV based on the factors of production methodology described above.

In order to determine whether below-cost sales were made over an extended period of time, we performed the following analysis: (1) if a respondent sold a product in only one or two months of the POI and there were sales in those months below the COP, or (2) if a respondent sold a product during three months or more of the POI and there were sales below the COP during three or more of those months, then below-cost sales were considered to have been made over an extended period of time.

C. Results of COP Test

We found that more than 90 percent of third country sales were at below-COP prices over an extended period of time. We have no information indicating whether the below cost sales were at prices that would permit recovery of all costs within a reasonable period of time in the normal course of trade. Accordingly, we based FMV for all U.S. sales on the factors of production methodology.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank, or at the rates published by the International Monetary Fund in *International Financial Statistics.*

Verification

As provided in section 776(b) of the Act, we will verify information determined to be acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of ferrovanadium and nitrided vanadium from the Russian Federation entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the FMV exceeds the USP as shown below. These suspension of liquidation instructions will remain in effect until further notice.

Consistent with our practice in investigations involving imports from NME countries, we calculated a single rate applicable to all exporters in the Russian Federation who have not established eligibility for a separate rate. Tulachermet accounts for all exports by known Russian exporters during the POI. While we have received information on four Russian customers that purchased the subject merchandise, we have no information, at this time, indicating that any of them are exporters. Accordingly, the only rate calculated for a Russian exporter is the Tulachermet rate. Because Tulachermet is the only identified Russian exporter, there is no need to address Tulachermet's separate rate request at this time.

The estimated dumping margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin
All exporters located in Russia including SC Vanadium-Tulachermet	56.15%
Galt Alloys, Inc.	40.46%
Gesellschaft für Elektrometallurgie m.b.H./Shieldalloy Metallurgical Corporation/Metallurg, Inc.	49.18%
Marc Rich Co., AG/Glencore International AG	108.00%
Odermet, Ltd.	28.25%

Manufacturer/producer/exporter	Weighted-average margin
Wogan Resources, Ltd.	108.00%
All Others not located in Russia	68.17%

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than March 27, 1995, and rebuttal briefs, no later than April 3, 1995. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on April 5, 1995, at 10:00 a.m. at the U.S. Department of Commerce, Room 1851, 14th Street and Constitution Avenue, N.W., Washington, D.C., 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by the 135th day after the date of publication of the affirmative preliminary determination in the **Federal Register**.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: December 27, 1994.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 95–160 Filed 1–3–95; 8:45 am]

BILLING CODE 3510–DO–P

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 94–141. *Applicant:* Department of the Interior, U.S. Geological Survey, Water Resources Division, 345 Middlefield Rd., Mail Stop 434, Menlo Park, CA 94025. *Instrument:* SIR Mass Spectrometer, Model PRISM. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* The instrument will be used for the expansion of existing research projects in Water Resources and Geologic Divisions which include studying carbon and nitrogen cycles in soils, sediments, estuaries, deltas, streams, coastal plans, arctic and other peat deposits, and lakes. *Application Accepted by Commissioner of Customs:* December 6, 1994.

Docket Number: 94–142. *Applicant:* Kansas State University, Department of Agronomy, 2004 Throckmorton Plant Science Center, Manhattan, KS 66506-5501. *Instrument:* IR Mass Spectrometer System, Model 20-20. *Manufacturer:* Europa Scientific, United Kingdom. *Intended Use:* The instrument will be used for carbon and nitrogen stable isotope tracer studies in agronomic, environmental, and ecological research. It is essential for basic research on C and N cycling in soils and applied research on improving N fertilizer use efficiency by soil management and breeding techniques. *Application Accepted by Commissioner of Customs:* December 7, 1994.

Docket Number: 94–143. *Applicant:* U.S. Bureau of Mines, Bldg. 20, Denver Federal Center, Denver, CO 80225. *Instrument:* Electron Microscope, Model CM 200. *Manufacturer:* Philips, The Netherlands. *Intended Use:* The instrument will be used to explore, indepth, the microstructure-property relationships in a wide range of materials. Specific experiments include routine minerals and materials characterization, second-phase analyses, interface and grain boundary characterization, dislocation and other fault analyses, and powder and particle characterization. *Application Accepted by Commissioner of Customs:* December 8, 1994.

Docket Number: 94–144. *Applicant:* University of Illinois at Urban-Champaign, Purchasing Division, 506 Wright Street, Urbana, IL 61801. *Instrument:* Gas Composition Analyzer, Model Epison II. *Manufacturer:* Thomas Swan, United Kingdom. *Intended Use:* The instrument will be used for studies of binary mixtures of hydrogen and tri-methyl indium during investigations to develop novel electro-optic devices and broaden the knowledge of these types of devices. *Application Accepted by Commissioner of Customs:* December 8, 1994.

Docket Number: 94–145. *Applicant:* Miami University, Office of Purchasing, 213 Roudebush Hall, Oxford, OH 45056. *Instrument:* Cryostage. *Manufacturer:* Linkham Scientific Instruments, Ltd., United Kingdom. *Intended Use:* The instrument will be used to study the effects of low temperatures on various tissues isolated from naturally cold tolerant vertebrates and invertebrates and to study the application of low temperature preservation to mammalian tissues. In addition, the instrument will be used by students in several zoology courses. *Application Accepted by Commissioner of Customs:* December 15, 1994.

Docket Number: 94–146. *Applicant:* Rutgers, The State University of New Jersey, Department of Civil Engineering, P.O. Box 909, Piscataway, NJ 08855-0909. *Instrument:* Test Frame with Accessories. *Manufacturer:* Hi-Tech Ltd., United Kingdom. *Intended Use:* The instrument will be used in a course which trains students in the testing of the mechanical properties and behavior of structural elements under a variety of load conditions. *Application Accepted by Commissioner of Customs:* December 14, 1994.

Docket Number: 94–148. *Applicant:* Lamont-Doherty Earth Observatory of Columbia University, Rte 9W, Palisades, NY 10964. *Instrument:* Isotope Ratio-Gas Source Mass Spectrometer, Model PRISM. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* The instrument will be used to measure the fractionation of the stable isotopes of hydrogen, carbon and oxygen in natural waters, including seawater and freshwater. *Application Accepted by Commissioner of Customs:* December 15, 1994.

Pamela Woods,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 95–162 Filed 1–3–95; 8:45 am]

BILLING CODE 3510–DS–F

National Oceanic and Atmospheric Administration

[I.D. 122294D]

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) and its committees will hold public meetings on January 16–19, 1995. On January 16, 1995, the Shrimp Management Committee, and Joint Shrimp/Reef Fish Management Committee will convene at 1:00 p.m., and recess at 5:30 p.m. On January 17, the Reef Fish Management Committee, and Coral Management Committee will convene at 8:00 a.m. and adjourn at 5:30 p.m.

The full Council will convene its meeting on January 18, 1995, from 8:30 a.m until 5:30 p.m. The agenda is as follows:

8:45 a.m. - 3:00 p.m.—receive Public Testimony on the Cooperative Texas Shrimp Closure and Draft Reef Fish Amendment 8 (NOTE: Testimony cards must be turned in to staff before the start of public testimony); and

3:00 p.m. - 5:30 p.m.—review the Reef Fish Management Committee Report on red snapper biological generation time estimates, NMFS actions on Council request rescinding bag limits, analyses of 1995 recreational catch, and Draft Amendment 8 to the Reef Fish Fishery Management Plan.

The Council will reconvene at 8:30 a.m. on January 19 for the following:

8:30 a.m. - 11:00 a.m.—continue review of Reef Fish Management Committee report;

11:00 a.m. - 2:45 p.m.—receive reports of the Shrimp Management Committee, Joint Shrimp/Reef Fish Management Committee, and Coral Management Committee; and

2:45 p.m. - 3:45 p.m.—receive reports on the International Commission for the Conservation of Atlantic Tunas meeting, Enforcement reports, Directors' reports, and other business.

All meetings will be held at the J.W. Marriott Hotel, 5150 Westheimer, Houston, TX; telephone: (713) 961–1500.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION: These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Julie Krebs at the above address by January 9, 1995.

Dated: December 28, 1994.

Richard H. Schaefer,

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

[FR Doc. 95–145 Filed 1–3–95; 8:45 am]

BILLING CODE 3510–22–F

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Ohio Advisory Committee

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 Ohio Advisory Committee to the Commission will be held from 1:00 p.m. until 6:00 p.m. on Tuesday, January 24, 1995, at the Hyatt Regency, 151 W. 5th Street, Cincinnati, Ohio 45202. The purpose of the meeting is to hold a press conference to release the Advisory Committee's report, ''Hate Crimes in Ohio'', and to discuss current issues and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Lynwood L. Battle at 513–983–2843, or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8326). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional 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, December 23, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–97 Filed 1–3–95; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Scientific Advisory Board Panel Closed Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Scientific Advisory Board has been scheduled as follows:

DATES: January 10, 1995 (830 to 400).

ADDRESSES: The Defense Intelligence Agency, Pentagon, Washington, D.C. 20340.

DATES: January 11, 1995 (830 to 400).

ADDRESSES: The Defense Intelligence Agency, Bolling AFB, Washington, D.C. 20340–5100.

FOR FURTHER INFORMATION CONTACT: Dr. W.S. Williamson, Executive Secretary, DIA Scientific Advisory Board, Washington, D.C. 20340–1328 (202) 373–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(I), Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefing on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: December 28, 1994.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 94–81 Filed 1–3–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Open Meeting—Armed Forces Epidemiological Board

AGENCY: Armed Forces Epidemiological Board, DOD.

ACTION: Notice.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 94–462), announcement is made of the following committee meeting:

Name of Committee: Armed Forces Epidemiological Board.

Date of Meeting: 22 February 1995.

Time: 0800–1630.

Place: Hill Air Force Base, Ogden, Utah.

Proposed Agenda: Meeting of the Injury Prevention Working Group of the Armed Forces Epidemiological Board.

This meeting will be open to the public but limited by space accommodations. Any interested person may attend, appear before or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, AFEB, Skyline Six, 5109 Leesburg Pike, room 667, Falls Church, Virginia 22041–3258.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 95–17 Filed 1–3–95; 8:45 am]

BILLING CODE 3710–08–M

Open Meeting—Armed Forces Epidemiological Board

AGENCY: Armed Forces Epidemiological Board, DOD.

ACTION: Notice.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 94–462), announcement is made of the following committee meeting:

Name of Committee: Armed Forces Epidemiological Board.

Date of Meeting: 23–24 February 1995.

Time: 0800–1630.

Place: Hill Air Force Base, Ogden, Utah.

Proposed Agenda: Service preventive medicine reports, vaccine usage updates, Hepatitus A Vaccine in DOD, Hantavirus Update/BCG Vaccine Update and Report of the Injury Prevention Working Group.

This meeting will be open to the public but limited space accommodations. Any interested person may attend, appear before or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, AFEB, Skyline Six, 5109 Leesburg Pike, room 667, Falls Church, Virginia 22041–3258.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 95–18 Filed 1–3–95; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Record of Decision for Realignment of the Naval Air Station, Pensacola, FL

Pursuant to Section 102(2) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality regulations for implementing NEPA procedures (40 CFR 1500–1508), the Department of the Navy announces its decision to implement realignment of the Naval Air Station (NAS) Pensacola, Florida.

In accordance with the legislative requirements of the Base Closure and Realignment Act of 1990 (Public Law [P.L.] 101–510), the 1993 Defense Base Closure and Realignment Commission (BRAC–93) recommended the realignment of NAS Memphis, Tennessee, and the closure of the Naval Training Center (NTC) San Diego, California. Also recommended for closure was the Naval Aviation Depot (NADEP) in Pensacola, Florida. All the naval technical training now offered at NAS Memphis and the Messmans Apprentice (MS 'A') School from NTC San Diego will be relocated to NAS Pensacola.

A Draft Environmental Impact Statement (DEIS) was prepared for the proposed realignment implementation and was distributed to Federal, State, and local agencies and to interested individuals and interested groups/organizations. Comments from the reviewers and Navy responses to those comments were incorporated into the Final Environmental Impact Statement (FEIS) which was distributed to the public for a 30-day review period ending on 21 November 1994. This review resulted in letters from the U.S. Environmental Protection Agency (EPA), Region IV, and from the Office of the Governor, Florida State Clearinghouse. The EPA letter stated while the proposed realignment would result in minor degradation of air quality from proposed fire-fighting training activities, immediate on-site and proximate environmental consequences are within acceptable limits and the proposal appears reasonable. The State Clearinghouse indicated the action, at this stage, is consistent with the Florida Coastal Zone Management Program. Should further environmental documentation be required to support the action, subsequent review from the State Clearinghouse will be obtained. The Navy will also accommodate Florida regulatory agency requirements during the permitting process.

The realignment will, by 1997, increase the average number of on-board students by 4,924. The number of permanent naval personnel necessary to support the apprentice school training will increase by approximately 1,101, bringing with them approximately 1,684 dependents. Thus, implementation of the realignment will bring about 7,709 personnel to the area. During the same period, it is estimated that about 2,587 NADEP employees including their dependents will leave the Pensacola region, resulting in a net population increase of 5,122 people.

The Navy has determined that 19 BRAC-related construction (BRACON) projects are required to accommodate the realignment at NAS Pensacola. The BRACON projects include upgrades of existing facilities and construction of new facilities to support new functions and the increased number of students and permanent personnel. All associated construction and renovation projects addressed in the FEIS will occur at NAS Pensacola, with the exception of a 116-unit family housing project, which will be constructed at the Navy Technical Training Center (NAVTECHTRACEN) Corry Station, also in Pensacola.

The Defense Base Closure and Realignment Act waived certain aspects of NEPA such that the environmental analysis need not consider the no-action alternative. Alternative means of implementing the mandated BRAC–93 realignment at NAS Pensacola were considered, including the use of existing structures and alternative sites for construction of new facilities. Sites considered at NAS Pensacola for the proposed new facilities/renovations avoided environmentally sensitive areas and were preferred based on functional considerations: adequacy of existing structures for the proposed uses, availability of utilities, proximity to existing facilities, and minimal distances required for students to walk to classes from the barracks and galley. The Chevalier Field site, being vacated by the closure of NADEP, is chosen as the best site to develop the training ''campus''. NAVTECHTRACEN Corry Station is selected as the most environmentally preferred and functionally desirable site for the family housing project.

The Navy anticipates no significant adverse impacts to surface waters or wetlands from implementation of the

action. New facilities will be constructed such that wetlands, except for a small area (less than one-tenth of an acre), are not encumbered. Sediment and erosion control measures for construction activities meeting federal and state guidelines outlined in the FEIS will ensure that temporary decreases in the quality of stormwater runoff during construction are minimal and temporary. Since existing facilities predate current stormwater regulations, implementing Best Management Practices required by federal and state permits will improve the overall quality of stormwater. There will be no significant impacts to groundwater or potable water resources as a result of the realignment.

The realignment will not significantly impact ambient noise levels or air quality. Temporary, localized noise impacts will occur, primarily from heavy machinery during construction and demolition. Compliance with the National Emissions Standards for Hazardous Air Pollutants (NESHAPS), the Toxic Substances Control Act, and the Florida Administrative Code (FAC) 17–296.810 will be effected during the removal of asbestos-containing material. Asbestos debris will be disposed of in accordance with NESHAPs and FAC 17-701. Lead-based paint will be disposed of in accordance with FAC 17–701 after sampling of the material is completed. NAS Pensacola is located in an area of full attainment for all criteria pollutants, thus an applicability analysis required by the General Conformity Rule under the 1990 Clean Air Act Amendment is not necessary. The action complies with the National Ambient Air Quality Standards (NAAQS). A minor source of air pollutants will be fire-fighting training, which is estimated to have total emissions of federal criteria pollutants of less than 16 tons per year (tpy), well below the Prevention of Significant Deterioration (PSD) limits of 100 and 250 tpy. Closure of NADEP and its associated emissions reductions will more than offset emissions of the realignment, and thus the action will not cause or contribute to exceedance of NAAQS.

The action will not adversely impact any Department of Defense Installation Restoration Program (IR) sites. While four IR sites do overlap areas proposed for the campus development, these sites will be remediated prior to construction and after their risk assessments for potential impacts on human health are approved by the EPA, the Florida Department of Environmental Protection (FDEP), and the Navy. In addition, one petroleum-contaminated site will be remediated in compliance with the guidelines set forth by FAC 17–770 and will be constructed upon only after EPA or FDEP approval.

The net total population increase to the Pensacola region will be 5,122 persons, or less than two percent of the existing Escambia County population. This number represents a net quantity which accounts for both the loss of personnel from the NADEP closing and the incoming personnel from NAS Memphis. This increase is considered insignificant, especially when the enlisted student loading of 4,924, the majority of which will be housed on-base in bachelor's quarters, is considered. The action also provides 116 new family housing units at NAVTECHTRACEN Corry Station. No impacts to the area infrastructure or traffic is anticipated from the housing construction.

The increase in elementary, middle, and high school enrollment resulting from the realignment will have no significant impact on Escambia or Santa Rosa counties. Based on a recent survey by local school boards, the closure of NADEP may result in approximately 668 school-aged children leaving the region. Similarly, using population characteristics of other Navy training facilities, about 686 school-aged children are expected to enter the local schools as a result of the realignment.

Utilities at NAS Pensacola and Corry Station have adequate capacity to accommodate the new housing. The total demand for wastewater for the action is 0.9 million gallons per day (mgd) which increases the total base requirement to 2.1 mgd, below the total capacity of 2.35 mgd.

Potential impacts to cultural resources at NAS Pensacola have been evaluated in compliance with Section 106 of the National Historical Preservation Act (of 1966), as amended, and the Programmatic Agreement between NAS Pensacola, the Advisory Council on Historic Preservation (ACHP), and the State Historic Preservation Officer (SHPO). Results of the cultural resource survey conducted at Chevalier Field identified the previously recorded Commodore's Pond site and the historic Town of Woolsey. However, construction is not expected to result in a loss of cultural resources because all subsurface impacts beneath 40 centimeters will be monitored by a professional archaeologist; 40 centimeters is the thickness of the fill material overlying the site. In addition, subsurface testing will be coordinated with the SHPO to avoid or mitigate potential significant features.

Renovations for nine buildings in the vicinity of Chevalier Field include buildings 18 and 52, located within the NAS Pensacola Landmark Historic District; buildings 606, 607, 627, 630, and 631, located within the proposed boundary increase; and building 225, which is an older building located outside of the district. No adverse impacts are expected during renovation work because the SHPO's recommendations for avoiding adverse effects to historic structures will be followed. These recommendations include leaving historic building exteriors intact and providing a 100-foot buffer zone between historic buildings and new construction. Also, proposed interior modifications will be reviewed by the SHPO prior to initiating work. In a letter dated June 6, 1994, the SHPO agreed that the renovations at Chevalier Field could proceed under the mitigation and monitoring guidelines outlined above.

Questions regarding the Draft and Final Environmental Impact Statement prepared for this action may be directed to: Commanding Officer, Southern Division, Naval Facilities Engineering Command, PO Box 190010, North Charleston, SC 29419–9010 (Attn: Mr. Ronnie Lattimore, Code 203RL, telephone (803) 743–0888, fax (803) 743–0993.

Elsie L. Munsell,

Deputy Assistant Secretary of the Navy (Environment and Safety).

[FR Doc. 95–166 Filed 1–3–95; 8:45 am]

BILLING CODE 3810–FF–P

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Task Force on Naval Surface Warfare Design will meet January 17-18, 1995, from 9:00 a.m. to 4:00 p.m., at 4401 Ford Avenue, Alexandria, Virginia. These sessions will be closed to the public.

The purpose of this meeting is to conduct discussions about advanced machinery and combat systems concepts. The matters being discussed constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Timothy J. Galpin, Assistant for CNO Executive Panel Management, 4401 Ford Avenue, Suite 601, Alexandria, VA 22302-0268, Phone: (703) 756-1205.

Dated: December 29, 1994

Dennis J. Oppman,

Alternate Federal Register Liaison Officer.

[FR Doc. 95–165 Filed 1–3–95; 8:45 am]

BILLING CODE 3810–AE–F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by January 12, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

Director, Information Resources Group, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: December 29, 1994.

Gloria Parker,

Director, Information Resources Group.

Office of Educational Research and Improvement

Type of Review: Expedited

Title: National Assessment of Educational Progress (NAEP) 1995 Field Test and 1996 Full Scale Assessment and Background Questionnaires on Mathematics, Science and the Arts

Frequency: Biennially

Affected Public: Individuals or households

Reporting Burden:
Responses: 36,047
Burden Hours: 37,836

Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: The National Assessment of Educational Progress (NAEP) is a congressionally mandated data collection of assessment and background information. Respondents include students in the 4th, 5th and 12th grades, teachers, school administrators, and parents. The 1995 NAEP was revised to include grade 12 Advanced Mathematics Teacher Questionnaire, the Individual Educational Programs (IEP) and Limited English Proficient (LEP) Questionnaire. Results of the assessments will be linked to the background characteristics of students, their schools, teachers and parents. Copies of the questionnaires can be obtained by calling (202) 219–1442.

Additional Information: Clearance for this information collection is requested for January 12, 1995. An expedited review is necessary to meet the mail-out date of the questionnaires. NAEP data are of vital importance to the President, Congress, and the National Education Goals Panel, as well as State and local policymakers.

[FR Doc. 95–144 Filed 1–3–95; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Notice of Floodplain/Wetland Involvement for Operable Unit 2 Remedial Action At the Fernald Environmental Management Project

AGENCY: U.S. Department of Energy (DOE), Fernald Area Office.

ACTION: Notice of Floodplain/Wetland Involvement.

SUMMARY: The Fernald Environmental Management Project (FEMP), located approximately 18 miles (29 kilometers) northwest of downtown Cincinnati, Ohio, is divided into five operable units which will involve various removal and remedial actions. The subject of this Notice of Involvement is Operable Unit 2. The purpose of the Operable Unit 2 Remedial Action is to reduce risks to human health and the environment. Operable Unit 2 is defined by five subunits or areas: the Solid Waste Landfill, Lime Sludge Ponds, Inactive Flyash Pile, South Field, and Active Flyash Pile. The proposed Remedial Action Alternatives for Operable Unit 2 consist of excavation and disposal of Operable Unit 2 waste in an on-property disposal facility. Waste exceeding waste acceptance criteria would be disposed of off site.

Excavation activities involving the Solid Waste Landfill, Lime Sludge Ponds, and support facilities (i.e., pipeline and haul road) would impact wetland areas. Remedial activities involving the Inactive Flyash Pile, South Field, and Active Flyash Pile could impact floodplain areas. In accordance with 10 CFR 1022, ''Compliance with Floodplain/Wetland Environmental Review Requirements,'' DOE will prepare the respective Floodplain/Wetland Assessment for the Operable Unit 2 Remedial Action and the appropriate Statements of Findings. The proposed activities will be performed in such a manner to avoid or minimize potential harm to or within wetland and floodplain areas. Maps and additional information are available from the DOE at the address below.

DATES: Written comments must be received by the DOE at the following address on or before January 19, 1995.

ADDRESSES: Mail comments and requests for further information to: Mr. Wally Quaider, Acting Associate Director, Office of Safety & Assessment,

U.S. Department of Energy, Fernald Area Office, P.O. Box 538705, Cincinnati, Ohio 45253–8705, Facsimile: (513) 648–3077.

FOR FURTHER INFORMATION CONTACT: Ms. Carol Borgstrom, Director, Office of NEPA Oversight, EH–25, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586–4600 or 1–800–472–2756.

SUPPLEMENTARY INFORMATION: The Remedial Action for Operable Unit 2 would affect on-property wetlands and the 100- and 500-year floodplain of Paddys Run. Activities involving the Solid Waste Landfill would result in direct physical impact to a 0.1 hectare- (0.2 acre-) drainage ditch wetland on the northern boundary of the Solid Waste Landfill. Indirect impacts to a 0.02 hectare- (0.04 acre-) drainage ditch wetlands north and northwest of the Lime Sludge Ponds could include the migration of eroded soil and surface water runoff and the dispersion of fugitive dust to the wetland area. In addition, approximately 0.18 hectare (0.45 acre) of drainage ditch wetland areas would be filled as a result of the construction of a haul road and pipeline. Engineering controls would be implemented during all remedial activities to minimize impacts. Potential indirect impacts to the 100- and 500-year floodplain as a result of the remedial activities involving the Inactive Flyash Pile, South Field, and Active Flyash Pile include surface water runoff and sedimentation loading into the floodplain. Direct physical impact to the floodplain could also occur as a result of heavy equipment operating within the floodplain during remediation of the Inactive Flyash Pile and South Field; however, no change in flood elevations would be expected.

Proposed actions potentially affecting these areas are subject to the substantive requirements of laws, regulations, and orders pertaining to wetlands and floodplains protection. Additionally, Executive Order (E.O.) 11988—Floodplain Management—and E.O. 11990—Protection of Wetlands—implemented by 10 CFR 1022, require federal agencies to consider the effects of proposed actions on floodplains and wetlands. These regulations require federal agencies to avoid, to the extent possible, adverse impacts associated with the occupancy and modification of floodplains and the destruction and modification of wetlands, and to avoid direct or indirect support of floodplain and wetlands development where there is a practicable alternative. Where no practicable alternative exists, proposed actions must include all practicable measures to minimize harm. Best management practices will be utilized during the proposed projects to minimize impacts to wetland and floodplain areas.

Issued in Miamisburg, Ohio on December 21, 1994.

Robert Folker,

Acting Manager, Ohio Field Office.

[FR Doc. 95–143 Filed 1–3–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Fossil Energy

[FE Docket No. 94–103–NG]

Continental Energy Marketing Ltd.; Order Granting Blanket Authorization to Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Continental Energy Marketing Ltd. (Continental) authorization to export up to 75 Bcf of natural gas from the United States to Canada. The term of the authorization is for a period of two years, beginning on the date of first export after December 17, 1994.

Continental's order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 27, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy .

[FR Doc. 95–139 Filed 1–3–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 94–95–NG]

Union Pacific Fuels, Inc.; Order Granting Blanket Authorization to Import Natural Gas From Canada and Export Natural Gas to Canada and Mexico and Vacating Authorization

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Union Pacific Fuels, Inc. (Union Pacific) authorization to import up to 200 Bcf of natural gas from Canada and to export up to a combined total of 200 Bcf of natural gas to Canada and Mexico over a two-year term beginning on the date of first import or export, whichever occurs first. The authorization also vacated Union Fuel's current authority to export natural gas to Mexico.

This order is available for inspection and copying in the Office of Fuels Programs docket room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., December 9, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–140 Filed 1–3–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. ER94–1432–001, et al.]

JEP Corporation, et al.; Electric Rate and Corporate Regulation Filings

December 28, 1994.

Take notice that the following filings have been made with the Commission:

1. JEP Corporation

[Docket No. ER94–1432–001]

Take notice that on December 9, 1994, JEP Corporation tendered for filing quarterly information in the above-referenced docket.

Comment date: January 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. North American Energy Conservation, Inc.

[Docket No. ER94–152–003]

Take Notice that on October 27, 1994, North American Energy Conservation, Inc. (NAEC), filed certain information as required by the Commission's February 10, 1994, letter order in Docket No. ER94–152–000. Copies of NAEC's informational filing are on file with the Commission and are available for public inspection.

3. AES Power Inc.

[Docket No. ER94–890–003]

Take notice that on December 12, 1994, AES Power Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: January 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Carolina Power & Light Company

[Docket No. ER95–10–001]

Take notice that on December 16, 1994, Carolina Power & Light Company made a compliance filing in the above-referenced docket.

Comment date: January 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. West Texas Utilities Company

[Docket No. ER95–245–000]

Take notice that on December 20, 1994, West Texas Utilities Company (WTU), tendered for filing an amendment to its Coordination Sales Tariff, filed November 30, 1994. Under the Coordination Sales Tariff, WTU will make Economy Energy, Short-Term Power and Energy, General Purpose Energy and Emergency Service available to customers upon mutual agreement. The amendment lowers the rate for purchase and resale transactions.

WTU has requested expedited consideration and waiver of the Commission's notice requirements to the extent necessary to permit an effective date of January 1, 1995. Copies of this filing were served on the Public Utility Commission of Texas and are available for public inspection at WTU's offices in Abilene, Texas.

Comment date: January 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Kaztex Energy Services, Inc.

[Docket No. ER95–295–000]

Take notice that on December 19, 1994, Kaztex Energy Services, Inc. tendered for filing an Application for Waivers, Blanket Authorizations, and Order Approving Rate Schedule.

Comment date: January 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Commonwealth Electric Company

[Docket No. ES95–17–000]

Take notice that on December 23, 1994, Commonwealth Electric Company filed an application under § 204 of the Federal Power Act seeking authorization to issue not more than $60 million of short-term debt during a two-year period commencing on the effective authorization date and maturing less than one year after the date of issuance.

Comment date: January 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–118 Filed 1–3–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP95–35–003]

K N Interstate Gas Transmission Co.; Notice of Tariff Filing

December 28, 1994.

Take notice that on December 22, 1994, K N Interstate Gas Transmission Co. (KNI), tendered for filing certain revised tariff sheets. KNI states that such revised tariff sheets are being filed solely to correct internal numbering references and typographical errors. KNI requests that the tendered sheets be accepted for filing and permitted to become effective on December 2, 1994.

KNI states that copies of the filing were served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before January 5, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make any 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. 95–20 Filed 1–3–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–99–000]

Koch Gateway Pipeline Co.; Notice of Annual Storage Report

December 28, 1994.

Take notice that on December 22, 1994, Koch Gateway Pipeline Company (KGPC), tendered for filing its report pursuant to the Commission's Order dated October 1, 1993, in Docket No. RS92–26–000.

KGPC states that the order required KGPC to file a study within 60 days after the end of its first year of operation under restructured services that indicates the amount of storage capacity and deliverability that was actually used and provides a basis for KGPC's plan to use 10 Bcf of retained storage capacity, or some other specified amount, for system operations in future years.

KGPC states that it has been operating under Order No. 636 since November 1, 1993. KGPC also states that the report analyzes the storage activity from November 1, 1993 through October 31, 1994 and supports the retention of 10 Bcf to maintain the operational integrity of KGPC's system.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 19, 1995. 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. 95–21 Filed 1–3–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–83–001]

National Fuel Gas Supply Corp.; Notice of Tariff Filing

December 28, 1994.

Take notice that on December 22, 1994, National Fuel Gas Supply Corporation (National), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Original Sheet Nos. 377 through 379, with a proposed effective date of January 6, 1995.

National states that the purpose of the filing is to update certain information included on the Index of Customers, originally filed on December 5, 1994, in this proceeding.

National states that it is serving copies of the filing to its customers, State Commissions, and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before January 5, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant 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. 95–22 Filed 1–3–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–105–007]

Ozark Gas Transmission System Notice of Proposed Changes in FERC Gas Tariff

December 28, 1994.

Take notice that on December 22, 1994, Ozark Gas Transmission System (Ozark), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets with a proposed effective date of January 1, 1995:

Ninth Revised Sheet No. 4
Second Revised Sheet No. 38
Second Revised Sheet No. 86

Ozark states that the purpose of Ninth Revised Sheet No. 4 is to implement, in advance of approval of settlement, rates equal to the rates which Ozark has recently negotiated with the Commission Staff to fully resolve and terminate its rate case in Docket No. RP94–105. The settlement, and thus the filing, provides for a decrease in Ozark's rates compared to its currently effective rates and compared to the rates which Ozark filed in compliance with the Commission's July 7, 1994, order in Docket No. RP94–105, but did not move into effect.

Ozark states that good cause exists for the Commission to waive its 30-day notice provision and accept the primary sheet to be effective January 1, 1995. Ozark requests that if the Commission does not accept Ninth Revised Sheet No. 4 to be effective January 1, 1995, then the tariff sheet be accepted effective February 1, 1995, so that the rate change will still go into effect on the first of a month.

Ozark further states that Second Revised Sheet Nos. 38 and 86 are proposed to provide a minor change in wording to reflect the fact that the demand charge to firm shippers under Rate Schedules T–1 and FTS, as provided on Ninth Revised Sheet No. 4 and in the Settlement rates, no longer reflects the Docket No. RS92–72 allocation of fixed costs to interruptible service but rather, reflect the fixed costs allocated to interruptible service agreed to between Ozark and the Commission Staff and reflected in the Settlement.

Ozark states that copies of the filing were served upon Ozark's jurisdictional customers and interested state regulatory commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C.. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before January 5, 1995. 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. 95–23 Filed 1–3–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–37–001]

Federal Energy Regulatory Commission

South Georgia Natural Gas Co.; Notice of Proposed Changes to FERC Gas Tariff

December 28, 1994.

Take notice that on December 22, 1994, South Georgia Natural Gas Company (South Georgia), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective as of December 5, 1994:

First Sub. First Revised Sheet Nos. 15–16
First Sub. First Revised Sheet Nos. 33–34

South Georgia states that the purpose of this filing is to comply with the Order issued by the Commission in the captioned proceeding on December 8, 1994. The Order required South Georgia (1) to revise its midday nomination proposal to reinstate the provision allowing shippers to cancel their nominations on four hours prior notice and to remove the limitation on shippers decreasing their nominations midday, and (2) to provide that South Georgia will use its best efforts to continue IT service beyond the 4-hour notice period required for interruptions.

South Georgia states that copies of the filing will be served upon its shippers, interested state commissions and all parties to the proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E. Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR Section 385.211). All such protests should be filed on or before January 5, 1995. Protests will not be considered by the Commission in determining the parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–24 Filed 1–3–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Research

Energy Research Financial Assistance Program Notice 95–10: Innovations in Toroidal Magnetic Confinement Systems

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Fusion Energy (OFE) of the Office of Energy Research (ER), U.S. Department of Energy (DOE) announces its interest in receiving grant applications for innovative experiments in toroidal magnetic confinement systems. These applications may be either to continue research on existing experimental devices or to start new experimental projects. Institutions with grants in experimental toroidal magnetic research who wish to continue to conduct toroidal experiments will need to submit new grant applications in response to this Notice.

The Office of Fusion Energy is interested in applications for innovative research that have the possibility of leading to improved toroidal magnetic fusion power plants (this includes tokamak based power plants with

improved performance). The research should be aimed at elucidating the physics principles of such improved toroidal magnetic power systems. Research projects are desired which are unique, first of a kind and provide new insights. Applications for research on existing large tokamaks should not be submitted in response to this notice.

DATES: To permit timely consideration for awards in Fiscal Year 1996, formal applications submitted in response to this notice must be received no later than 4:30 p.m., June 1, 1995. No electronic submissions of formal applications will be accepted.

ADDRESSES: Formal applications referencing Program Notice 95–10 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64 (GTN), Washington, DC 20585, Attn: Program Notice 95–10. The following address must be used when submitting applications by U.S. Postal Service Express mail, any commercial mail delivery service, or when handcarried by the applicant: U.S. Department of Energy, Acquisition and Assistance Management Division, ER–64, 19901 Germantown Road, Germantown, MD 20874.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Blanken, Division of Advanced Physics & Technology, Office of Fusion Energy, ER–542, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874, (301) 903–3306 or 903–3421, or by Internet address, ronald.blanken@mailgw.er.doe.gov.

SUPPLEMENTARY INFORMATION: In selecting applications for funding, the DOE Office of Fusion Energy will give priority to applications that can produce experimental results within three to five years after grant initiation. Applications in fusion confinement concepts without closed toroidal magnetic surfaces and without significant rotational transform will not be considered under this Notice, but may be the subject of a future Notice.

This notice requests that the detailed description of the proposed project component of a complete grant application required by 10 CFR 605.9 (b)(2) should include a detailed experimental research plan which includes the specific results expected at the end of the project period. Evaluation of this written component against the selection criteria set forth in 10 CFR Part 605 will be the principal means for selecting the successful applications.

It is anticipated that up to $5,000,000 in FY 1996 will be available to start new projects from applications received in response to this Notice. Future year funding is anticipated to be greater but will depend on the nature of the applications, suitable experimental progress and the availability of funds. Because of the total amount of anticipated available funding and because of the intent to have a broadly based program, applications with a base yearly requirement in any year in excess of $4,000,000 are unlikely to be funded. Evaluation against the selection criteria will be normalized on a per dollar basis so as not to favor applications of any particular size. Applications requiring yearly funding as low as $50,000 are welcome and encouraged.

Applicants are requested to supply with their application a three page written summary (plus one page of figures) which will be read by all peer reviewers. The following sections should be included in the summary:

(1) Goal of the experiment;

(2) Synopsis of the experimental program plan;

(3) Deliverable result expected (please be specific);

(4) Adequacy of the facilities;

(5) Adequacy of the budget (include yearly funding requested);

(6) Discussion on why this research would have an important impact on the prospects for toroidal magnetic fusion power plants; and

(7) Discussion of how the experiment would elucidate the physics principles of the innovation. It is expected that the review process will be completed in August 1995 and that OFE decisions will be announced in September 1995. To expedite communications, please include the principal investigator's telefax number and Internet address in Item 15 of the grant application.

Information about the development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures may be found in the Application Guide for the Office of Energy Research Financial Assistance Program. The Application Guide is available from the U.S. Department of Energy, Office of Fusion Energy, Division of Advanced Physics and Technology, ER–542, Washington, DC 20585. Instructions for preparation of an application are included in the Application Guide. Telephone requests for the Application Guide may be made by calling (301) 903–3421.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

D.D. Mayhew,

Director, Office of Management, Office of Energy Research.

[FR Doc. 95–142 Filed 1–3–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Project No. 2459–005 West Virginia]

West Penn Power Co.; Notice of Availability of Final Environmental Assessment

December 28, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new license for the Lake Lynn Hydroelectric Project, located in Monogalia County, West Virginia, and Fayette County, Pennsylvania, and has prepared a Final Environmental Assessment (FEA) for the project. In the FEA, the Commission's staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the project, with appropriate environmental protection or enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–19 Filed 1–3–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5131–1]

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.

DATES: Comments must be submitted on or before February 3, 1995.

FOR FURTHER INFORMATION CONTACT: For further information, or to obtain a copy of this ICR, contact Sandy Farmer at 202–260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: NESHAP for Benzene Equipment Leaks (Subpart V)—Information Requirements (ICR # 1153.05; OMB # 2060–0068). This is a request to extend the expiration date of a currently approved collection without any change in the substance or method of collection.

Abstract: Owners or operators of process units operating in benzene service (those containing or contacting fluids consisting by weight of at least 10 percent benzene) must submit an application for approval of construction or modification, and notice of anticipated and actual startup. They must monitor for fugitive benzene emissions, and must keep records of this monitoring and of any leaks detected from valves, pumps, and compressors, as well as the steps taken to make repairs. This includes a weekly visual inspection and reporting of leaks from pumps to detect outer seal failure from those pumps containing dual mechanical seals. Owners or operators must submit semiannual reports of any emissions, leaks or repairs. EPA, or the delegated State authority, uses this information to determine the compliance status of sources.

Burden Statement: The public burden for this collection of information is estimated to average 30 hours per response for reporting, and 57 hours annually for recordkeeping. The estimated reporting burden includes the time needed to review instructions, search existing data sources, gather the data needed and review the collection of information.

Respondents: Owners or operators of process units operating in benzene service (those containing or contacting fluids consisting by weight of at least 10 percent benzene).

Estimated No. of Respondents: 200.

Estimated No. of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 23,539 hours.

Frequency of Collection: For initial compliance and semiannually.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460 and

Mr. Troy Hillier, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: December 19, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 95–67 Filed 1–3–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5132–6]

Public Water System Supervision Program Revision for the State of New Jersey

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of New Jersey is revising its approved Public Water System Supervision Primacy Program. The State of New Jersey has adopted drinking water regulations that satisfy the National Primary Drinking Water Regulations for the Synthetic Organic Chemicals and Inorganic Chemicals; Monitoring for Unregulated Contaminants rule (Phase 2), Monitoring for Volatile Organic Chemicals rule (Phase 2B), and the Synthetic Organic Chemicals and Inorganic Chemicals rule (Phase 5). These regulations were promulgated by EPA on January 30, 1991 (56 FR 3526), July 1, 1991 (56 FR 30266) with May 27, 1992 correction (57 FR 22178); and July 17, 1992 (57 FR 31776), respectively.

The USEPA has determined that New Jersey's Phase regulations are not less stringent then the corresponding Federal regulations and that New Jersey continues to meet all requirements for primary enforcement responsibility as specified in 40 CFR 142.10.

All interested parties, other than Federal Agencies, may request a public hearing. A request for a public hearing must be submitted to the USEPA Regional Administrator at the address shown below within thirty (30) days after the date of this **Federal Register** Notice. If a substantial request for public hearing is made within the required thirty-day period, a public hearing will be held and a notice will be given in the **Federal Register** and a newspaper of general circulation. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator.

If no timely and appropriate request for a hearing is received and the Regional Administrator does not choose to hold a hearing on his/her motion, this determination shall become final and effective thirty (30) days after publication of this **Federal Register** Notice.

Any request for a public hearing shall include the following information:

(1) the name, address and telephone number of the individual organization or other entity requesting a hearing;

(2) a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement on information that the requesting person intends to submit at such hearing;

(3) the signature of the individual making the requests or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: Requests for Public Hearing shall be addressed to: Deputy Regional Administrator, U.S. Environmental Protection Agency—Region II, Jacob K. Javits Federal Building, 26 Federal Plaza, New, York, New York 10278.

All documents relating to this determination are available for inspection between the hours of 9:00 am., and 4:30 pm., Monday through Friday, at the following offices:

New Jersey Department of Environmental Protection, Division of Water Resources, Bureau of Safe Drinking Water, P.O. Box CN–426, Trenton, New Jersey 08625–0402

U.S. Environmental Protection Agency—Region II, Public Water System Supervision Section Room 853, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York 10278

For further information, you may contact: Walter E. Andrews, Chief, Drinking and Groundwater Protection Branch, U.S. Environmental Protection Agency—Region II, (212) 264–1800.

(Section 1413 of the Safe Drinking Water Act, as amended, and 40 CFR 142.10 of the NPDWR)

Dated: December 8, 1994.

William J. Muszynski,

Acting Regional Administrator, EPA, Region II.

[FR Doc. 95–68 Filed 1–3–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–S132–1]

Public Water System Supervision Program Revision for the State of New York

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of New York is revising its approved Public Water System Supervision Primacy Program. The State of New York has adopted drinking water regulations that satisfy the National Primary Drinking Water Regulations for the Synthetic Organic Chemicals and Inorganic Chemicals; Monitoring for Unregulated Contaminants rule (Phase 2), and Monitoring for Volatile Organic Chemicals rule (Phase 2B). These regulations were promulgated by EPA on January 30, 1991 (56 FR 3526), and July 1, 1991 (56 FR 30266) with May 27, 1992 correction (57 FR 22178), respectively.

The USEPA has determined that New York's Phase regulations are no less stringent than the corresponding Federal regulations and that New York continues to meet all requirements for primary enforcement responsibility as specified in 40 CFR 142.10.

All interested parties, other than Federal Agencies, may request a public hearing. A request for a public hearing must be submitted to the USEPA Regional Administrator at the address shown below within thirty (30) days after the date of this **Federal Register** Notice. If a substantial request for a public hearing is made within the required thirty-day period, a public hearing will be held and a notice will be given in the **Federal Register** and a newspaper of general circulation. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. If no timely and appropriate request for a hearing is received and the Regional Administrator does not choose to hold a hearing on his/her motion, this determination shall become final and effective thirty (30) days after publication of this **Federal Register** Notice.

Any request for a public hearing shall include the following information:

(1) the name, address and telephone number of the individual organization or other entity requesting a hearing;

(2) a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement on information that the requesting person intends to submit at such hearing;

(3) the signature of the individual making the requests or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: Requests for Public Hearing shall be addressed to: Regional Administrator, U.S. Environmental Protection Agency—Region II, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York 10278.

All documents relating to this determination are available for inspection between the hours of 9:00 am and 4:30 pm, Monday through Friday, at the following offices:

New York State Department of Health, Bureau of Public Water Supply Protection, 2 University Plaza/ Western Avenue, Albany, New York 12203–3399, (518) 458–6731

U.S. Environmental Protection Agency—Region II, Public Water System Supervision Section Room 853, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York 10278

For further information, you may contact: Walter E. Andrews, Chief, Drinking and Groundwater Protection Branch, U.S. Environmental Protection Agency—Region II, (212) 264–1800.

(Section 1413 of the Safe Drinking Water Act, as amended, and 40 CFR 142.10 of the NPDWR)

Dated: December 8, 1994.

William J. Muszynski,

Acting Regional Administrator, EPA, Region II.

[FR Doc. 95–69 Filed 1–3–95; 8:45 am]

BILLING CODE 6560–50–M

[OPPTS–00164; FRL–4927–4]

Notice of Availability of FY 1995 Multimedia Environmental Justice Through Pollution Prevention Grant Funds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA is announcing the availability of approximately $4.2 million in FY 95 grant/cooperative agreement funds under the Environmental Justice Through Pollution Prevention (EJP2) grant program. The purpose of this program is to provide financial assistance to community groups and tribal governments for projects that address environmental justice and use pollution prevention as the proposed solution.

DATES: Applications are due to the EPA Regional Offices by March 31, 1995.

FOR FURTHER INFORMATION CONTACT: Contact the appropriate Regional EPA coordinator for a copy of the grant guidance and application package. Contact names for each Regional Office are listed under Unit IV. of this notice. For general information on the EJP2 program contact Lena Ferris at EPA Headquarters at (202) 260–2237. Grant guidance and applications can only be requested from the regional contacts listed in Unit IV. of this notice. Materials are also available in Spanish upon request.

SUPPLEMENTARY INFORMATION:

I. Scope and Purpose of the EJP2 Grant Program

The primary purpose of this grant program is to provide financial assistance to community groups and tribal governments for projects that address environmental justice and use pollution prevention activities as the proposed solution. This grants program is designed to fund projects which have a direct impact on affected communities. EPA is seeking proposals for projects that will encourage institutionalization and innovative use of pollution prevention as the preferred approach for addressing environmental justice issues, and whose activities and products can be applied to other communities. The Agency also encourages cooperative efforts with business and industry to address common pollution prevention goals.

Projects funded under this grant program may involve public education, training, demonstrations, research, investigations, experiments, surveys, studies, public-private partnerships, or approaches to develop, evaluate, and demonstrate non-regulatory strategies and technologies.

The purpose of the EJP2 grants program is to support the use of pollution prevention solutions to address the environmental problems of minority and low-income communities and tribes. Funds awarded must be used to support pollution prevention programs in minority and low-income communities or tribal lands. Priority will be given to those projects that improve the environmental quality of affected communities using pollution prevention as the primary solution.

Below are brief summaries of sample projects which meet the definitions of pollution prevention and environmental justice, which may help guide applicants as they develop their proposals.

- Assist minority and low-income communities and tribal governments in obtaining environmental information or

designing and implementing training programs for such communities to promote pollution prevention initiatives.

• Conduct demonstration projects in support of EPA voluntary programs (such as the 33/50 Program, the Water Alliance for Voluntary Efficiency, the Waste Wise Project, or the Green Lights Project) which promote resource efficiency, or EPA's industry sector projects such as the Common Sense Initiative.

• Research, demonstrations, or public educational training activities to institutionalize sustainable agricultural practices including integrated pest management techniques to reduce use of pesticides.

• Establish demonstration projects to provide financial assistance through establishment of a revolving loan fund to assist small businesses in obtaining loans for pollution prevention-oriented activities.

II. Definition of Environmental Justice and Pollution Prevention

Environmental justice is defined by EPA as the fair treatment of people of all races, cultures, and incomes with respect to the development, implementation, and enforcement of environmental laws, regulations, programs, and policies. Fair treatment means that no racial, ethnic or socioeconomic group should bear a disproportionate share of the negative environmental consequences resulting from the operation of industrial, municipal, and commercial enterprises and from the execution of federal, state and local, and tribal programs and policies.

Pollution prevention is defined by EPA as ''source reduction''; that is, any practice that reduces or eliminates any pollutant prior to recycling, treatment, or disposal. EPA further defines pollution prevention as the use of other practices that reduce or eliminate the creation of pollutants through:

• Increased efficiency in the use of raw materials, energy, water, or other resources, or

• Protection of natural resources by conservation.

To help better understand pollution prevention, EPA has established a hierarchy of environmental management practices. In order of preference, these practices include:

• Pollution Prevention
• Recycling
• Treatment
• Disposal

This grant program is focused on using the top of the hierarchy (pollution prevention) to bring about better environmental protection.

III. Eligibility

Eligible applicants include any incorporated non-profit or grassroots organization, as well as any Federally-recognized tribal government, any city, county or local government organization such as a local education, health, energy, transportation, housing, environment agency or community college. Organizations must be incorporated to apply for funds. State agencies are also eligible but will not be a priority for funding as community-based organizations and/or local governments are the primary groups EPA is trying to reach through this program. State agencies interested in applying are encouraged to work cooperatively with community groups or local programs to strengthen their proposal. Private businesses and individuals are not eligible. Organizations excluded from applying directly are encouraged to work with eligible applicants in developing proposals that include them as participants in the projects. EPA strongly encourages this type of cooperative arrangement.

No applicant can have two grants for the same project at one time. EPA will consider only one proposal for a given project. Applicants may submit more than one application as long as the applications are for separate and distinct projects. However, no organization will receive more than one grant per Region per year under the EJP2 grant program. Organizations seeking funds from the EJP2 grants can request up to $100,000.

The Federal government requires that all non-profit organizations receiving grants be incorporated. EPA, in order to reach out to communities unfamiliar with government procedures, will accept grant applications from incorporated organizations acting as a sponsor or umbrella for community groups that would otherwise be ineligible to apply directly. The sponsoring organization may represent up to three community groups, and must specifically identify the community groups that will be participating in the project.

All awardees must also comply with the requirements of 40 CFR part 31 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) or 40 CFR part 30 (General Regulation for Assistance Program for other than State and Local Governments).

IV. EPA Regional Contacts

For further information please contact the appropriate EPA Regional staff person listed below:

James Younger, U.S. EPA Region 1, John F. Kennedy Federal Building, Boston, MA 02202, 617–565–3403.

Janet Sapadin, U.S. EPA Region 2, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, NY 10278, 212–264–1925.

Dominique Lueckenhoff, U.S. EPA Region 3, 841 Chestnut Building, Philadelphia, PA 19107, 215–597–6529.

Carol Monell, U.S. EPA Region 4, 345 Courtland St., NE, Atlanta, GA 30365, 404–347–3555 or 6779.

Phil Kaplan, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604–3507, 312–353–4669.

Donna Tisdall, U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, 12th Floor, Suite 1200, Dallas, TX 75202–2733, 214–665–6528.

Steve Wurtz, U.S. EPA Region 7, 726 Minnesota Ave., Kansas City, KS 66101, 913–551–7063.

Mel McCottrey, U.S. EPA Region 8, 999 18th St., Suite 500, Denver, CO 80202–2405, 303–293–1645.

Bill Wilson, U.S. EPA Region 9, 75 Hawthorne St., San Francisco, CA 94105, 415–744–2192.

Robin Meeker, U.S. EPA Region 10, 1200 Sixth Ave., Seattle, WA 98101, 206–553–8579.

Dated: December 27, 1994.

David Kling,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 95–149 Filed 1–3–95; 8:45 am]

BILLING CODE 6560–50–F

[ECAO–RTP–0671; FRL–5133–8]

Three Peer Review Workshops on Draft Chapters of the Revised EPA Document: Air Quality Criteria for Particulate Matter

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meetings.

SUMMARY: Three peer review workshops will be held by the Environmental Criteria and Assessment Office (ECAO) of EPA'S Office of Health and Environmental Assessment to facilitate preparation of draft chapters dealing with (1) respiratory tract dosimetry and toxicology of particulate matter; (2) airborne particle sampling and analysis methods, ambient concentrations, and exposure to particulate matter; and (3) epidemiology studies of health effects

associated with ambient air particulate matter exposures. These draft chapters will become part of the revised EPA document entitled: Air Quality Criteria for Particulate Matter.

DATES: The first workshop, which addresses respiratory tract dosimetry and toxicologic effects of particulate matter, will be held January 11 through January 13, 1995. The second workshop, which addresses sampling and analysis, concentrations, and exposure to particulate matter, will be held January 17 and 18, 1995. The third workshop, which addresses particulate matter epidemiologic studies, will be held January 23 through January 25, 1995. The daily meeting times for the sessions of all three workshops are from 8:30 a.m. to 5:00 p.m., and the sessions will be held at EPA's Environmental Research Center at Research Triangle Park, NC. The workshops will be open to the public, but advance registration is required due to space limitations.

FOR FURTHER INFORMATION CONTACT: Ms. Annie M. Jarabek, manager for the chapters on dosimetry and on toxicological studies, U.S. Environmental Protection Agency, ECAO, MD–52, Research Triangle Park, NC 27711, telephone 919–541–4847, for information on the first workshop. Information on the second workshop may be obtained from Mr. William G. Ewald, manager for the chapters on sampling and analysis, on concentrations, and on exposure, at the same address, telephone 919–541–4164. For information on the third workshop, contact Dr. Allan Marcus, manager for the chapter on epidemiology studies, at the same address, telephone 919–541–0636. Members of the public wishing to attend any of the three workshops as observers should contact Ms. Emily Lee (telephone 919–541–4169) to register in advance.

SUPPLEMENTARY INFORMATION: As discussed in a previous call for information (59 FR 17375), EPA is undertaking to review, where appropriate, update and revise the document, Air Quality Criteria for Particulate Matter. As part of this review, the first workshop will cover draft chapters on respiratory tract deposition of inhaled particles and on toxicological studies of particulate matter exposures. The second workshop will cover draft chapters on sampling and analysis of airborne particulate matter, on environmental concentrations of particulate matter and on ambient and indoor exposures to airborne particles. The third workshop will cover a draft chapter on the epidemiology studies of particulate matter exposure including both mortality and morbidity effects associated with short-term and chronic particulate matter exposures. The specific chapters covered at each workshop will be made available to the public at the time of the workshop. Members of the public will have an opportunity at the workshops to make brief, oral statements. Interested parties also are invited to assist the EPA in developing and refining the scientific information base for particulate matter by submitting new information on the topics covered at these three workshops. To be considered for inclusion in the review process, submitted information should be published or accepted for publication in a peer-reviewed, scientific journal.

Dated: December 16, 1994.

Joseph K. Alexander,

Acting Assistant Administrator for Research and Development.

[FR Doc. 95–152 Filed 1–3–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5132–9]

Notice of Open Meeting of the Federal Facilities Environmental Restoration Dialogue Committee

AGENCY: Environmental Protection Agency.

ACTION: FACA Committee meeting—Federal Facilities.

SUMMARY: As required by Section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), we are giving notice of the next meeting of the Federal Facilities Environmental Restoration Diaglogue Committee. The meeting is open to the public without advance registration.

The purpose of the meeting is to discuss issues related to the Federal Facilities Environmental Restoration process.

DATES: The meeting will be held on January 24, 1995, from 2 p.m. until 5 p.m., and on January 25 and January 26, 1995 from 8:30 a.m. until 5 p.m. (All times Pacific Standard Time.)

ADDRESSES: The meeting will be held at the Fairmont Hotel, 950 Mason Street, San Francisco, California.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on any aspect of the Federal Facilities Environmental Restoration Dialogue Committee should contact Sven-Eric Kaiser, Office of Solid Waste and Emergency Response, U.S. EPA, 401 M Street, S.W. (5101), Washington, DC 20460, (202) 260–5138.

Dated: December 27, 1994.

James Woolford,

Acting Designated Federal Official.

[FR Doc. 95–70 Filed 1–3–95; 8:45 am]

BILLING CODE 6560–50–M

[OPP–50802; FRL–4918–3]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR part l72, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

275–EUP–77. Issuance. Abbott Laboratories, 1401 Sheridan Road, North Chicago, IL 60064. This experimental use permit allows the use of 968 pounds of the plant growth regulator [S]-trans-2-amino-4-[2-aminoethoxy]-3-butenoic acid hydrochloride on 220 acres of greenhouse ornamentals to evaluate the reduction of shipping-related problems such as, flower senescence and flower bud abortion. The program is authorized only in the States of California, Colorado, Florida, Illinois, Michigan, North Carolina, Ohio, Texas, Utah, Virginia, and Wisconsin. The experimental use permit is effective from June 14, 1994 to June 30, 1995. (Cynthia Giles-Parker, PM 22, Rm. 229, CM #2, (703–305–5540))

67986–EUP–1. Issuance. AgriPhi, Inc., 160 North Main, Logan, Utah 84321. This experimental use permit allows the use of 33.6 pounds of the biological pesticide bacteriophages of *Xanthomas campestris* subsp. *vesicatoria* on 20 acres of peppers and tomatoes to evaluate the control of bacterial spot. The program is authorized only in the State of Florida. The experimental use permit is effective from August 29, 1994 to August 15, 1996. A temporary exemption from the requirement of a

tolerance for residues of the active ingredient in or on peppers and tomatoes has been established. (Steve Robbins, PM 21, Rm. 259, CM #2, (703–305–5611))

4787–EUP–1. Issuance. Cheminova Agro, 1015 15th St., NW., Suite 500, Washington, DC 20005. This experimental use permit allows the use of 150 pounds of the insecticide O,O-diethyl O-p-nitrophenyl phosphorothioate on 15 acres of alfalfa to evaluate the control of various insect pests. The program is authorized only in the States of Colorado, Idaho, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, New York, North Dakota, Oklahoma, Pennsylvania, Utah, and Washington. The experimental use permit is effective from July 15, 1994 to July 15, 1995. This permit is issued with the limitation that all crops are destroyed or used for research purposes only. (Dennis Edwards, PM 19, Rm. 207, CM #2, (703–305–6386))

352–EUP–162. Issuance. E.I. duPont deNemours and Company, Inc., Agricultural Products, P.O. Box 80038, Wilmington, DE 19880–0038. This experimental use permit allows the use of 515 pounds of the herbicide sodium 2-chloro-6-(4,6-dimethoxypyrimidin-2-ylthio)benzoate on 8,250 acres of cotton to evaluate the control of various broadleaf weeds. The program is authorized only in the States of Alabama, Arizona, Arkansas, California, Florida, Georgia, Louisiana, Missouri, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia. The experimental use permit is effective from June 20, 1994 to March 31, 1997. A temporary tolerance for residues of the active ingredient in or on cottonseed has been established. (Cynthia Giles-Parker, PM 22, Rm. 229, CM #2, (703–305–5540))

1812–EUP–2. Issuance. Griffin Corporation, P.O. Box 1847, Valdosta, GA 31603–1847. This experimental use permit allows the use of 1.02 kilograms of the insecticide N-ethyl perfluorooctanesulfonamide on 400 acres of domestic yards and lawns to evaluate the control of imported fire ants. The program is authorized only in the States of Alabama, Arkansas, Georgia, Florida, Louisiana, Mississippi, South Carolina, and Texas. The experimental use permit is effective from July 22, 1994 to July 31, 1995. (Phil Hutton, PM 18, Rm. 213, CM #2, (703–305–7690))

67651–EUP–1. Issuance. Resource Seeds, Inc., P.O. Box 1319, Gilroy, CA 95021. This experimental use permit allows the use of 5,200 pounds of the herbicide 3-(3,4-dichlorophenyl)-1-methoxy-1-methylurea on 2,800 acres of lupins to evaluate the control of various weeds. The program is authorized only in the States of California, Michigan, Minnesota, North Dakota, and Wisconsin. Temporary tolerances for residues of the active ingredient in or on lupins (forage, grain, and hay) have been established. The experimental use permit is effective from September 1, 1994 to September 1, 1996. (Robert Taylor, PM 25, Rm. 241, CM #2, (703–305–6800))

707–EUP–131. Issuance. Rohm and Haas Company, Independence Mall West, Philadelphia, PA 19105. This experimental use permit allows the use of 400 pounds of the insecticide benzoic acid 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide on 200 acres of walnuts to evaluate the control of various lepidopterous pests. The program is authorized only in the State of California. The experimental use permit is effective from May 31, 1994 to May 31, 1995. (Robert Brennis, PM 10, Rm. 210, CM#2, (703–305–6788))

36029–EUP–2. Issuance. Wilco Distributors, Inc., P.O. Box 291, Lompoc, CA 93438. This experimental use permit allows the use of 21.375 pounds of the rodenticide strychnine alkaloid in underground applications on 375 acres of dormant alfalfa fields to evaluate the control of valley pocket gophers. The program is authorized only in the State of California. The experimental use permit is effective from August 1, 1994 to July 31, 1995. The experimental use permit allows the use of the active ingredient in four different formulations. (Robert Forrest, PM 14, Rm. 219, CM #2, (703–305–6600))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquires concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Experimental use permits.

Dated: December 20, 1994.

Losi Rossi,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–3 Filed 1–3–95; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5133–2]

Proposed Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to enter into an administrative settlement to resolve claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (CERCLA), as amended. Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. This settlement is intended to resolve liabilities of one party for costs incurred by EPA at the Chemical Control Site.

DATES: Comments must be provided by February 3, 1995.

ADDRESSES: Comments should be addressed to the U.S. Environmental Protection Agency, Office of Regional Counsel, New Jersey Superfund Branch, Room 309, 26 Federal Plaza, New York, New York 10278 and should refer to: In the Matter of the Chemical Control Site: Radiac Research Corporation, U.S. EPA Index No. II CERCLA–94–0112.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, Office of Regional Counsel, New Jersey Superfund Branch, Room 309, 26 Federal Plaza, New York, New York 10278, (212) 264–6159, Attention: Kristine Leopold, Esq.

SUPPLEMENTARY INFORMATION: In accordance with Section 122(i)(1) of CERCLA, notice is hereby given of a proposed administrative settlement concerning the Chemical Control Site which is located in Elizabeth, New Jersey. Section 122(h) of CERCLA provides EPA with authority to consider, compromise, and settle certain claims for costs incurred by the United States.

Radiac Research Corporation will pay a total of $40,000 under this agreement to reimburse EPA for response costs incurred at the Chemical Control Site.

A copy of the proposed administrative settlement agreement, as well as background information relating to the settlement, may be obtained in person or by mail from EPA's Region II Office of Regional Counsel, New Jersey Superfund Branch, Room 309, 26 Federal Plaza, New York, New York 10278.

Dated: December 23, 1994.

Conrad S. Simon,

Acting Deputy Regional Administrator.

[FR Doc. 95–84 Filed 1–3–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5133–3]

Proposed Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to enter into an administrative settlement to resolve claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (CERCLA), as amended. Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. This settlement is intended to resolve liabilities of one party for costs incurred by EPA at the Chemical Control Site.

DATES: Comments must be provided by February 3, 1995.

ADDRESSES: Comments should be addressed to the U.S. Environmental Protection Agency, Office of Regional Counsel, New Jersey Superfund Branch, room 309, 26 Federal Plaza, New York, New York 10278 and should refer to: In the Matter of the Chemical Control Site: Union Carbide Corporation, U.S. EPA Index No. II CERCLA–94–0111.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, Office of Regional Counsel, New Jersey Superfund Branch, room 309, 26 Federal Plaza, New York, New York 10278, (212) 264–6159, Attention: Kristine Leopold.

SUPPLEMENTARY INFORMATION: In accordance with Section 122(i)(1) of CERCLA, notice is hereby given of a proposed administrative settlement concerning the Chemical Control Site which is located in Elizabeth, New Jersey. Section 122(h) of CERCLA provides EPA with authority to consider, compromise, and settle certain claims for costs incurred by the United States.

Union Carbide Corporation will pay a total of $90,000 under this agreement to reimburse EPA for response costs incurred at the Chemical Control Site.

A copy of the proposed administrative settlement agreement, as well as background information relating to the settlement, may be obtained in person or by mail from EPA's Region II Office of Regional Counsel, New Jersey Superfund Branch, room 309, 26 Federal Plaza, New York, New York 10278.

Dated: December 23, 1994.

Conrad S. Simon,

Acting Deputy Regional Administrator.

[FR Doc. 95–85 Filed 1–3–95; 8:45 am]

BILLING CODE 6560–50–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Small Disadvantaged and Women-Owned Businesses

AGENCY: Executive Office of the President, Office of Management and Budget (OMB), Office of Federal Procurement Policy (OFPP).

ACTION: OFPP is requesting comments on its plans to comply with the review requirements of small disadvantaged and women-owned businesses in accordance with the Federal Acquisition Streamlining Act of 1994.

BACKGROUND: The Federal Acquisition Streamlining Act of 1994, Public Law 103–355, provides, in section 7107, that the Administrator for Federal Procurement Policy shall conduct a comprehensive review of Federal laws, in effect on November 1, 1994, to identify and catalogue all of the provisions in such laws that define (or describe for definitional purposes) the following small business concerns: (1) Concerns owned and controlled by socially and economically disadvantaged individuals; (2) minority-owned concerns; (3) concerns owned and controlled by women; and, (4) woman-owned concerns. (In this notice, these 4 categories will also be referred to as disadvantaged and women-owned businesses.) The definitions of concern are those which authorize the participation of such small business concerns as prime contractors or subcontractors in (1) contracts awarded directly by the Federal Government or subcontracts awarded under such contracts, and (2) contracts and subcontracts funded, in whole or in part, by Federal financial assistance under grants, cooperative agreements, or other forms of Federal assistance.

In conducting this review, the Administrator shall provide for the participation in the review by representatives of (1) the Small Business Administration (SBA) (including the Office of the Chief Counsel for Advocacy); (2) the Minority Business Development Agency (MBDA) of the Department of Commerce; (3) the Department of Transportation (DOT); (4) the Environmental Protection Agency (EPA); and (5) such other executive departments and agencies as the Administrator considers appropriate. The Administrator must also consult with representatives of organizations representing (1) minority-owned business enterprises; (2) women-owned business enterprises; and (3) other organizations that the Administrator considers appropriate.

On the basis of the results of the review, the Administrator is to develop (1) uniform definitions for disadvantaged and women-owned business concerns; (2) uniform agency certification standards and procedures for (A) determinations of whether a small business concern qualifies as a disadvantaged or women-owned business concern under an applicable standard for purposes of the types of contracts and subcontracts referred to above, and (B) reciprocal recognition by an agency of a decision of another agency regarding whether a small business concern qualifies as a disadvantaged or women-owned business concern; and (3) such other related recommendations as the Administrator determines appropriate, consistent with the review results.

Section 7107 requires the Administrator, not later than 60 days after the date of the enactment of the Act, to publish in the **Federal Register** a notice which (1) lists the provisions of law identified in the review carried out during the first 60 days; (2) describes the matters to be developed on the basis of the results of the review; (3) solicits public comment regarding the matters described in the notice for a period of not less than 60 days; and (4) addresses such other matters as the Administrator considers appropriate in order to ensure the comprehensiveness of the review.

Finally, section 7107 requires that not later than May 1, 1966, the Administrator for Federal Procurement Policy shall submit to the Committees on Small Business of the Senate and the House of Representatives a report on the results of the review. The report shall include a discussion of the results of the review, a description of the consultations conducted and public comments received, and the Administrator's recommendations.

PERFORMANCE OF REVIEW: In response to this direction, the Administrator for Federal Procurement Policy, through the Office of Federal Procurement Policy (OFPP), has conducted a review of the

various laws defining the business concerns listed in section 7107, and has formed an informal task force with representatives of the SBA (including its Office of Chief Counsel for Advocacy), the MBDA, the DOT, the EPA, the Department of Defense, the Department of Energy, and the General Services Administration. Additionally, the Administrator has held meetings with representatives of 21 organizations or companies representing minority-owned, women-owned, and other appropriate business enterprises to discuss the review. During these meetings, OFPP has discussed the need for uniform definitions and the desirability of uniform certification standards and procedures.

This review has indicated that there are divergent definitions of the terms section 7107 covers. The primary problem appears to be that while the Small Business Act contains comprehensive definitions of socially and economically disadvantaged small businesses and women-owned small businesses, other statutes contain either differing definitions or similar terms with no definitions. Consequently, to further their program implementation responsibilities, agencies have, in some instances, adopted through the regulatory process definitions which differ from those of the Small Business Act. This tends to cause confusion and inefficiency within the government and within the small business community.

Statutory definitions: It is not always clear from the relevant statutes as to which of the four terms in section 7107 the statutes would apply. However, after reviewing the laws and discussing the issues with representatives of Federal Government agencies and of minority and women-owned businesses, the Administrator has determined that the following provisions of law are relevant to defining (a) concerns owned and controlled by socially and economically disadvantaged individuals; (b) minority-owned concerns; (c) concerns owned and controlled by women; and, (d) woman-owned concerns:

1. Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals and Minority-owned Concerns:

10 U.S.C. § 2323(a) (Armed Forces)
15 U.S.C. § 637(a)(4) (Small Business Act)
15 U.S.C. § 637(a)(5) (Small Business Act)
15 U.S.C. § 637(a)(6) (Small Business Act)
15 U.S.C. § 637(a)(13) (Small Business Act)
15 U.S.C. § 637(a)(14) (Small Business Act)
15 U.S.C. § 637(a)(15) (Small Business Act)
15 U.S.C. § 637(a)(17) (Small Business Act)
15 U.S.C. § 637(d)(3)(C) (Small Business Act)
49 U.S.C. § 332 (Transportation)
49 U.S.C. § 47113(a) (Transportation)
Public Law 101–165, Department of Defense Appropriations Act, 1990, Section 9004

2. Concerns Owned and Controlled by Women and Woman-owned Concerns:

15 U.S.C. § 632(n) (Small Business Act)
15 U.S.C. § 637(d)(3)(D) (Small Business Act)
49 U.S.C. § 332 (Transportation)
49 U.S.C. § 47113(a) (Transportation)
Public Law 102–377, Section 304 (a)&(b) Energy and Water Development Appropriations Act, 1993
Public Law 102–486, the Energy Policy Act of 1992, Section 3021
Public Law 102–240, Intermodel Surface Transportation Efficiency Act of 1991, Section 1003(b)

Example of Statutory Discrepancy: The Small Business Act, at 15 U.S.C. § 637(d)(3)(D), provides as follows: ''The term 'small business concern owned and controlled by women' shall mean a small business concern—(i) which is at least 51 per centum owned by one or more women; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more women; and (ii) whose management and daily business operations are controlled by one or more women.'' Section 1003(b)(2)(B) of the Intermodel Surface Transportation Efficiency Act of 1991 provides as follows: ''Socially and Economically Disadvantaged Individuals.—The term ''socially and economically disadvantaged individuals'' has the meaning such term has under section 8(d) of the Small Business Act (15 U.S.C. § 737(d)) and relevant subcontracting regulations promulgated pursuant thereto; except that women shall be presumed to be socially and economically disadvantaged individuals for purposes of this subsection.'' For their respective programs, these two statutes provide differing coverage for women-owned businesses. One provides a separate definition; the other includes women within the definition of socially and economically disadvantaged individuals.

Regulatory definitions: In addition, the following provisions of federal regulations, which represent the implementing guidance of the various federal departments and agencies, are relevant to the interpretation of the statutes cited above:

48 CFR Part 19 (Federal Acquisition Regulation System)
7 CFR Part 3403 (Agriculture)
10 CFR Part 470 (Energy)
13 CFR Part 124 (Business Credit and Assistance) (Small Business Administration)
48 CFR Part 219 (Federal Acquisition Regulation System) (Defense)
49 CFR Part 23 (Transportation)
49 CFR Part 265 (Transportation)

Review of statutory definitions: OFPP has reviewed the above listed statutes and regulations. OFPP interprets the provisions of section 7107 as directing the Administrator to recommend a single, uniform definition for socially and economically disadvantaged and minority owned small businesses. It makes the same interpretation regarding small businesses owned and controlled by women and woman-owned small businesses. Consequently, the Administrator does not intend to recommend substantive changes in the definitions of these terms, other than those necessary to arrive at a uniform definition. The Administrator does intend to recommend adoption of a single, uniform definition for small disadvantaged businesses and for women-owned small businesses, respectively. Furthermore, the Administrator currently intends to recommend statutory provisions which would provide that the definitions of these terms contained in the Small Business Act, as it would be amended, would supersede all other similar definitions of these terms contained in various other laws.

Certifications: Certification of firms as eligible participants in a program for small disadvantaged or small women-owned businesses is one of the most important features of such a program. A reliable certification program ensures that only eligible firms participate, while preventing ineligible firms from taking advantage of the program. A certification program that meets this objective may range from the simple to the complex and may, depending on the nature of the program adopted, impose significant administrative and financial burdens on agencies and small businesses. Several issues have been raised regarding possible changes to certification standards and procedures. The preliminary discussions held to date indicate a wide variety of views as to the most desirable method of performing certifications of small businesses as socially and economically disadvantaged and as women-owned. The possible methods of accomplishing this include the following:

a. Creation of a uniform federal government-wide certification program.

Such a program could be administered by one agency or by several agencies of the government. In any case, once a certification was granted to a business concern, that certification would be good for all other federal departments and agencies for the period of time set for the certification. Potential problems that would have to be addressed include availability of resources to administer the program and availability of local information on applicants.

b. Adoption of certifications by non-federal agencies, possibly state and local governments or private organizations. Such governments or organizations would have to first qualify as applying standards compatible with those of the federal government. After such qualification, they would act in the place of the federal government for purposes of granting certifications or on behalf of the federal government. This might be accomplished either by creating a program granting them the necessary authority or by contracting with them to perform the service for the federal government. Certification by such organizations would be good for all federal departments and agencies for the period of time set for the certification.

c. In addition to the issues of who might grant certifications or how, the question of auditing was also raised. Currently, under the Small Business Act 8(d) program (for subcontractors) and certain Department of Defense programs, businesses can self-certify. If a self-certification program of this type were extended to other federal programs, local certifying authorities, if they were adopted, could engage in an auditing program, whether universal or random in nature. Potential problems that would have to be addressed include utility of the program in preventing ''fronts'' from exploiting the program and availability of resources to administer the auditing program.

Various aspects of these approaches could also be combined.

MATTERS TO BE DEVELOPED: The Administrator intends to develop recommendations for uniform definitions relating to small disadvantaged businesses and to women-owned small businesses. These definitions will be applicable to all federal departments and agencies in their contracting, grants, and cooperative agreements actions. In addition, the Administrator intends to develop recommendations for a single, uniform system of standards and procedures for federal certification of small disadvantaged and small women-owned businesses. The Administrator also intends to consider whether the term ''socially and economically disadvantaged business'' should be changed to some other appropriate term.

PUBLIC COMMENTS: The Administrator solicits the comments of interested agencies and parties regarding their views of the matters to be developed. These comments may include references to additional statutes that the commentor believes relevant, to proposals regarding terms to be used in the uniform definitions, to proposals for ways and means of creating a uniform system of certifications, and suggestions as to what form it should take. Additionally, commentors may address the goals to be achieved by creating uniform definitions and uniform standards and procedures, differences in procurements under contracts, grants, and cooperative agreements, and means of avoiding unnecessary disruption of existing programs.

DATES: Comments in response to this notice should be received at OFPP by close of business on February 20, 1995.

ADDRESSES: Comments should be submitted to the OFPP, New Executive Office Building, Room 9001, 725 17th Street, NW, Washington, DC 20503, Attention: Ms. Linda Mesaros.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Mesaros at 202-395-4821.

Steven Kelman,

Administrator.

[FR Doc. 95–7 Filed 1–3–95; 8:45 am]

BILLING CODE 3110–01–M

FEDERAL RESERVE SYSTEM

City National Bancshares, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than January 17, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. City National Bancshares, Inc., Miami, Florida; to acquire 20.6 percent of the outstanding shares of Turnberry Savings & Loan Association, North Miami Beach, Florida, and thereby engage in operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. BancorpSouth, Inc., Tupelo, Mississippi; to acquire LF Bancorp, Inc., Laurel, Mississippi, and indirectly acquire Laurel Federal Savings and Loan Association, Laurel, Mississippi, and thereby engage in operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 28, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–87 Filed 1–3–95; 8:45 am]

BILLING CODE 6210–01–F

Michael J. Corliss; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank

holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than January 17, 1995.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Michael J. Corliss (through the Corliss Valley Bancorporation Trust), Sumner, Washington; to acquire 14.10 percent of the voting shares of Valley Bancorporation, Sumner, Washington, and thereby indirectly acquire Bank of Sumner, Sumner, Washington.

Board of Governors of the Federal Reserve System, December 28, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–88 Filed 1–3–95; 8:45 am]

BILLING CODE 6210–01–F

Norwest Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 17, 1995.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to engage *de novo* in operating a credit bureau, pursuant to § 225.25(b)(24) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 28, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–89 Filed 1–3–95; 8:45 am]

BILLING CODE 6210–01–F

SunTrust Banks, 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 January 27, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. SunTrust Banks, Inc., Atlanta, Georgia; to acquire 100 percent of the voting shares of Peoples State Bank, New Port Richey, Florida.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Rosemount Financial Services, Inc., Rosemount, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Rosemont National Bank, Rosemount, Minnesota.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Baltz Family Partners, Ltd., Parker, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of First United Bancorporation, Parker, Colorado, and thereby indirectly acquire First United Bank, Parker, Colorado.

D. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. First Bancorp, Inc., Denton, Texas; to acquire 100 percent of the voting shares of Shady Oaks Bancshares, Inc., Fort Worth, Texas, and thereby indirectly acquire Shady Oaks National Bank, Fort Worth, Texas.

2. First Delaware Bancorp, Inc., Dover, Delaware; to acquire 100 percent of the voting shares of Shady Oaks Bancshares, Inc., Fort Worth, Texas, and thereby indirectly acquire Shady Oaks National Bank, Fort Worth, Texas.

3. Texas Financial Bancorporation, Inc., Minneapolis, Minnesota; to acquire 100 percent of the voting shares of Shady Oaks Bancshares, Inc., Fort Worth, Texas, and thereby indirectly acquire Shady Oaks National Bank, Fort Worth, Texas.

Board of Governors of the Federal Reserve System, December 28, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-90 Filed 1-3-95; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[[File No. 951 0015]

Wright Medical Technology, Inc., et al.; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a Tennessee-based research and development corporation to transfer to the Mayo Foundation, the licensor of the implant technology to Orthomet, Inc., a complete copy of all assets relating to Orthomet's business of researching and developing orthopaedic implants for use in human hands, and would also require Wright Medical Technology to obtain Commission approval before acquiring any interest in any firm that has received, or has applied for, Food and Drug Administration approval to market orthopaedic hand implants in the United States.

DATES: Comments must be received on or before March 6, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Richard Dagen or Benjamin Tahyar, FTC/S–2627, Washington, D.C. 20580. (202) 326–2628 or 326–2889.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

In the Matter of Wright Medical Technology, Inc., a corporation, Kidd, Kamm Equity Partners, L.P., a limited partnership, Kidd, Kamm Investments, L.P., a limited partnership, and Kidd, Kamm Investments, Inc., a corporation.

The Federal Trade Commission (''Commission''), having initiated an investigation of the acquisition of all the outstanding shares of common and convertible preferred stock of Orthomet, Inc. (''Orthomet'') by Wright Medical Technology, Inc. (''WMTI''), a subsidiary of Kidd, Kamm Equity Partners, Inc. (''KKEP''), KKEP's general partner, Kidd, Kamm Investments, L.P. (''KKI''), and KKI's general partner, Kidd, Kamm Investments, Inc. (''KKI, Inc.''), and it now appearing that WMTI, KKEP, KKI, and KKI, Inc., hereinafter sometimes referred to as ''Proposed Respondents,'' are willing to enter into an Agreement Containing Consent Order (''Agreement'') to (i) divest and license certain assets, (ii) cease and desist from certain acts, and (iii) provide for certain other relief:

It is hereby agreed by and between Proposed Respondents, by their duly authorized officers and their attorneys, and counsel for the Commission that:

1. Proposed Respondent WMTI is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 5677 Airline Road, Arlington, Tennessee 38002.

2. Proposed Respondent KKEP is a limited partnership organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at Three Pickwick Plaza, Greenwich, Connecticut 06830.

3. Proposed Respondent KKI is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located c/o Kidd, Kamm & Company, 9454 Wilshire Boulevard, Suite 920, Beverly Hills, California 90212.

4. Proposed Respondent KKI, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at Kidd, Kamm & Company, 9454 Wilshire Boulevard, Suite 920, Beverly Hills, California 90212.

5. Proposed Respondents admit all the jurisdictional facts set forth in the draft of complaint.

6. Proposed Respondents waive:

(a) any further procedural steps;

(b) the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) all rights to seek judicial review or otherwise to challenge or contest the validity of the order pursuant to this Agreement; and

(d) any claims under the Equal Access to Justice Act.

7. This Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Agreement and so notify the Proposed Respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

8. This Agreement is for settlement purposes only and does not constitute an admission by the Proposed Respondents that the law has been violated as alleged in the draft of complaint, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

9. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to Proposed Respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following Order to divest and license and to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to Order to Proposed Respondents' addresses as stated in this Agreement shall constitute service. Proposed Respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the Agreement may be used to vary or contradict the terms of the Order.

10. Proposed Respondents have read the proposed complaint and Order contemplated hereby. Proposed Respondents understand that once the

Order has been issued, they will be required to file one or more compliance reports showing they have fully complied with the Order. Proposed Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I.

It is ordered that, as used in this Order, the following definitions shall apply:

A. ''WMTI'' means Wright Medical Technology, Inc., its subsidiaries, divisions, groups and affiliates controlled by WMTI, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

B. ''KKEP'' means Kidd, Kamm Equity Partners, L.P., its subsidiaries (including WMTI), divisions, groups and affiliates controlled by KKEP, and their respective general partners, directors, officers, employees, agents and representatives, and their respective successors and assigns.

C. ''KKI'' means Kidd, Kamm Investments, L.P., its divisions, groups and affiliates controlled by KKI, and their respective general partners, directors, officers, employees, agents and representatives, and their respective successors and assigns.

D. ''KKI, Inc.'' means Kidd, Kamm Investments, Inc., its subsidiaries, divisions, groups and affiliates controlled by KKI, Inc., and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

E. ''Orthomet'' means Orthomet, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Minnesota, with its principal place of business located at 6301 Cecilia Circle, Minneapolis, Minnesota 55439.

F. ''Respondents'' mean WMTI, KKEP, KKI, and KKI, Inc.

G. ''Commission'' means the Federal Trade Commission.

H. ''Acquisition'' means the acquisition by WMTI of outstanding shares of stock of Orthomet pursuant to a cash tender offer commenced on October 17, 1994.

I. ''Mayo'' means the Mayo Foundation for Medical Education and Research, a Minnesota Charitable Corporation, with its principal place of business located at 200 First Street SW, Rochester, Minnesota 55439.

J. ''Mayo PIP Orthopaedic Finger Implant Design'' means the Mayo proximal interphalangeal prosthesis design together with modifications, enhancements, and improvements, whether or not patentable, that is the subject of a technology license contract between Mayo and Orthomet dated as of December 24, 1992.

K. ''Mayo MCP Orthopaedic Finger Implant Design'' means the metacarpophalangeal prosthesis design developed as a cooperative effort between Mayo and Orthomet, together with modifications, enhancements, and improvements, whether or not patentable, that is the subject of a technology license contract between Mayo and Orthomet dated as of May 1, 1993.

L. ''Mayo CMC Orthopaedic Finger Implant Design'' means the carpometacarpal prosthesis design developed as a cooperative effort between Mayo and Orthomet, together with modifications, enhancements, and improvements, whether or not patentable, that is the subject of a technology license contract between Mayo and Orthomet dated as of May 1, 1993.

M. ''Licensed Inventions'' means (1) the Mayo PIP Orthopaedic Finger Implant Design, (2) the Mayo MCP Orthopaedic Finger Implant Design, and (3) the Mayo CMC Orthopaedic Finger Implant Design.

N. ''Technology License Contracts'' means the contracts between Mayo and Orthomet (1) relating to the Mayo PIP Orthopaedic Finger Implant Design and any amendments thereto, (2) relating to the Mayo MCP Orthopaedic Finger Implant Design and any amendments thereto, and (3) relating to the Mayo CMC Orthopaedic Finger Implant Design and any amendments thereto.

O. ''Orthopaedic Finger Implants'' means orthopaedic implants designed for use in the proximal interphalangeal joint, the metacarpophalangeal joint, and the carpometacarpal joint of the human hand.

P. ''Orthomet/Mayo Orthopaedic Finger Implant Business'' means Orthomet''s or WMTI's business of researching and developing Orthopaedic Finger Implants for eventual commercialization based upon the Licensed Inventions.

Q. ''Orthomet/Mayo Orthopaedic Finger Implant Research Assets'' means all tangible and intangible assets constituting or otherwise relating to the Orthomet/Mayo Orthopaedic Finger Implant Business, including but not limited to:

1. All books, records, CAD files and other documents;

2. All data, materials, and information relating to the Orthomet/Mayo Orthopaedic Finger Implant Business, including, but not limited to, FDA approvals for Orthopaedic Finger Implants, list of clinicians, clinical testing, surgical techniques and protocols, surgical instrumentation design development, and biomechanical materials;

3. All intellectual property, including, but not limited to, patents and patent applications, formulas, processes, technology, know-how, trade secrets, manufacturing information, specifications, plans, drawings, designs and data, product prototypes, and other tangible embodiments of know-how, including, but not limited to, the technology and know-how required to manufacture commercially acceptable products; and

4. All products testing and laboratory research data and samples, including, but not limited to, bench testing, wear testing, and materials testing.

R. ''Orthopaedic Finger Implant Licensee'' means the party or parties, other than Respondents, to whom Mayo licenses the Licensed Inventions.

S. ''FDA'' means the United States Food and Drug Administration.

T. ''510(k) Application'' means an application made to the FDA pursuant to 21 U.S.C. § 350(k), or successor provisions.

U. ''IDE Application'' means an application made to the FDA pursuant to 21 C.F.R. § 812.20, or successor provisions, for an investigational device exemption.

II.

It is further ordered That: A. Within five (5) days after the date this Order becomes final, Respondents shall:

1. Transfer to Mayo a full and complete copy of the Orthomet/Mayo Orthopaedic Finger Implant Research Assets;

2. Grant Mayo a license to such assets, where applicable, with full right of sublicense thereunder, in perpetuity; and

3. Make any and all such arrangements and transfers as are necessary to enable Mayo to license an Orthopaedic Finger Implant Licensee.

B. Upon reasonable notice and request from the Orthopaedic Finger Implant Licensee, Respondents shall provide reasonable assistance to the Orthopaedic Finger Implant Licensee regarding the Orthomet/Mayo Orthopaedic Finger Implant Research Assets transferred pursuant to Paragraph II.A of this Order. Such assistance shall include consultation with knowledgeable employees of Respondents as the Orthopaedic Finger Implant Licensee's facilities or at such other place as is

mutually satisfactory to Respondents and the Orthopaedic Finger Implant Licensee for a period of time sufficient to satisfy the Orthopaedic Finger Implant Licensee's management. However, Respondents shall not be required to continue providing such assistance for more than six (6) months. Respondents may require reimbursement from the Orthopaedic Finger Implant Licensee for all the actual hourly cost of pay and benefits for Respondents' personnel providing the assistance and, if travel is required, the travel cost and per diem subsistence incurred by Respondents in providing the assistance to the Orthopaedic Finger Implant Licensee.

C. Pending the transfer (and licensing, where applicable) of Orthomet/Mayo Orthopaedic Finger Implant Research Assets, Respondents shall take such actions as are necessary to maintain the viability and marketability of Orthomet/Mayo Orthopaedic Finger Implant Research Assets and to prevent the destruction, removal, wasting, deterioration, or impairment of Orthomet/Mayo Orthopaedic Finger Implant Research Assets except for ordinary wear and tear.

III.

It is further ordered That: A. If Respondents do not, within six (6) months of the date this Order becomes final, obtain the Commission's approval for an Orthopaedic Finger Implant Licensee pursuant to the procedures set forth in § 2.41(f) of the Commission's Rules of Practice, 16 C.F.R. § 2.41(f), Respondents shall:

1. Take whatever steps are necessary to effect the immediate termination of the Technology License Contracts within five (5) days after the end of the six (6)-month period;

2. After the termination of the Technology Licensee Contracts, refrain from entering into any agreement of any sort with Mayo relating to the Licensed Inventions or to the Orthomet/Mayo Orthopaedic Finger Implant Research Assets; and

3. Within ten (10) days of the termination of the Technology License Contracts ordered in this Paragraph, divest to Mayo absolutely and in good faith the Orthomet/Mayo Orthopaedic Finger Implant Research Assets and grant Mayo, where applicable, a license to such assets with full right of sublicense thereunder, in perpetuity. Respondents shall retain no interest or rights in the Orthomet/Mayo Orthopaedic Finger Implant Research Assets. Mayo shall have the exclusive power and authority to grant a license relating to the Licensed Inventions.

The purpose of licensing an Orthopaedic Finger Implant Licensee other than Respondents is to ensure the continuation of the Orthomet/Mayo Orthopaedic Finger Implant Research Assets as an ongoing research project for Orthopaedic Finger Implants to be approved by the FDA for sale in the United States and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

B. Upon reasonable notice and request from the Orthopaedic Finger Implant Licensee, Respondents shall provide reasonable assistance to the Orthopaedic Finger Implant Licensee regarding the Orthomet/Mayo Orthopaedic Finger Implant Research Assets divested pursuant to Paragraph III.A of this Order. Such assistance shall include consultation with knowledgeable employees of Respondents at the Orthopaedic Finger Implant Licensee's facilities or at such other place as is mutually satisfactory to Respondents and the Orthopaedic Finger Implant Licensee for a period of time sufficient to satisfy the Orthopaedic Finger Implant Licensee's management. However, Respondents shall not be required to continue providing such assistance for more than six (6) months. Respondents may require reimbursement from the Orthopaedic Finger Implant Licensee for all the actual hourly cost of pay and benefits for Respondents' personnel providing the assistance, and, if travel is required, the travel cost and per diem subsistence incurred by Respondents in providing the assistance to the Orthopaedic Finger Implant Licensee.

IV.

It is further ordered That Respondents shall not without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. For a period of ten (10) years from the date this Order becomes final, acquire more than 1% of the stock, share capital, equity, or other interest in any concern, corporate or non-corporate, that (1) has filed a 510(k) Application or IDE Application relating to Orthopaedic Finger Implants or, within two (2) years prior to any such proposed acquisition, has announced publicly its intention to submit either of such applications, or (2) has received FDA approval relating to Orthopaedic Finger Implants.

B. For a period of ten (10) years from the date this Order becomes final, acquire any assets (including, but not limited to, any technology, know-how, and other intellectual property) that relate to Orthopaedic Finger Implants (1) for which a 510(k) Application or IDE Application has been filed or for which the intention to file such applications has been publicly announced within two (2) years prior to any such proposed acquisition, or (2) for which FDA approval has been received. The foregoing prohibition shall not apply to (i) the acquisition of materials, supplies, inventory, testing equipment or manufacturing equipment in the ordinary course of business, or (ii) the acquisition of product evaluations and product testing and laboratory research data (relating to Orthopaedic Finger Implants owned by Respondents), including, but not limited to, bench testing, wear testing and materials testing, from outside laboratories, outside testing facilities or other third parties, in the ordinary course of Respondents' business.

C. For a period of ten (10) years from the date the Technology License Contracts are terminated pursuant to Paragraph III.A of this Order, enter into any agreement with Mayo relating to Orthopaedic Finger Implants.

V.

It is further ordered That,

A. Within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until Respondents have fully complied with the provisions of Paragraphs II and III of this Order, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with Paragraphs II and III of this Order. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with these Paragraphs of this Order, including a description of all substantive contacts or negotiations undertaken by Respondents, and assistance offered by Respondents to Mayo for accomplishing the provision (and licensing, where applicable) of Orthomet/Mayo Orthopaedic Finger Implant Research Assets required by this Order, including the identity of all parties contacted by Respondents. Respondents shall include in their compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the requirements of Paragraphs II and III of this Order.

B. One (1) year from the date this Order becomes final, annually for the next nine (9) years on the anniversary of the date this Order becomes final, and

at other times the Commission may require, Respondents shall file with the Commission verified written reports setting forth in detail the manner and form in which they have complied and are complying with Paragraph IV of this Order.

VI.

It is further Ordered That, for the purpose of determining or securing compliance with this Order, Respondents shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondents, relating to any matters contained in this consent order; and

B. Upon five (5) days' notice to Respondents, and without restraint or interference from Respondents, to interview officers of employees of Respondents.

VII.

It is further Ordered That Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in Respondents such as dissolution, assignment, sale resulting in the emergence of a successor, or the creation or dissolution of subsidiaries or any other change that may affect compliance obligations arising out of the Order.

VIII.

It is further ordered That, notwithstanding any other provision of this Order, this Order shall terminate twenty (20) years from the date this Order becomes final.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted provisionally an agreement containing a proposed Consent Order from Wright Medical Technology, Inc. (''Wright''), a subsidiary of Kidd, Kamm Equity Partners, L.P. (''KKEP''), a limited partnership, KKEP's general partner, Kidd, Kamm Investments, LP (''KKI''), and KKI's general partner, Kidd, Kamm Investments, Inc. (collectively, the ''Respondents''), under which Respondents would transfer and license certain assets relating to orthopaedic finger implants as well as cease and desist from certain acts.

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested people. Comments received during this period will become part of the public record. After sixty (60) days the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed Order.

On October 17, 1994, Respondents commenced a cash tender offer to acquire substantially all of the outstanding shares of common and convertible preferred stock issued by Orthomet, Inc. (''Orthomet''). The proposed complaint alleges that the proposed acquisition, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 45 in the market for the sale of orthopaedic implants used or intended for use in the human hand approved by the United States Food and Drug Administration (''FDA'') and in the market for the research and development of such orthopaedic implants.

For the past several years, Orthomet has been the exclusive licensee of the Mayo Foundation for Medical Education and Research (''Mayo Foundation'') relating to certain orthopaedic joint implants used or intended for use in the human hand originally designed by orthopaedic surgeons working at the Mayo Foundation. During that period Orthomet worked alongside the Mayo Foundation to develop and refine the Mayo Foundation's original design with a goal towards eventual commercialization. As a result of the proposed acquisition, the exclusive license agreements between Orthomet and the Mayo Foundation relating to the orthopaedic implants, which have since been made non-exclusive, would be assigned to Wright.

The proposed Consent Order provides that within five (5) days of the Order becoming final, Respondents shall transfer to the Mayo Foundation a complete copy of all assets relating to Orthomet's business of researching and developing orthopaedic implants used or intended for use in the human hand and, where applicable, grant to the Mayo Foundation a license to such assets with full rights of sublicense in perpetuity. The proposed Consent Order is intended to free the Mayo Foundation to find another non-exclusive licensee, in addition to Wright, to develop for eventual commercialization orthopaedic implants used or intended for use in the human hand.

In the event that the Mayo Foundation has not found another non-exclusive licensee acceptable to the Commission within six (6) months of the date the proposed Consent Order becomes final, Respondents shall take whatever steps are necessary to terminate the license agreements between the Mayo Foundation and Wright relating to orthopaedic implants used or intended for use in the human hand and divest to the Mayo Foundation all assets relating to Orthomet's business of researching the developing orthopaedic implants used or intended for use in the human hand. The Mayo foundation shall then be free to license, whether exclusively or non-exclusively, any firm other than Respondents to develop for eventual commercialization orthopaedic implants used or intended for use in the human hand.

Under the provisions of the Order, Respondents are also required to provide to the Commission a report of their compliance with the transfer and divestiture provisions of the Order within sixty (60) days following the date this Order becomes final, and every sixty (60) days thereafter until Respondents have either transferred or completely divested all assets relating to Orthomet's business of researching and developing orthopaedic implants used or intended for use in the human hand. The proposed Order will also require Respondents to cease and desist for ten (10) years from acquiring, without Federal Trade Commission approval, any interest in any firm that either has received FDA approval to market orthopaedic implants used or intended for use in the human hand in the United States or has filed a 510(k) or investigational device exemption (''IDE'') application for approval from the FDA or has publicly announced its intention to do so. The proposed Order also requires the Respondents, for ten years, to seek Federal Trade Commission approval before acquiring any assets relating to market orthopaedic implants used or intended for use in the human hand for which a 510(k) or IDE application has been filed or for which the intention to file such applications has been publicly announced, or for which FDA approval has been received. Finally, in the event that Respondents are required to terminate their license agreements with the Mayo Foundation, the proposed Order will also prohibit Respondents for ten (10) years from entering into any agreement with the Mayo Foundation relating to orthopaedic implants used or intended for use in the human hand, without Federal Trade Commission approval. One year from the date the Order becomes final and annually thereafter for nine (9) years, Respondents will be required to provide

to the Commission a report of their compliance with the cease and desist provisions of the proposed Order.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 95–96 Filed 1–3–95; 8:45 am]

BILLING CODE 6750–01–M

[Dkt C–3544]

Columbia/HCA Healthcare Corporation; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order permits, among other things, the hospital company to complete its acquisition of Medical Care America, but requires it to divest the Alaska Surgery Center within twelve months to a Commission-approved entity. If the transaction is not completed in the designated time frame, the respondents are required to permit the Commission to appoint a trustee. In addition, the consent order requires the respondent, for ten years, to obtain Commission approval before acquiring an interest worth more than $1 million in any outpatient surgical services facility in Anchorage, Alaska, and before selling such an interest to any entity that operates an outpatient surgical services facility in Anchorage, Alaska.

DATES: Complaint and Order issued December 6, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Mark Horoschak, FTC/S–3115, Washington, DC 20580, (202) 326–2756.

SUPPLEMENTARY INFORMATION: On Friday, September 23, 1994, there was published in the **Federal Register**, 59 FR 48883, a proposed consent agreement with analysis In the Matter of Columbia/HCA Healthcare Corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 95–92 Filed 1–3–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 932 3357]

Abovo, Inc., et al.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Massachusetts company and its president from making false or unsubstantiated performance claims about any communication aid they offer in the future, and from making representations concerning the efficacy of their communication devices in enabling individuals with disabilities to communicate through facilitated communication, unless the respondents have competent and reliable scientific evidence to substantiate the representation.

DATES: Comments must be received on or before March 6, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Jeffrey Klurfeld or Kerry O'Brien, San Francisco Regional Office, Federal Trade Commission, 901 Market St., Suite 570, San Francisco, CA 94103, (415) 744–7920.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9 (b)(6)(ii) of the Commission's Rules of Practices (16 CFR 4.9(b)(6)(ii)).

In the Matter of: Abovo, Inc., a corporation, and Susan L. Lakso, individually and as an officer of said corporation.

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Abovo, Inc., a corporation, and Susan L. Lakso, individually and as an officer of said corporation (''proposed respondents''), and it not appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between Abovo, Inc., by its duly authorized officer, and Susan L. Lakso, individually and as an officer of said corporation, and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Abovo, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business located at Cabotville Industrial Park, 165 Front Street, 4th Floor, B Building, in the City of Chicopee, State of Massachusetts.

Proposed respondent Susan Lakso is an officer of said corporation. She formulates, directs and controls the policies, acts and practices of said corporation and her address is the same as that of said corporation.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and

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[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint.

6. This agreement contemplates that, if is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (a) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding and (b) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. Proposed respondents understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

For the purposes of this Order, the following definitions shall apply:

A. The term ''Communication Aid'' means any alphabet display chart, computer, typewriter or other device, which is created or marketed for use by persons with communication impairments, including the ''Abovo Personal Communicating Device.''

B. The term ''Facilitated Communication'' means any method or technique or process that entails an individual providing physical support to a person with a communication aid.

I

It is ordered that respondents, Abovo, Inc., a corporation, its successors and assigns, and its officers, and Susan L. Lakso, individually and as an officer and director of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of any communication aid, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, that such product enable autistic and/or mentally retarded individuals to communicate through facilitated communication.

II

It is further ordered that respondents, Abovo, Inc., a corporation, its successors and assigns, and its officers, and Susan L. Lakso, individually and as an officer and director of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of any communication aid, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that such product enables individuals with disabilities to communicate through facilitated communication, unless such representation is true and, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation. For purposes of this Order, ''competent and reliable scientific evidence'' shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

III

It is further ordered that respondents, Above, Inc., a corporation, its successors and assigns, and its officers, and Susan L. Lakso, individually and as an officer and director of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of any communication aid, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, the performance or attributes of any such product, unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence, that substantiates such representation.

IV

It is further ordered that for five (5) years after the last date of dissemination of any representation covered by this Order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

V

It is further ordered that respondents shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondent that may affect compliance obligations under this Order such as dissolution, assignment, or sale resulting in the emergence of a successor corporation(s), the creation or dissolution of subsidiaries, or any other change in the corporation(s).

VI

It is further ordered that the individual respondent shall, for a period of five (5) years after the date of service of this Order upon her, promptly notify the Commission, in writing, of her discontinuance of her present business or employment and of her affiliation with a new business or employment. For each such new affiliation, the notice shall include the name and address of the new business or employment, a statement of the nature of the new business or employment, and a description of respondent's duties and responsibilities in connection with the new business or employment.

VII

It is further ordered that the corporate respondent shall, within sixty (60) days from the date of service of this Order upon it, distribute a copy of this Order to each of its officers, agents, representatives, licensees, independent contractors, and employees involved in the preparation and placement of advertisements or promotional materials, or is in communication with customers or prospective customers, or who has any responsibilities with respect to the subject matter of this Order; and for a period of three (3) years, from the date of issuance of this Order, distribute a copy of this Order to all of respondent's future such officers, agents, representatives, licensees, independent contractors, and employees.

VIII

It is further ordered that respondents shall, within sixty (60) days from the date of service of this Order upon them, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondents Abovo, Inc., a Massachusetts corporation, and Susan L. Lakso, individually and as an officer of the corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns the advertising of the ''Abovo Personal Communicating Device'' (''Above PCD''), a communication aid for individuals with disabilities. The Commission's complaint charges that respondents' advertising contained false and unsubstantiated representations concerning the efficacy of this communication aid in enabling individuals with communication disabilities to communicate through facilitated communication. Facilitated communication is a technique that, among other things, entails an individual providing physical support to a person with a communication impairment, while that person types or points to a communication aid, such as the Abovo PCD.

Specifically, the complaint alleges that respondents falsely represented that the Abovo PCD enables autistic and mentally retarded individuals to communicate through facilitated communication. The complaint also alleges that the respondents lacked substantiation for its claim that the Abovo PCD enables individuals who are disabled as a result of apraxia, motor speech disorders, RETT Syndrome, stroke, tracheotomy, laryngeal cancer, traumatic brain injury, Alzheimer's disease, Parkinson's disease, multiple sclerosis, muscular dystrophy, and/or cerebral palsy to communicate through facilitated communication.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondents from engaging in similar acts and practices in the future.

Part I of the proposed order prohibits respondents from misrepresenting that any communication aid enables autistic or mentally retarded individuals to communicate through facilitated communication.

As fencing-in relief, Part II of the proposed order provides that, if respondents represent that a communication aid enables individuals with disabilities to communicate through facilitated communication, the representation must be true and respondents must possess competent and reliable scientific evidence that substantiates the representation. In addition, Part III of the proposed order prohibits respondents from representing the performance or attributes of a communication aid unless they possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, to substantiate the representation.

The proposed order also requires respondents to maintain materials relied upon to substantiate claims covered by the order; to provide a copy of the consent agreement to their employees involved in the preparation and placement of respondents' advertisements, or in communication with respondents' customers or prospective customers; to notify the Commission of any change in the corporate structure that might affect compliance with the order; to notify the Commission of certain changes in the business or employment of the named individual respondent; and to file one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 95–91 Filed 1–3–95; 8:45 am]

BILLING CODE 6750–01–M

[Dkt C–3545]

Chemopharm Laboratory Inc., d/b/a CP Industries; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Utah corporation that markets the ice melting product, Superior Sno-N-Ice, from making any environmental benefit claim about any product unless it possesses and relies on competent and reliable scientific evidence to substantiate the claims. In addition, the respondent is prohibited from misrepresenting the existence or contents of any test or study.

DATES: Complaint and Order issued December 6, 1994.[1]

FOR FURTHER INFORMATION CONTACT: C. Steven Baker or Mary Tortorice, Chicago Regional Office, Federal Trade Commission, 55 East Monroe St., Suite 1437, Chicago, IL 60603. (312) 353–8156.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: On Tuesday, September 27, 1994, there was published in the **Federal Register**, 59 FR 49245, a proposed consent agreement with analysis In the Matter of Chemopharm Laboratory Inc., d/b/a CP Industries, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings, and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 95–93 Filed 1–3–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 932 3356]

Louis Bass, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Wisconsin corporation, doing business as Crestwood Company, from making false or unsubstantiated performance claims about any communication aid it offers in the future, and from making representations concerning the efficacy of the communication devices in enabling individuals with disabilities to communicate through facilitated communication, unless the respondent has competent and reliable scientific evidence to substantiate the representation.

DATES: Comments must be received on or before March 6, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Jeffrey Klurfeld or Kerry O'Brien, San Francisco Regional Office, Federal Trade Commission, 901 Market St., Suite 570, San Francisco, CA. 94103. (415) 744–7920.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Louis Bass, Inc. (d/b/a Crestwood Company), a corporation, and it now appearing that Louis Bass, Inc. (d/b/a Crestwood Company), a corporation, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Louis Bass, Inc. (d/b/a Crestwood Company), by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Louis Bass, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its office and principal place of business located at 6625 North Sidney Place, in the City of Glendale, State of Wisconsin.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (a) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding and (b) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. Proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

For the purposes of this order, the following definitions shall apply:

A. The term ''Communication aid'' means any alphabet display chart, computer, typewriter or other device, which is created or marketed for use by persons with communication impairments, including the ''Crestalk'' and ''Canon Communicator.''

B. The term ''Facilitated Communication'' means any method or technique or process that entails an individual providing physical support to a person with a communication impairment, while that person types or points to a communication aid.

I.

It is ordered that respondent, Louis Bass, Inc. (d/b/a/ Crestwood Company), a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any communication aid, in or affecting commerce, as ''commerce'' as defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, that such product enables autistic individuals to communicate through facilitated communication.

II.

It is further ordered that respondent, Louis Bass, Inc. (d/b/a Crestwood Company), a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with he manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any communication aid, in or affecting commerce, as ''commerce'' as defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that such product enables individuals with disabilities to communicate through facilitated communication, unless such representation is true and, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation. For purposes of this Order, ''competent and reliable scientific evidence'' shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

III.

It is further ordered that respondent. Louis Bass, Inc. (d/b/a Crestwood Company), a corporation, its successors and assigns, and its officers agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of any communication aid, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, the performance or attributes of any such product, unless, at the time of making such representation, respondent possesses and relies upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation.

It is further ordered that for five (5) years after the last date of dissemination of any representation covered by this Order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in its possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

V.

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the respondent that may affect compliance obligations under this Order such as dissolution, assignment, or sale resulting in the emergency of a successor corporation(s), the creation or dissolution of subsidiaries, or any other change in the corporation(s).

VI.

It is further ordered that the corporate respondent shall, within sixty (60) days from the date of service of this Order upon it, distribute a copy of this Order to each of its officers, agents, representatives, licensees, independent contractors, and employees involved in the preparation and placement of advertisements or promotional materials, or is in communication with customers or prospective customers, or who has any responsibilities with respect to the subject matter of this Order; and for a period of three (3) years, from the date of issuance of this Order, distribute a copy of this Order to all of respondent's future such officers, agents, representatives, licensees, independent contractors, and employees.

VII.

It is further ordered that respondent shall, within sixty (60) days from the date of service of this Order upon it, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent Louis Bass, Inc., d/b/a Crestwood Company, a Wisconsin corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns the advertising of the ''Crestalk'' and the ''Canon Communicator,'' communication aids for individuals with disabilities. The Commission's complaint charges that respondent's advertising contained false and unsubstantiated representations concerning the efficacy of these communication aids in enabling autistic individuals to communicate through facilitated communication. Facilitated communication is a technique that, among other things, entails an individual providing physical support to a person with a communication impairment, while that person types or points to a communication aid, such as the Crestalk or the Canon Communicator.

Specifically, the complaint alleges that respondent falsely represented that the Crestalk and the Canon

Communicator enable autistic individuals to communicate through facilitated communication. The complaint also alleges that respondent lacked substantiation for these claims.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondent from engaging in similar acts and practices in the future.

Part I of the proposed order prohibits respondent from misrepresenting that any communication aid enable autistic individuals to communicate through facilitated communication.

As fencing-in relief, Part II of the proposed order provides that, if the respondent represents that a communication aid enables individuals with disabilities to communicate through facilitated communication, the representation must be true and respondent must possess competent and reliable scientific evidence that substantiates the representation. In addition, Part II of the proposed order prohibits respondent from representing the performance or attributes of a communication aid unless it possesses and relies upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, to substantiate the representation.

The proposed order also requires respondent to maintain materials relied upon to substantiate claims covered by the order; to provide a copy of the consent agreement to its employees involved in the preparation and placement of respondent's advertisements, or in communication with respondent's customers or prospective customers; to notify the Commission of any change in the corporate structure that might affect compliance with the order; and to file one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 95–94 Filed 1–3–95: 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3546]

Rite Aid Corporation; Prohibited Trade Practices, and Affirmative Correction Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, Rite Aid, in conjunction with its acquisition of LaVerdiere's Enterprises, Inc., to divest the pharmacy assets either in its own Rite Aid stores, or in the LaVerdiere's stores it will acquire, in three specified cities, to a Commission-approved entity within 12 months of the order. If the divestitures are not accomplished within the time-frame, the Commission can appoint a trustee to accomplish them. In addition, the consent order requires the respondent, for a period of ten years, to obtain Commission approval before acquiring any assets or stocks in any entity engaged in the business of selling prescription drugs at retail outlets in the three designated cities.

DATES: Complaint and Order issued December 15, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Ann Malester or Catharine Moscatelli, FTC/S–2224, Washington, D.C. 20580. (202) 326–2682 or 326–2749.

SUPPLEMENTARY INFORMATION: On Monday, September 12, 1994, there was published in the **Federal Register**, 59 FR 46843, a proposed consent agreement with analysis In the Matter of Rite Aid Corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 95–95 Filed 1–3–95; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Invention; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing in the U.S. (and in foreign markets) in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development.

A ''Method And System For Measuring The Diffusion Tensor And For Diffusion Tensor Imaging'' was developed by P.J. Basser and J.H. Mattiello of the National Center for Research Resources and D. LeBinah of the Warren Grant Magnuson Clinical Center. The National Institutes of Health is the assignee of patent rights to this technology, which are covered under U.S. Patent Application Number 08/103,009, filed August 6, 1993.

This application describes a new modality of nuclear magnetic resonance imaging. Specifically, this is a method and system for measuring the diffusion tensor and for generating images related to the diffusion tensor. Several advantages can be achieved with this method and system for measuring the effective diffusion tensor for spin-labeled nuclei. The diffusion tensor may be used for generating a diffusion ellipsoid for the measured region. Such techniques may be used for imaging fiber orientation in tissue. Measurements in diffusion tensor may also be used for aligning and calibrating the magnetic field gradients of the NMR apparatus itself.

ADDRESSES: Licensing information and copies of the U.S. patent application may be obtained by writing to J.E. Fahner-Vihtelic at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804 (telephone 301/496–7735 ext. 285; fax 301/402–0220). A signed Confidential Disclosure Agreement will be required to receive copies of the patent application.

Dated: December 20, 1994.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 95–46 Filed 1–3–95; 8:45 am]

BILLING CODE 4140–01–P

Division of Research Grants; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meeting:

Purpose/Agenda: To review individual grant applications
Name of SEP: Behavioral and Neurosciences
Date: January 11, 1995
Time: 1:00 p.m.
Place: NIH, Westwood Building, Room 232, Bethesda, MD 20892, Telephone Conference
Contact Person: Dr. Kenneth Newrock, Scientific Review Administrator, 5333 Westbard Ave., Room 232, (301) 594–7123

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 23, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–45 Filed 1–3–95; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Meetings of the National Cancer Advisory Board and Its Subcommittees

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of the National Cancer Advisory Board, National Cancer Institute, and its Subcommittees on January 9–11, 1995 at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. Except as noted below, the meetings of the Board and its Subcommittees will be open to the public to discuss issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

A portion of the Board meeting will be closed to the public in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning the individuals associated with the applications or programs, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Office, National Cancer Institute, National Institutes of Health, Executive Plaza North, Room 630, 9000 Rockville Pike, Bethesda, Maryland 20892 (301/496–5708), will provide summaries of the meetings and rosters of the Board members, upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Carole Frank, Committee Management Specialist, at 301/496–5708 in advance of the meeting.

Name of Committee: Subcommittee for Special Priorities
Contact Person: Ms. Iris Schneider, Building 31, Room 11A48, Bethesda, MD 20892; (301) 496–5534
Date of Meeting: January 9, 1995
Place of Meeting: Embassy Conference Room, Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD
Open: 7:30 pm to 9:30 pm
Agenda: To discuss issues related to special priorities.

Name of Committee: National Cancer Advisory Board
Contact Person: Dr. Marvin R. Kalt, Executive Plaza North, Room 600A, Bethesda, MD 20892; (301) 496–5147
Dates of Meeting: January 10–11, 1995
Place of Meeting: Building 31C, Conference Room 10
Open: January 10—8 am to approximately 12 noon
Agenda: Report on activities of the President's Cancer Panel; the Director's Report on the National Cancer Institute; and Scientific Presentations
Closed: January 10—3 pm to recess
Agenda: For review and discussion of individual grant applications
Open: January 11—8 am to adjournment
Agenda: Policy and Scientific Presentations, Subcommittee Reports; and New Business.

Name of Committee: Subcommittee on Planning and Budget
Contact Person: Ms. Cherie Nichols, Building 31, Room 11A19, Bethesda, MD 20892; (301) 496–5515
Date of Meeting: January 10, 1995
Place of Meeting: Building 31C, Conference Room 8
Open: 12 pm to 2 pm
Agenda: To discuss the NCI budget and various planning issues.

Name of Committee: Subcommittee on Information and Cancer Control
Contact Person: Mr. Paul Van Nevel, Building 31, Room 10A31, Bethesda, MD 10892; (301) 496–6631
Date of Meeting: January 10, 1995
Place of Meeting: Building 31C, Conference Room 9
Open: 1 pm to 3 pm
Agenda: To discuss cancer control issues.

Name of Committee: Subcommittee on Clinical Investigations
Contact Person: Dr. Bruce Chabner, Building 31, Room 3A52, Bethesda, MD 20892; (301) 496–4291
Date of Meeting: January 10, 1995
Place of Meeting: Building 31C, Conference Room 8
Open: 2 pm to 3 pm
Agenda: To discuss clinical investigational issues.

Name of Committee: Subcommittee on Cancer Centers
Contact Person: Dr. Brian Kimes, Executive Plaza North, Room 300, Bethesda, MD 20892; (301) 496–8537
Date of Meeting: January 10, 1995
Place of Meeting: Building 31C, Conference Room 9
Open: Immediately following the recess of the NCAB's closed session
Agenda: To discuss the cancer centers.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: December 27, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–42 Filed 1–3–95; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of the National Cancer Institute for January and February 1995.

These meetings will be open to the public to discuss administrative details or other issues relating to committee activities as indicated in the notice and for the review of concepts being considered for funding. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in secs. 552(c)(4) and 552(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications and

contract proposals and for the critique and evaluation of extramural/intramural programmatic and personnel policies, including consideration of personnel qualifications and performance and the competence of individual investigators. These applications and proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Carole Frank, the Committee Management Officer, National Cancer Institute, Executive Plaza North, Room 630E, 6130 Executive Blvd MSC 7405, Bethesda, Maryland 20892–7405, (301–496–5708) will provide a summary of the meetings and the roster of committee members, upon request.

For other information pertaining to the meetings or individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, contact the contact person indicated below.

Committee Name: Board of Scientific Counselors, Division of Cancer Prevention and Control
Contact Person: Ms. Linda M. Bremerman, Executive Plaza North, Rm 232, Telephone: (301) 496–8526
Date of Meeting: January 19–20, 1995
Place of Meeting: Building 31, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892
Open: January 19, 1995, 8:30 am to 12 pm, January 20, 10:15 am to adjournment
Agenda: Review progress of programs within the Division and review of concepts being considered for funding.
Closed: January 19, 1995, 3:15 pm to 5 pm
Agenda: Extramural/Intramural programmatic and personnel policies of a sensitive nature and consideration of personnel qualifications and performance and the competence of individual investigators.
Place of Meeting: Building 31, Conference Room 9, 9000 Rockville Pike, Bethesda, MD 20892
Open: January 19, 1995, 1 pm to 3 pm
Agenda: Discuss current and future programs of the subcommittee and review of concepts being considered for funding.

Committee Name: Biometry and Epidemiology Contract Review Committee
Contact Person: Dr. Harvey P. Stein, Room 601c, Executive Plaza North, Telephone: (301) 496–7030
Date of Meeting: February 3, 1995
Place of Meeting: Conference Room G, 6130 Executive Boulevard, Rockville, MD 20852
Closed: February 3, 1995, 9 am to adjournment
Agenda: Review, discussion and evaluation of individual contract proposals.

Committee Name: Subcommittee A of the Cancer Research Manpower and Education Review Committee
Contact Person: Dr. Mary Bell, Room 611A, Executive Plaza North, Telephone: (301) 496–7978
Date of Meeting: February 14–17, 1995
Place of Meeting: The Holiday Inn, 2101 Wisconsin Avenue, NW., Washington, DC 20007
Closed:
February 14, 1995 7:30 pm to recess
February 15, 1995 8 am to recess
February 16, 1995 8 am to recess
February 17, 1995 8 am to adjournment
Agenda: Review, discussion and evaluation of individual grant applications.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: December 27, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–43 Filed 1–3–95; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meetings:

Name of SEP: Innovative Ventricular Assist System (IVAS)
Date: January 18–19, 1995
Time: 7:30 p.m.
Place: Residence Inn, Bethesda, Maryland
Contact Person: Carl A. Ohata, Ph.D., 5333 Westbard Avenue, Room 5A09, Bethesda, Maryland 20892 (301) 594–7483
Purpose/Agenda: To evaluate and review contract proposals.

Name of SEP: Clinical Center for Etiology of Sarcoidosis: A Case Control Study—Coordinating Center
Date: January 27, 1995
Time: 12:00 p.m.
Place: Holiday Inn, Chevy Chase, Maryland
Contact Person: S. Charles Selden, Ph.D., 5333 Westbard Avenue, Room 552, Bethesda, Maryland 20892 (301) 594–7476
Purpose/Agenda: To evaluate and review contract proposals.

These meetings will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838 Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: December 23, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–44 Filed 1–3–95; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Statement of Organizations, Functions, and Delegations of Authority; Office of the Assistant Secretary for Health

Part H, Public Health Service (PHS), Chapter HA (Office of the Assistant Secretary for Health), of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health Services (DHHS) (42 FR 61318, December 2, 1977, as amended most recently at 59 FR 52553–52554, October, 18, 1994) is amended to reflect changes in reporting relationships in the Office of the Assistant Secretary for Health.

Office of the Assistant Secretary for Health

Under *Chapter HA, Office of the Assistant Secretary for Health, Section HA–10, Organization,* delete the list and insert the following:

1. Office of Health Communications (HAB)
2. President's Council on Physical Fitness and Sports (HAC)
3. Office of Research Integrity (HAG)
4. National AIDS Program Office (HAA)
5. Office of Health Legislation (HAJ)
6. Office of Equal Employment Opportunity (HAK)
7. Office of International and Refugee Health (HAL)
8. Office of Minority Health (HAM)
9. Office of the Surgeon General (HAN)

10. Office of Emergency Preparedness (HAP)
11. Office of Management (HAU)
12. Office of Disease Prevention and Health Promotion and Health Planning and Evaluation (HAV)
13. Office on Women's Health (HAW)
14. National Vaccine Program Office (HA2)
15. Office of Population Affairs (HA5)
16. PHS Executive Secretariat (HA6)
17. Office of Intergovernmental Affairs (HA7)

Under *Chapter HA, Section HA–20, Functions,* in the statement for the *Office of Communications (HAB),* change the title to *Office of Health Communications (HAB),* delete the first sentence and insert the following:

The Office is under the direction of the Deputy Assistant Secretary for Health (Communications) who advises the Assistant Secretary for Health, through the Principal Deputy Assistant Secretary for Health, on a PHS-wide strategic communications program.

Following the title *President's Council on Physical Fitness and Sports (HAC),* insert a new first sentence, as follows:

The President's Council on Physical Fitness and Sports is directed by the Executive Director who reports to the Principal Deputy Assistant Secretary for Health.

Following the title *Office of Equal Employment Opportunity (HAK),* delete the first paragraph and insert the following:

The Director, Office of Equal Employment Opportunity (OEEO), reports to the Principal Deputy Assistant Secretary for Health on EEO policy and on operational matters to the Deputy Assistant Secretary for Health (Management and Budget), who serves as the Director of the PHS Equal Employment Opportunity Program and as the principal advisor on all PHS equal employment matters. The Director, OEEO, serves as Deputy Director of the PHS Equal Employment Opportunity Program to provide functional supervision throughout PHS and to direct OEEO activities.

In the statement for the *Office of Minority Health (HAM),* delete the first sentence and insert the following:

The Deputy Assistant Secretary for Minority Health serves as the Director of the Office of Minority Health and advises the Assistant Secretary for Health, through the Principal Deputy Assistant Secretary for Health, about health program activities that address minority populations, develops policies for the improvement of the health status of minority populations, and coordinates all PHS minority health activities.

In the statement for the *Office of Emergency Preparedness (HAP),* delete the first phrase and insert the following:

The Director of the Office of Emergency Preparedness: (1) Advises the Assistant Secretary for Health, through the Principal Deputy Assistant Secretary for Health, on emergency preparedness to:

Following the statement for the *Division of Payment Management (HAU45),* add the following:

Office of Disease Prevention and Health Promotion and Health Planning and Evaluation (HAV). The Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion and Health Planning and Evaluation) serves as the Director of the Office and advises the Assistant Secretary for Health, through the Principal Deputy Assistant Secretary for Health, on health policies, procedures, and activities which relate to disease prevention, health promotion, preventive health services, health information and education, and national health planning and evaluation. The Office provides a program of leadership, coordination and liaison between PHS and other Federal agencies, national non-Federal organizations, State and local agencies and private sector organizations that have roles in disease prevention, health promotion and national health planning. The Office coordinates the development of national health policy, plans, legislative proposals, regulations, and the conduct of health policy analyses and evaluations.

In the statement for the *Office on Women's Health (HAW),* delete the first sentence and insert a new sentence, as follows:

The Deputy Assistant Secretary for Women's Health, who reports to the Principal Deputy Assistant Secretary for Health, is Director of the Office on Women's Health and serves as advisor on scientific, legal, ethical, and policy issues relating to women's health.

In the statement for the *National Vaccine Program Office (HA2),* delete the first sentence and insert the following:

The Deputy Director of the National Vaccine Program (NVP) serves as the Director, National Vaccine Program Office, and reports to the Assistance Secretary for Health regarding NVP activities and to the Principal Deputy Assistant Secretary for Health on operational and administrative matters.

Following the statement for the *National Vaccine Program Office (HA2),* delete the title and statement in their entirety for the *Senior Advisor for Environmental Affairs (HA3).*

In the statement for the *Office of Population Affairs (HA5)* delete the first paragraph and insert the following:

The Office is under the direction of the Deputy Assistant Secretary for Population Affairs who advises the Assistant Secretary for Health regarding the mandated provisions of Title X, Population Research and Voluntary Family Planning Programs; and Title XX, Adolescent Family Life Demonstration Projects and provisions of Title XVII, Office of Adolescent Health of the Public Health Service Act; and who reports to the Principal Deputy Assistant Secretary for Health concerning other operational and administrative matters.

Following the title *PHS Executive Secretariat (HA6),* insert a new first sentence, as follows:

The Director of the PHS Executive Secretariat reports to the Principal Deputy Assistant Secretary for Health.

In the statement for the *Office of Intergovernmental Affairs (HA7),* delete the beginning phrase and insert the following:

The Director of the Office of Intergovernmental Affairs reports to the Principal Deputy Assistant Secretary for Health. The Office:

After the statement for the Office of Intergovernmental Affairs (HA7), delete the titles and statements in their entirety for the *Office of Disease Prevention and Health Promotion (HA8)* and the *Office of Health Planning and Evaluation (HA9).*

Public Health Service (PHS) Regional Offices

Under *Chapter HD, Section HD–20 Functions,* following the title *Public Health Service (PHS) Regional Office (HD1–HDX),* delete the first sentence and insert the following:

The Public Health Service (PHS) Regional Offices are headed by Regional Health Administrators (RHA), who report to the Principal Deputy Assistant Secretary for Health and who serve as regional PHS representatives. The RHA directs and administers Regional Office activities and is responsible for integrating health and medical expertise with regional program efforts.

Office of the Assistant Secretary for Health

Under *Chapter HD, Section HD–30, Delegations of Authority,* add the following:

All delegations and redelegations of authority to officers and employees of the OASH which were in effect immediately prior to the effective date of this reorganization will be continued in effect in them or their successors,

pending further redelegation, provided they are consistent with this reorganization.

Donna E. Shalala,

Secretary.

[FR Doc. 95–114 Filed 1–3–95; 8:45 am]

BILLING CODE 4160–17–M

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, Room 13A–54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are *not* to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACCU–LAB, Inc., 405 Alderson St., Schofield, WI 54476, 800–627–8200 (formerly: Alpha Medical Laboratory, Inc., Employee Health Assurance Group, ExpressLab, Inc.)

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Rd., Suite 21, Nashville, TN 37211, 615–331–5300

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931/205–263–5745

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 22021, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–227–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Bayshore Clinical Laboratory, 4555 W. Schroeder Dr., Brown Deer, WI 53223, 414–355–4444/800–877–7016

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5810

Center for Laboratory Services, a Division of LabOne, Inc., 8915 Lenexa Dr., Overland Park, Kansas 66214, 913–888–3927

Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310–215–6020

Clinical Reference Lab, 11850 West 85th St., Lenexa, KS 66214, 800–445–6917

Cox Medical Centers, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–836–3093

Damon/MetPath, 8300 Esters Blvd., Suite 900, Irving, TX 75063, 214–929–0535 (formerly: Damon Clinical Laboratories)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38–H, Great Lakes, IL 60088–5223, 708–688–2045/708–688–4171

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468

Drug Labs of Texas, 15201 I–10 East, Suite 125, Channelview, TX 77530, 713–457–3784

DrugProof, Division of Laboratory of Pathology of Seattle, Inc., 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 800–898–0180/206–386–2672 (formerly: Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

Eagle Forensic Laboratory, Inc., 950 N. Federal Highway, Suite 308, Pompano Beach, FL 33062, 305–946–4324

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267

Harrison Laboratories, Inc., 9930 W. Highway 80, Midland, TX 79706, 800–725–3784/915–563–3300 (formerly: Harrison & Associates Forensic Laboratories)

HealthCare/MetPath, 24451 Telegraph Rd., Southfield, MI 48034, Inside MI: 800–328–4142 / Outside MI: 800–225–9414 (formerly: HealthCare/Preferred Laboratories)

Holmes Regional Medical Center Toxicology Laboratory, 5200 Babcock St., N.E., Suite 107, Palm Bay, FL 32905, 407–726–9920,

Jewish Hospital of Cincinnati, Inc., 3200 Burnet Ave., Cincinnati, OH 45229, 513–569–2051

Laboratory Specialists, Inc., 113 Jarrell Dr., Belle Chasse, LA 70037, 504–392–7961

Marshfield Laboratories, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–222–5835

Med-Chek/Damon, 4900 Perry Hwy., Pittsburgh, PA 15229, 412–931–7200 (formerly: Med-Chek Laboratories, Inc.)

MedExpress/National Laboratory Center, 4022 Willow Lake Blvd., Memphis, TN 38175, 901–795–1515

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43699–0008, 419–381–5213

Medlab Clinical Testing, Inc., 212 Cherry Lane, New Castle, DE 19720, 302–655–5227

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 800–832–3244/612–636–7466

Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587

Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Ave., Peoria, IL 61636, 800–752–1835/309–671–5199

MetPath, Inc., 1355 Mittel Blvd., Wood Dale, IL 60191, 708–595–3888

MetPath, Inc., One Malcolm Ave., Teterboro, NJ 07608, 201–393–5000

Metropolitan Reference Laboratories, Inc., 2320 Schuetz Rd., St. Louis, MO 63146, 800–288–7293

National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485 (formerly: Maryland Medical Laboratory, Inc.)

National Health Laboratories Incorporated, 2540 Empire Dr., Winston-Salem, NC 27103–6710, Outside NC: 919–760–4620/800–334–8627 / Inside NC: 800–642–0894

National Health Laboratories Incorporated, d.b.a. National Reference Laboratory,

Substance Abuse Division, 1400 Donelson Pike, Suite A–15, Nashville, TN 37217, 615–360–3992/800–800–4522
National Health Laboratories Incorporated, 13900 Park Center Rd., Herndon, VA 22071, 703–742–3100
National Psychopharmacology Laboratory, Inc., 9320 Park W. Blvd., Knoxville, TN 37923, 800–251–9492
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 805–322–4250
Nichols Institute Substance Abuse Testing (NISAT), 7470–A Mission Valley Rd., San Diego, CA 92108–4406, 800–446–4728/619–686–3200 (formerly: Nichols Institute)
Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361
Occupational Toxicology Laboratories, Inc., 2002 20th St., Suite 204A, Kenner, LA 70062, 504–465–0751
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 503–687–2134
Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400
PDLA, Inc. (Princeton), 100 Corporate Court, So. Plainfield, NJ 07080, 908–769–8500/800–237–7352
PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 415–328–6200/800–446–5177
PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Fort Worth, TX 76118, 817–595–0294 (formerly: Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–338–4070/800–821–3627 (formerly: Physicians Reference Laboratory Toxicology Laboratory)
Poisonlab, Inc., 7272 Clairemont Mesa Rd., San Diego, CA 92111, 619–279–2600/800–882–7272
Puckett Laboratory, 4200 Mamie St., Hattiesburgh, MS 39402, 601–264–3856/800–844–8378
Regional Toxicology Services, 15305 N.E. 40th St., Redmond, WA 98052, 206–882–3400
Roche Biomedical Laboratories, Inc., 1120 Stateline Rd., Southaven, MS 38671, 601–342–1286
Roche Biomedical Laboratories, Inc., 69 First Ave., Raritan, NJ 08869, 800–437–4986
Roche CompuChem Laboratories, Inc., A Member of the Roche Group, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263/800–833–3984 (Formerly: CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory)
Roche CompuChem Laboratories, Inc., Special Division, A Member of the Roche Group, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263 (Formerly: CompuChem Laboratories, Inc.—Special Division)
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130
Scott & White Drug Testing Laboratory, 600 S. 25th St., Temple, TX 76504, 800–749–3788
S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–848–8800
Sierra Nevada Laboratories, Inc., 888 Willow St., Reno, NV 89502, 800–648–5472
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91045, 818–376–2520
SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 32748, 904–787–9006 (formerly: Doctors & Physicians Laboratory)
SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 404–934–9205 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 708–885–2010 (formerly: International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 800–523–5447 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301 (formerly: SmithKline Bio-Science Laboratories)
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Rd., Suite 6, Tempe, AZ 85283, 602–438–8507
St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee St., Oklahoma City, OK 73102, 405–272–7052
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 314–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260
TOXWORX Laboratories, Inc., 6160 Variel Ave., Woodland Hills, CA 91367, 818–226–4373 (formerly: Laboratory Specialists, Inc.; Abused Drug Laboratories; MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.)
UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 800–492–0800/818–343–8191 (formerly: MetWest-BPL Toxicology Laboratory)

The following laboratory withdrew from the Program on October 14, 1994:

Dept. of the Navy, Navy Drug Screening Laboratory, Norfolk, VA, 1321 Gilbert St., Norfolk, VA 23511–2597, 804–444–8089 ext. 317

The following laboratory withdrew from the Program on December 14, 1994:

National Drug Assessment Corporation, 5419 South Western, Oklahoma City, OK 73109, 800–749–3784 (formerly: Med Arts Lab)

Richard Kopanda,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

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BILLING CODE 4160–20–U

Fiscal Year (FY) 1995 Funding Opportunities for Grants From the Center for Substance Abuse Treatment

AGENCY: Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Notice of funding availability.

SUMMARY: The Center for Substance Abuse Treatment (CSAT), SAMHSA, announces that FY 1995 funds are available for grants for the following activities. These activities are discussed in more detail under Section 4 of this notice.

Activity	Application deadline	Estimated funds available (thousands)	Estimated No. of awards	Project period
Substance abuse	01–10–95	$400	8	1 year.
Conference Grants	05–10–95 09–10–95			
Comprehensive HIV/AIDS Outreach Services	04–27–95	7,500	20–25	2–3 years.
Residential women and children	03–21–95	10,000	10–14	Up to 5 years.
Pregnant/post-partum women	03–21–95	4,000	5–6	Up to 5 years.

The actual amount available for awards and their allocation may vary, depending on unanticipated program requirements and the volume and quality of applications. Awards are made for grant periods which generally run from 1 up to 5 years in duration. FY 1995 funds for substance abuse treatment services and demonstration programs are appropriated by the Congress under Public Law 103–333. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published

in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The Center's treatment improvement services and demonstration activities address issues related to Healthy People 2000 objectives: Promoting the physical, social, psychological and economic well-being of individuals recovering from alcohol and other drug dependencies; enhancing the physical, emotional, social and cognitive development of children exposed to alcohol and other drugs of abuse; promoting safe and healthy pregnancies and perinatal outcome; reducing the infant mortality rate and increasing the proportion of infants who receive recommended primary health care services; promoting outreach to drug abusers, IV drug users using uncontaminated paraphernalia, testing for HIV infection; increasing access to treatment programs; and promoting the collaboration of primary care, mental health and substance abuse treatment.

Additional themes include fostering closer coordination between the criminal justice and public health systems to collaboratively address issues related to alcohol and other drug-related crime and violence; managing health care for community-based offender populations and designing cost-effective programming that is responsive to today's health care issues.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone: 202–783–3238).

GENERAL INSTRUCTIONS: Applicants for grants must use application form PHS 5161–1 (Rev. 7/92). The Application Kit contains the PHS 5161–1, Standard Form 424 (Face Page) and complete instructions for preparing and submitting applications. The Kit may be obtained from: National Clearinghouse for Alcohol and Drug Information, P.O. Box 2345, Rockville, MD 20847–2345, 1–800–729–6686.

When requesting an Application Kit, the applicant must specify the particular activity(ies) for which detailed information is desired. This is to ensure receipt of all necessary forms and information, including any specific program review and award criteria.

APPLICATION SUBMISSION: Applications must be submitted to: Center for Substance Abuse Treatment Programs, Division of Research Grants, NIH, Westwood Building, Room 240, 5333 Westbard Avenue, Bethesda, Maryland 20892*

(*If an overnight carrier or express mail is used, the Zip Code is 20816.)

APPLICATION DEADLINES: The deadlines for receipt of applications are listed in the table above. Please note that the deadlines differ for the individual categories of grants.

Competing applications must be received by the indicated receipt date(s) to be accepted for review. An application received after the deadline may be acceptable if it carries a legible proof-of-mailing date assigned by the carrier and that date is not later than one week prior to the deadline date. Private metered postmarks are not acceptable as proof of timely mailing. If the receipt date falls on a weekend, it will be extended to Monday; if the date falls on a national holiday, it will be extended to the following work day.

Applications received after the receipt date(s) or those sent to an address other than the address specified above will be returned to the applicant without review.

FOR FURTHER INFORMATION CONTACT: Requests for activity-specific technical information should be directed to the contact person identified for each activity covered by this notice (see Section 4).

Requests for information concerning business management issues should be directed to: Ms. Mabel Lam, Grants Management Office, Center for Substance Abuse Treatment, Rockwall II Building, 6th Floor, 5600 Fishers Lane, Rockville, Maryland 20857, 1–301–443–9665.

SUPPLEMENTARY INFORMATION: To facilitate the use of this notice of funding availability, information in this section has been organized, as outlined in the Table of Contents below. For each activity, information is presented under the following headings:

- Application Deadline
- Purpose
- Priorities
- Eligible Applicants
- Grants/Amounts
- Catalog of Federal Domestic Assistance Number
- Program Contact

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1. Program Background and Objectives

SAMHSA's CSAT has been given a statutory mandate to expand the availability of effective treatment and recovery services for alcohol and other drug problems in the United States. CSAT utilizes a variety of grant, training, and technical assistance efforts to accomplish this mission through expanding human resources, improving the capabilities of the State and sub-State management infrastructure, and developing and promoting cost-effective approaches for treatment and recovery services.

CSAT seeks to expand the availability and improve the quality of services aimed at addressing the special needs of populations that are especially vulnerable to addictive disorders, as well as to expand the volume of effective treatment and recovery services in targeted geographic areas where the demand for services far exceeds the existing capacity. The Center also works to upgrade the quality and effectiveness of treatment and recovery services through improved coordination among treatment providers, recovery programs, primary health care entities, mental health care providers, human service agencies, housing authorities, educational and vocational services, the criminal justice system, and a variety of related services. Further, CSAT seeks to upgrade the financial and physical condition of publicly funded addiction treatment and recovery programs.

2. Special Concerns

SAMHSA's CSAT will address a number of special concerns in FY 1995. Particular emphasis will be placed on comprehensive approaches to treatment, and coordination with other Federal and

non-Federal programs. Special emphasis will be given to providing assistance for racial and ethnic minority populations; adolescents; residents of public housing and the homeless; women, their infants and children; rural populations; migrant workers; substance abusers involved in the criminal justice system; the disabled; those at risk for HIV/AIDS, tuberculosis(TB), sexually transmitted diseases (STDs), and other infectious diseases; and those with co-occurring mental disorders.

3. Criteria for Review and Funding

Competing applications requesting funding under the specific project activities in Section 4 will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures.

Applications that are accepted for review will be assigned to an Initial Review Group (IRG) composed primarily of non-Federal experts. Applications will be recommended for approval or disapproval on the basis of technical merit. Applications recommended for approval will be assigned scores according to level of merit.

Notification of the IRG's recommendation will be sent to the applicant upon completion of the initial review. In addition, the IRG recommendations on technical merit of applications over $50,000 will undergo a second level of review by the CSAT National Advisory Council, whose review may be based on policy considerations, as well as technical merit.

3.1 General Review Criteria

As published in the **Federal Register** on July 2, 1993 (Vol. 58, No. 126), SAMHSA's ''Peer Review and Advisory Council Review of Grant and Cooperative Agreement Applications and Contract Proposals,'' peer review groups will take into account, among other factors as may be specified in the application guidance materials, the following general criteria:

- Potential significance of the proposed project;
- Appropriateness of the applicant's proposed objectives to the goals of the specific program;
- Adequacy and appropriateness of the proposed approach and activities;
- Adequacy of available resources, such as facilities and equipment;
- Qualifications and experience of the applicant organization, the project director, and other key personnel; and
- Reasonableness of the proposed budget.

3.2 Funding Criteria for Approved Applications

Applications recommended for approval by the peer review group and the CSAT National Advisory Council (if applicable) will be considered for funding on the basis of their overall technical merit as determined through the review process.

Other funding criteria will include;

- Availability of funds.
- Geographic distribution.

Additional funding criteria specific to the programmatic activity may be included in the application guidance materials.

4. Special FY 1995 Substance Abuse Treatment Activities

Project activities are grouped in this notice under one section: Grants.

4.1 Grants

Four major activities for CSAT grant programs are discussed below.

4.1.1 Substance Abuse Treatment Conference Grants.

- Application Deadlines: January 10, May 10, September 10, 1995.
- Purpose: To provide support for domestic conferences relating to alcohol and other substance abuse treatment, including conferences for the purposes of coordinating, exchanging and disseminating information to the services community and the general public; and for the development of strategies for improving substance abuse treatment.
- Priorities: Consumer and treatment services-oriented constituency groups, including those representing State and local governments, professional associations, voluntary organizations, and self-help groups that share a mutual interest with CSAT.
- Eligible Applicants: Public and non-profit private entities.
- Grants/Amounts: Approximately eight (8) awards. Individual awards may not exceed $50,000 or 50% of the total costs of the conference, whichever is less.
- Catalog of Federal Domestic Assistance Number: 93.218.
- Program Contact: Nancy S. Kilpatrick, M.A., Office of Scientific Analysis and Evaluation, Center for Substance Abuse Treatment, Rockwall II Building, 6th Floor, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–8831.

4.1.2 Community Based Comprehensive HIV/STD/TB Outreach Services for High Risk Substance Abusers Demonstration Program

- Application Deadline: April 27, 1995.
- Purpose: To support community-based comprehensive HIV/STD/TB outreach intervention services for chronic, hardcore substance abusers and their sex and/or needle sharing partners. Projects will demonstrate: (1) The efficacy of outreach as an intervention for facilitating access to substance abuse treatment, and (2) that comprehensive outreach interventions affect behavior changes in the targeted populations.
- Priorities: Extent to which outreach intervention services are directed towards chronic, hardcore substance abusers and their sex/needle sharing partner(s). Chronic, hardcore substance abusers are defined as those individuals who have severe drug problems, frequently inject heroin and/or cocaine, and/or who are polydrug users. Emphasis is expected on providing outreach services to the following subpopulations: racial/ethnic minorities (includes African Americans, Latinos/Hispanics, Asian/Pacific Islanders, American Indians, Alaska Natives, and Native Hawaiians); women; residents of public housing projects; and homeless individuals.
- Eligible Applicants: Public and private non-profit entities must submit their applications through the Single State Agency (SSA) in their State. Indian Tribal authorities constitute an exception and may apply directly to CSAT without going through an SSA. Public and private non-profit providers presently operating in the third and final year of grants awarded in 1992 under the former Office of Treatment Improvement's demonstration program for AIDS Outreach for Substance Abusers are eligible to apply for competing renewals under this announcement for up to two additional years of support.
- Grants/Amounts: 20–25 awards, with individual award amounts varying from $275,000-$375,000. CSAT expects to set aside no more than 50% of available funds for competing renewals.
- Catalog of Federal Domestic Assistance Number: 93.949
- Program Contact: Wendell McConnell, M.D., Chief, HIV/Linkage Branch, Center for Substance Abuse Treatment, Rockwall II Building, 6th Floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–8160.

Note: Complete guidelines for preparing and submitting an application under this activity will be available on January 18, 1995.

4.1.3 Demonstration Grant Program for Residential Treatment for Women and their Children

• Application Deadline: March 21, 1995.

• Purpose: To improve the service, access to and/or delivery system for substance abusing, parenting women and their children in comprehensive residential treatment programs that have potential for becoming models; to provide findings that will support or modify existing information on the potential generalizability to appropriate populations; and to develop knowledge that can be transferred. Projects will demonstrate that substance abuse treatment services, delivered in residential settings coupled with primary health, mental health, and social services can improve overall treatment outcomes for women/children by decreasing alcohol and other drug use; improving physical health, and reducing client morbidity/mortality; improving emotional/psychological health, and family/social functioning; enhancing socio-economic well-being of women/family unit services; decreasing involvement in crime, inter-personal violence, child abuse and neglect, and sexual abuse; and enhancing cognitive/educational development of children.

• Priorities: Racial/ethnic minority women; in particular, Native American/Alaska Native and Hispanic women. Other groups include women who have been physically or sexually abused; women and children involved, or at risk for involvement, with the foster care/child welfare system; adolescent and adult women in the Criminal Justice (CJ) system; women with co-occurring disorders; and women who are cognitively or physically impaired. Significant others/extended family members when determined in the best interest of the women and children.

• Eligible Applicants: Public and private non-profit treatment providers must submit their applications through the Single State Agency (SSA) in their State. Indian Tribal authorities constitute an exception and may apply directly to CSAT without going through an SSA.

• Grants/Amounts: 10–14 awards, with individual award amounts varying from $600,000-$900,000.

• Catalog of Federal Domestic Assistance Number: 93.102

• Program Contact: Maggie Wilmore, Division of Clinical Programs, Center for Substance Abuse Treatment, Rockwall II Building, 6th Floor, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–8160.

4.1.4 Services Grant Program for Residential Treatment for Pregnant and Postpartum Women

• Application Deadline: March 21, 1995.

• Purpose: To expand availability of comprehensive, quality residential treatment for pregnant/postpartum women and their infants who suffer from alcohol and other drug abuse problems. Funds will support alcohol and other drug abuse treatment services to be delivered in residential settings, coupled with primary health, mental health and social services, that strive to: decrease alcohol and other drug (AOD) use; improve physical health, promote safe and healthy pregnancies/perinatal outcome, and reduce client morbidity and mortality; improve psychological and emotional health, and family social functioning; enhance socio-economic well-being of women/family unit by improving employment status, accessibility to housing, and human services; decrease interpersonal violence, child abuse and neglect, and sexual abuse; and enhance the cognitive/educational development of infants/children with intra-uterine exposure to AOD use.

• Priorities: Racial/ethnic minority women; in particular, Native American/Alaska Native and Hispanic women. Other groups include women who have been physically or sexually abused; women and children involved, or at risk for involvement, with the foster care/child welfare system; adolescent and adult women in the Criminal Justice (CJ) system; women with co-occurring disorders; and those with cognitive or physical impairment. Significant others/extended family members when determined in the best interest of the women and children.

• Eligible Applicants: Public and private non-profit treatment providers must submit their applications through the Single State Agency (SSA) in their State. Indian Tribal authorities constitute an exception and may apply directly to CSAT without going through an SSA.

• Grants/Amounts: 5–6 awards, with individual award amounts varying from $600,000–$800,000.

• Catalog of Federal Domestic Assistance Number: 93.101

• Program Contact: Maggie Wilmore, Division of Clinical Programs, Center for Substance Abuse Treatment, Rockwall II Building, 6th Floor, 5600 Fishers Lane, Rockville, Maryland 20857 (301) 443–8160.

5. Public Health System Reporting Requirements

The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. The PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements.

Application guidance materials will specify if a particular FY 1995 activity described above is not subject to the Public Health System Reporting Requirements.

6. PHS Non-use of Tobacco Policy Statement

The PHS strongly encourages all grant and cooperative agreement recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Specific application guidance materials may include more detailed guidance as to how the Center will implement SAMHSA's policy on promoting the non-use of tobacco.

7. Executive Order 12372

Applications submitted in response to most, if not all, of the FY 1995 activities listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal

governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Office of Review, Substance Abuse and Mental Health Services Administration, Rockwall II Building, Suite 630, 5600 Fishers Lane, Rockville, MD 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. The CSAT does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Application guidance materials will specify if a particular FY 1995 activity described above is not subject to the provisions of Executive Order 12372.

Dated: December 28, 1994.

Richard Kopanda,

Acting Executive Officer, SAMHSA.

[FR Doc. 95–15 Filed 1–3–95; 8:45 am]

BILLING CODE 4162–20–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Final Environmental Assessment, and a Finding of No Significant Impact Regarding Genetic Restoration and Management for the Florida Panther

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and finding of no significant impact.

SUMMARY: The Fish and Wildlife Service (Service) announces completion of the Environmental Assessment regarding genetic restoration and management for the endangered Florida panther (*Felis concolor coryi*). Copies of the Environmental Assessment are available from the Service. The Service also announces a determination that the proposed genetic restoration and management program are not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2) (C) of the National Environmental Policy Act of 1969, as amended. The ''Finding of No Significant Impact'' is based on information contained in the final Environmental Assessment, the approved Florida Panther Recovery Plan, the Plan for Genetic Restoration and Management of the Florida Panther, other pertinent scientific and technical data, and public comments received on the draft Environmental Assessment.

ADDRESSES: Copies of the Environmental Assessment are available from the U.S. Fish and Wildlife Service, Post Office Box 110450, Gainesville, Florida 32611–0450.

FOR FURTHER INFORMATION CONTACT: Dennis B. Jordan, Florida Panther Coordinator (see **ADDRESSES** section), telephone 904/392–1861.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals or plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. The Florida panther is one of the most endangered large mammals in the world. The panther formerly occupied a range comprising much of the southeastern United States. This range was contiguous with other populations of North American cougars (*Felis concolor* spp.). A single population estimated to number 30 to 50 adults represents the sole known remaining population in the wild. This population utilized approximately 2–3 million acres of habitat on public and privately owned lands in southern Florida. The biological circumstances of geographic isolation, habitat loss, population reductions, and associated inbreeding have resulted in significant loss of genetic variation and health of the population. The genetic variability and health of the panther must be restored for the taxon to survive even with adequate habitat preservation and other enhancement measures. Existing data indicate that the Florida panther will likely go extinct without actions to restore genetic health to the population.

Population declines and associated inbreeding in the Florida panther have resulted in significant losses in genetic variability and viability. The population exhibits multiple physiological abnormalities that are likely a consequence of recent close inbreeding. High incidences of maladaptive traits which include reproductive and medical abnormalities have been observed. Significant among these are: Cryptorchidism (50+ percent of male population), abnormal sperm (average 93.5 percent per ejaculate), and atrial septal defects (5 individuals within last 2 decades). Furthermore, the Florida panther has suffered from numerous health problems and infectious disease that may be a consequence of a defective immune system.

The purpose of the proposed action is to implement a genetic restoration and management program designed to improve the genetic health, survivability and recovery potential of the Florida panther. The proposed program involves a strategy designed to restore lost historic gene flow into the panther from another *Felis concolor* subspecies.

As part of the development of the proposed action, the Service consulted with the Florida Panther Interagency Committee; numerous biologists, geneticists, scientists, and managers; and, received and reviewed written comments from the public. Based on the results of this review process, the Service has concluded that the proposed action (Alternative 2 of the subject Environmental Assessment—translocate a minimum number of wild non-Florida individuals into the wild population) provides the best overall opportunity to restore genetic health to the Florida panther.

Author

The primary author of this document is Mr. Dennis Jordan (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1532 *et seq.*).

Dated: December 27, 1994.

John T. Brown,

Acting Regional Director.

[FR Doc. 95–57 Filed 1–3–95; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 24, 1994. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–

7127. Written comments should be submitted by January 19, 1995.

Marilyn Harper,

Acting Chief of Registration, National Register.

DISTRICT OF COLUMBIA

District of Columbia State Equivalent

Hillandale—Main Residence and Gatehouse, 3905 Mansion Ct., NW. and 3905 Reservoir Rd., NW., Washington, 94001595

IDAHO

Benewah County

Chatcolet CCC Picnic and Camping Area, ID 5, Heyburn State Park, Chatcolet, 94001586

Plummer Point CCC Picnic and Hiking Area, ID 5, Heyburn State Park, Chatcolet, 94001587

Rocky Point CCC Properties, ID 5, Heyburn State Park, Chatcolet vicinity, 94001588

ILLINOIS

Bureau County

Wood—Tellkamp House, 82 Main St., LaMoille, 94001599

Cook County

Dorhmann—Buckman House, 8455 W. Grand Ave., River Grove, 94001598

Hamilton County

St. James Episcopal Church, 111 N. Pearl St., McLeansboro, 94001602

Johnson County

Vienna Public Library (Illinois Carnegie Libraries), 401 Poplar St., Vienna, 94001603

Kendall County

Yorkville School, 201 W. Center St., Yorkville, 94001600

La Salle County

Strawn, Jeremiah, House, 532 Congress St., Ottawa, 94001601

IOWA

Delaware County

Saints Peter and Paul Church, Jct. of C64 and X47, Petersburg, 94001589

Marion County

St. Joseph's Roman Catholic Church and Cemetery Historic District, 1 mile E of jct. of Co. Rd. G76 and SE. 97th St., Lacona vicinity, 94001580

LOUISIANA

Concordia Parish

Ferriday Commercial Historic District, Roughly bounded by First St., Louisiana Ave., Third St. and Mississipp Ave., Ferriday, 94001584

East Baton Rouge Parish

Nicholson School, 1143 North St., Baton Rouge, 94001585

Ouachita Parish

Slagle House, 1400 S. Grand, Monroe, 94001590

MASSACHUSETTS

Middlesex County

Colburn School, 136 Lawrence St., Lowell, 94001592

Varnum School, 103 Sixth St., Lowell, 94001591

MISSISSIPPI

Madison County

Natchez Trace, Old, and Choctaw Agency Site, Between I–55 and Livingston Rd., W of Ridgeland, Ridgeland vicinity, 94001579

NEW YORK

Monroe County

Lomb, Adolph, House, Jct. of Southerland St. and W. Jefferson Rd., Pittsford, 94001597

SOUTH CAROLINA

Beaufort County

Camp Saxton Site, Address Restricted, Port Royal, 94001581

TEXAS

Bexar County

Maverick Building, 606 N. Presa, San Antonio, 94001593

Cameron County

Cameron County Jail, Old, 1201 E. Van Buren, Brownsville, 94001594

UTAH

Salt Lake County

Deaconess, Davis, Home, 347 S. 400 East, Salt Lake City, 94001583

First Methodist Episcopal Church, 200 S. 200 East, Salt Lake City, 94001582

[FR Doc. 95–134 Filed 1–3–95; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting Notice

Pursuant to the provisions of the Federal Advisory Committee Act (P.L. 92–463 as amended), notice is hereby given of a meeting of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: January 19, 1995, 10:00 am—12:00 noon, Rm. N–4437 C&D, Department of Labor Building, 200 Constitution Ave., NW., Washington, DC 20210.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. section 552(c)(1). The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

For further information, contact: Fernand Lavallee, Director, Trade Advisory Group, Phone: (202) 219–4752.

Signed at Washington, DC, this 23rd day of December 1994.

Andrew Samet,

Acting Deputy Under Secretary, International Affairs.

[FR Doc. 95–112 Filed 1–3–95; 8:45 am]

BILLING CODE 4510–28–M

Employment and Training Administration

[TA–W–30,240]

Albee Textile, New York, NY; Notice of Revised Determination on Reopening

On December 12, 1994, the Department, on its own motion, reopened its investigation for the former workers of the subject firm. The initial investigation resulted in a negative determination on November 28, 1994 because the ''contributed importantly'' test of the Group Eligibility Requirements of the Trade Act was not met. The denial notice was published in the **Federal Register** on December 16, 1994 (59 FR 65076).

A late response to the Department's customer survey shows that a major customer accounting for a substantial portion of Albee's 1994 sales decline switched its purchases from the subject firm to imports.

U.S. imports of woven fabric increased, in absolute terms, in 1993 compared to 1992.

Other findings show that sales decreased in the first six months of 1994 compared to the same period in 1993. Substantial worker separations occurred in 1993 and 1994.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that increased imports of articles like or directly competitive with the woven fabric produced by the subject firm contributed importantly to the decline in production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

''All workers and former workers of Albee Textile, New York, New York who became totally or partially separated from employment on or after August 8, 1993, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, D.C., this 22nd day of December 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–31 Filed 1–3–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,288]

Beth-Energy Mines Corp., Cambria Slope Mine #33, Ebensburg, PA; Notice of Negative Determination Regarding Application for Reconsideration

By an application dated November 8, 1994, Local #1368 of the United Mine Workers (UMW) requested administrative reconsideration of the subject petition for trade adjustment assistance (TAA). The denial notice was published in the **Federal Register** on November 16, 1994 (59 FR 59253).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The investigation files show that the workers produced metallurgical coal until the mine closed in September, 1994. Some of the coal met steam coal specs and was sold to local utilities but this ceased in 1991.

The Department's denial was based on the fact that the increased import and contributed importantly test of the Worker Group Eligibility Requirements of the Trade Act were not met.

U.S. imports of coal have been negligible for the past four years—under one percent of U.S. production. There are no company imports of coal.

The preponderant portion of coal produced by the subject firm went (1) to affiliated Bethlehem steelmaking facilities whose workers are not under a worker certification and (2) to the export market. A decline in sales to the export market would not provide a basis for a worker group certification.

The Department would entertain a new petition when the workers at Bethlehem steelmaking facilities in Bethlehem, Pennsylvania, Burns Harbor, Illinois or Lackawana, New York become certified for TAA.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C., this 15th day of December 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–32 Filed 1–3–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,198; TA–W–30,198A]

KCA Apparel, and Staff One, Lawton, OK; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 19974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 16, 1994, applicable to all workers of KCS Apparel in Lawton, Oklahoma. The certification notice was published in the **Federal Register** on October 4, 1994 (59 FR 50629).

At the request of the State Agency, the Department is amending the certification to include leased employees from Staff One who were employed exclusively at KCA apparel in the production of ladies' pants.

The intent of the Department's certification is to include all workers at KCA Apparel, Lawton, Oklahoma including leased workers who were affected by increased imports of ladies' pants.

The amended notice applicable to TA–W–30,198 is hereby issued as follows:

''All workers of KCA Apparel, Lawton, Oklahoma and leased workers from Staff One, Lawton, Oklahoma engaged in employment related to the production of ladies' pants who became totally or partially separated from employment on or after July 23, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC, this 16th day of December 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–33 Filed 1–3–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–28,992; TA–W–28,992A]

New London Oil, Inc. and Well Solutions, Inc., San Antonio, TX; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on October 25, 1993. The notice was published in the **Federal Register** on November 9, 1993 (58 FR 59492).

At the request of the State Agency, the Department has reviewed the subject certification and is amending it by including all former workers of Well Solutions, Inc., San Antonio, Texas, a wholly owned subsidiary whose workers worked primarily at the wellsite for unaffiliated firms in the oil and gas industry. Well Solutions, Inc., was sold on November 30, 1994 when all the remaining workers were laid off.

The intent of the Department's certification is to include all workers of New London Oil, Inc., and its former wholly owned subsidiary, Well Solutions, Inc.

The amended notice applicable to TA–W–28,992 is hereby issued as follows:

''All workers of New London Oil, Inc., San Antonio, Texas and Well Solutions, Inc., San Antonio, Texas who became totally or partially separated from employment on or after August 30, 1992 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC, this 16th day of December 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–34 Filed 1–3–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,961; TA–W–29,961A]

Peabody Coal Co., Eagle #2 Mine and Eagle #2 Dock, Shawneetown, IL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance on October 17, 1994, applicable to all workers of Eagle #2 Mine, Peabody Coal Company, Shawneetown, Illinois. The Notice was published in the **Federal**

Register on November 1, 1994 (59 FR 54631).

District 12 of the United Mine Workers requested that the Department review its certification for workers of the subject firm. New information shows worker separations at the Dock facility.

The intent of the Department's certification is to include all workers of Peabody Coal Company at the Eagle #2 Mine including the Dock site who were affected by increased imports of coal.

The amended notice applicable to TA–W–29,961 is hereby issued as follows:

''All workers of Peabody Coal Company, Eagle #2 Mine and Eagle #2 Dock, Shawneetown, Illinois who were engaged in employment related to the production of bituminous coal who became totally or partially separated from employment on or after May 30, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC, this 19th day of December 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–35 Filed 1–3–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,113]

Philips Lighting, Richmond, KY; Notice of Revised Determination on Reconsideration

On December 16, 1994, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the former workers of the subject firm. The notice will soon be published in the **Federal Register**.

Investigation findings show that the workers produced halogen and miniature lamps.

Other investigation findings show that the subject firm ceased production in July, 1994 and the remaining workers were laid off by November, 1994.

New findings on reconsideration show that the company has begun importing halogen and miniature lamps in November, 1994.

U.S. imports of halogen and miniature lamps increased absolutely in the twelve-month period from September, 1993 through August, 1994 compared to the same twelve-month period ending in August, 1993.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that the former workers of Philips Lighting in Richmond, Kentucky were adversely affected by increased imports of articles that are like or directly competitive with the lamps produced at the subject firm. In accordance with the provisions of the Act, I make the following revised determination for workers of Philips Lighting in Richmond, Kentucky.

''All workers of Philips Lighting in Richmond, Kentucky who became totally or partially separated from employment on or after July 8, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC, this 21st day of December 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–36 Filed 1–3–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,951]

Saft Aerospace Batteries, a Division of Saft America, Gainesville, FL, (Formerly Gates Aerospace Batteries Division of Gates Energy Products, Inc.); Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance applicable to all workers of the subject firm.

The certification notice was issued on September 2, 1994 and published in the **Federal Register** on November 1, 1994 (59 FR 54631–2). The certification was subsequently amended to include workers from the predecessor-in-interest firm—Gates Aerospace Batteries Division of Gates Energy Products, Inc.

At the request of the company, the Department again reviewed the certification for workers of the subject firm. After review of the certification, the Department is inserting a new impact date of May 20, 1993 and deleting the January 1, 1994 impact date.

The amended notice applicable to TA–W–29,951 is hereby issued as follows:

''All workers of Saft Aerospace Batteries of Saft America (formerly Gates Aerospace Batteries Division of Gates Energy Products, Inc., Gainesville, Florida who became totally or partially separated from employment on or after May 20, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1994.''

Signed at Washington, DC, this 19th day of December 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–37 Filed 1–3–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,154]

Sanofi Bio Industries, Wapato, WA; Notice of Affirmative Determination Regarding Application for Reconsideration

On November 17, 1994, after being granted a filing extension, the petitioners requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was published in the **Federal Register** on October 21, 1994 (59 FR 53210).

The petitioners, stated among other things, that the Department's survey was inadequate. The petitioners submitted new customer information for the Department to consider.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 23rd day of December 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–38 Filed 1–3–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,378, etc.]

Texaco Exploration and Production, Inc., Tulsa, OK; Amended Certification Regarding Elgibility to Apply for Worker Adjustment Assistance

In the Matter of Texaco Exploration and Production, Incorporated Operating at Various Locations in the Following States:

TA–W–30,378A Alabama
TA–W–30,378C Colorado
TA–W–30,378E Illinois
TA–W–30,378G Mississippi
TA–W–30,378I North Dakota
TA–W–30,378K Texas
TA–W–30,378M Wyoming
TA–W–30,378B California
TA–W–30,378D Idaho

TA–W–30,378F Louisiana
TA–W–30,378H New Mexico
TA–W–30,378J Oklahoma
TA–W–30,378L Washington
TA–W–30,378N Montana

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Water Adjustment Assistance on December 2, 1994, applicable to all workers of the subject firm. The certification notice will soon be published in the **Federal Register**.

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations occurred in the state of Montana.

The intent of the Department's certification is to include all workers of Texaco Exploration and Production, Incorporated, who were affected by increased imports.

The amended notice applicable to TA–W–30,378 is hereby issued as follows:

''All workers of Texaco Exploration and Production, Inc., located in Tulsa, Oklahoma and at all locations in the following states listed below engaged in the exploration and production of crude oil, natural gas liquids and natural gas who became totally or partially separated from employment on or after October 3, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

TA–W–30,378A Alabama
TA–W–30,378C Colorado
TA–W–30,378E Illinois
TA–W–30,378G Mississippi
TA–W–30,378I North Dakota
TA–W–30,378K Texas
TA–W–30,378M Wyoming
TA–W–30,378B California
TA–W–30,378D Idaho
TA–W–30,378F Louisiana
TA–W–30,378H New Mexico
TA–W–30,378J Oklahoma
TA–W–30,378L Washington
TA–W–30,378N Montana

Signed at Washington, DC, this 16th day of December, 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–39 Filed 1–3–95; 8:45 am]

BILLING CODE 4510–30–M

Footwear Management Co.; Amended Certification Regarding Eligibility to Apply for NAFTA Transitional Adjustment Assistance

In the matter of: NAFTA—00252 Tony Lama Division, El Paso, Texas, NAFTA—00252A Justin Boot Company, Fort Worth, Texas, NAFTA—00252B Justin Boot Company, Cassville, Missouri, and NAFTA—00252C Nacona Boot Company, Nacona, Texas.

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on November 14, 1994, applicable to all workers of the subject firm in El Paso, Texas. The certification notice was published in the **Federal Register** on December 9, 1994 (59 FR 68324).

At the request of the company the Department reviewed the certification for workers of the subject firm.

The investigation findings show that workers of Footwear Management Company's Justin Boot Company in Fort Worth, Texas and Cassville, Missouri and the Nacona Boot Company in Nacona, Texas had the same boot customers as the Tony Lama Division.

The investigation findings show workers separations in 1994 at the Justin Boot Company in Fort Worth, Texas and Cassville, Missouri and at the Nacona Boot Company in Nacona, Texas. Other findings show decreased sales and production at the Justin Boot Company and the Nacona Boot Company of the Footwear Management Company.

The Department's survey of major declining customers of the Tony Lama Division of Footwear Management Company revealed that the respondents increased their imports of western style footwear from Canada and Mexico in the first nine months of 1994 compared to the same period in 1993 while reducing their purchases from the subject firm during the same period.

The intent of the Department's certification is to include all workers who were adversely affected by increased imports. Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to NAFTA—00252 is hereby issued as follows:

''All workers of the Tony Lama Division of Footwear Management Company, located in El Paso, Texas and all workers of the Justin Boot Company of Footwear Management Company in Fort Worth, Texas and Cassville, Missouri and all workers of the Nacona Boot Company in Nacona, Texas who became totally or partially separated from employment on or after December 8, 1993 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.''

Signed in Washington, DC, this 21st day of December, 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–40 Filed 1–3–95; 8:45 am]

BILLING CODE 4510–30–M

Niagara Mohawk Power Corp., Amended Certification Regarding Eligibility to Apply for NAFTA Transitional Adjustment Assistance

In the matter of: NAFTA—00270 Syracuse, New York and NAFTA—00270A all other sites in New York.

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification Regarding Eligibility to Apply for NAFTA Transitional Adjustment Assistance on December 6, 1994 for workers of the subject firm. The certification will soon be published in the **Federal Register**.

At the request of Local #97 of the International Brotherhood of Electrical Workers (IBEW) and the company, the Department reviewed the certification for workers of the subject firm. The investigation findings show worker separations occurred at other locations in the state.

Accordingly, the Department is amending the certification to properly reflect the correct worker group.

The intent of the Department's certification is to include all workers of Niagara Mohawk Power Corporation who were adversely affected by increased imports of electricity.

The amended notice applicable to NAFTA—00270 is hereby issued as follows:

''All workers of the Niagara Mohawk Power Corporation, Syracuse, New York and at other locations in the state of New York who became totally or partially separated from employment on or after December 8, 1993 are eligible to apply for NAFTA—TAA under Section 250 of the Trade Act of 1974.''

Signed at Washington, DC, this 15th day of December 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–41 Filed 1–3–95; 8:45 am]

BILLING CODE 4510–30–M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 94–87; Exemption Application No. D–9770, et al.]

Grant of Individual Exemptions; The Lubrizol Corporation Employees' Stock Purchase and Savings Plan et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (were appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978 transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) The are protective of the rights of the participants and beneficiaries of the plans.

The Lubrizol Corporation Employees' Stock Purchase and Savings Plan (the Plan)

Located in Wickliffe, Ohio
[Prohibited Transaction Exemption 94–87; Exemption Application No. D–9770]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash sale by the Plan to the Lubrizol Corporation, the Plan sponsor and a party in interest with respect to the Plan, of the Plan's interest (the Interest) in certain securities (the Securities) issued by Columbia Gas Systems, Inc., provided: (a) no commissions or other expenses are paid by the Plan in connection with the sale; (b) the Plan will receive the greater of $227,158.01 or the fair market value of the Plan's Interest in the Securities at the time of the sale as determined by Bankers Trust Company (BTC), the Plan's independent fiduciary; and (c) BTC has determined that the transaction is appropriate for the plan and in the best interest of the Plan and its participants and beneficiaries.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 1, 1994 at 59 FR 54637.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number).

Wells Fargo Bank, N.A. (Wells Fargo) and Wells Fargo Institutional Trust Company, N.A. (WFITC)

Located in San Francisco, California
[Prohibited Transaction Exemption 94–88; Application Nos. D–9718 and D–9719]

Exemption

The restrictions of sections 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the lending of securities that are assets of an employee benefit plan for which Wells Fargo, WFITC or an affiliated company (the Applicants) are fiduciaries, provided that the following conditions are met:

(A) The securities are loaned to a broker-dealer which is registered under the Securities Exchange Act of 1934 (the 1934 Act) or exempted from registration under section 15(a)(1) of the 1934 Act as a dealer in exempted Government Securities (as defined in section 3(a)(12) of the 1934 Act) or to a bank (A Borrower);

(B) Neither the Borrower nor an affiliate of the Borrower has discretionary authority or control with respect to the investment of the plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets;

(C) The lending plan receives from the Borrower (either by physical delivery or by book entry in a securities depository) by the close of the lending fiduciary's business on the day in which the securities lent are delivered to the Borrower, collateral (the Collateral) consisting of cash, securities issued or guaranteed by the United States Government or its agencies or instrumentalities, or irrevocable bank letters of credit issued by a person other than the Borrower or an affiliate thereof, or any combination thereof, having, as of the close of business on the preceding day, a market value or, in the case of letters of credit a stated amount, equal to not less than 100% of the then market value of the securities lent;

(D) Prior to the loan of any securities, the Borrower furnishes the Applicants with the most recent available audited statements of the Borrower's financial condition and a representation that, at the time the loan is negotiated, there has been no material adverse change in its financial condition since the date of the most recent financial statements furnished to the plan, that has not been disclosed to the Applicants. Such representation may be made by the Borrower's agreeing that each such loan shall constitute a representation by the Borrower that there has been no such material adverse change;

(E) The loan is made pursuant to a written loan agreement, the terms of which are at least as favorable to the lending plan as an arm's length transaction with an unrelated party would be. Such agreement may be in the form of a master agreement covering a series of securities lending transactions;

(F) (1) The lending plan (a) receives a reasonable fee that is related to the value of the borrowed securities and the duration of the loan, or (b) has the opportunity to derive compensation through the investment of cash collateral. Where the plan has that

opportunity, the plan may pay a loan rebate or similar fee to the Borrower, if such fee is not greater than the plan would pay in a comparable transaction with an unrelated party;

(2) The plan receives the equivalent of all distributions made on or with respect to the loaned securities during the term of the loan;

(G) If the market value of the Collateral at the close of trading on a business day is less than 100% of the market value of the borrowed securities at the close of trading on that day, the Borrower shall deliver, by the close of business on the following business day, an additional amount of Collateral (as described in paragraph C) the market value of which, together with the market value of all previously delivered Collateral, equals at least 100% of the market value of all the borrowed securities as of such preceding day. Notwithstanding the foregoing, part of the Collateral may be returned to the Borrower if the market value of the Collateral exceeds 100% of the market value of the borrowed securities, as long as the market value of the remaining Collateral equals at least 100% of the market value of the borrowed securities;

(H) The loan may be terminated by the lending plan at any time. In the event of termination, the Borrower shall deliver Replacement Securities, as defined below, to the lending plan within 5 business days of notice of termination of the loan. The value of the securities that the Borrower is obligated to deliver upon termination of a loan of Agency Securities will be no less than the value of the loaned Agency Securities at the termination of the loan. For purposes of this exemption, the term ''Replacement Securities'' means securities that: (a) are issued and/or guaranteed by the same agency as the loaned securities, (b) have the same coupon as the loaned securities, (c) have a principal amount at least equal to but no more than 2% greater than the then current principal amount of the loaned securities, (d) are of the same program or class as the loaned securities, and (e) either (i) have an aggregate weighted average maturity within a 12-month variance of the then current aggregate weighted average maturity of the loaned securities, but in no case will the variance be more than 10% of such aggregate weighted average maturity of the loaned securities, or (ii) meet some other comparable objective standard containing a range of variance that is no greater than that described in (i) above and that assures that the aging of the loaned securities is properly taken into account.

If the Borrower fails to return the Replacement Securities, the lending fiduciary may apply the Collateral to purchase other Replacement Securities, to cover any other obligations of the Borrower under the agreement, or to pay other expenses associated with the sale and/or purchase. In addition, the Borrower is obligated to pay the amount of any remaining obligations and expenses not covered by the Collateral plus interest at a reasonable rate.

Notwithstanding the foregoing, the Borrower may, in the event the Borrower fails to return borrowed securities as described above, replace non-cash collateral with an amount of cash not less than the then current market value of the collateral, provided such replacement is approved by the lending fiduciary.

If the Borrower fails to comply with any condition of this exemption in the course of engaging in a securities lending transaction, the plan fiduciary who caused the plan to engage in such transaction shall not be deemed to have caused the plan to engage in a transaction prohibited by section 406(a)(1) (A) through (D) of the Act solely by reason of the Borrower's failure to comply with the conditions of the exemption.

For purposes of this exemption the term ''affiliate'' of another person shall include: (a) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person; (b) Any officer, director, or partner, employee or relative (as defined in section 3(15) of the Act) of such other person; and (c) Any corporation or partnership of which such other person is an officer, director partner. For purposes of this definition, the term ''control' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

EFFECTIVE DATE: This exemption is effective May 27, 1994.

WRITTEN COMMENTS: In the Notice of Proposed Exemption (the Notice), the Department invited all interested persons to submit written comments on the proposed exemption within 45 days from the date of publication of the Notice in the **Federal Register**. All written comments were to have been received by the Department by December 16, 1994. The Department received one written comment. The comment was submitted on behalf of the Applicants. The issues addressed in the comment and the Department's responses are summarized as follows:

1. The Applicants request the following modifications be made in order to make the exemption consistent with the terms and conditions of PTE 81–6:

(a) Condition (D) of the proposed exemption would require the Borrower to furnish the Applicants with the most recent available audited statements of the Borrower's financial condition and a representation that, at the time the loan is negotiated, there has been no material adverse change in its financial condition since the date of those statements. The Applicants request that the following language be added at the end of condition (D):

> Such representation may be made by the Borrower's agreeing that each such loan shall constitute a representation by the Borrower that there has been no such material adverse change.

The Department has no objection to the proposed modification, and accordingly, has amended the language of condition (D).

(b) Condition (G) of the proposed exemption would require the Collateral received by the lending plan to be equal to at least 102% of the market value of the loaned securities. The Applicants request that this condition be modified to require that the Collateral be equal to 100% of the market value of the loaned securities. According to the Applicants, requiring collateral equal to 102% of the market value of the loaned securities will discourage the lending of securities, thereby defeating the purpose of the exemption, which is to permit lending as a safe and valuable way of increasing the earnings of a portfolio. The Applicants note that the Department originally set the minimum level of collateral at 102% when PTE 81–6 was proposed but was subsequently convinced by commentators that a collateral value of 100% would provide adequate protection to plans. The Department is persuaded by the Applicants' comment that a collateral value of 100% will provide sufficient protection for the participants and beneficiaries of the Plans. Accordingly, the Department has made the requested modification. The Department notes, however that nothing contained in the exemption prohibits a lending plan for negotiating a higher collateral value if it is appropriate under the circumstances. The Applicants also request that the following language be added to the end of condition (G):

> Notwithstanding the foregoing, part of the Collateral may be returned to the Borrower if the market value of the Collateral exceeds 100% of the market value of the borrowed securities, as long as the market value of the

remaining collateral equals at least 100% of the market value of the borrowed securities.

With the respect to the proposed languages concerning the return of a portion of the collateral under certain circumstances, the Department has no objection to the proposed additional language, and accordingly, has inserted this language at the end of condition (G).

(c) Condition (H) of the proposed exemption contains an explanation of the procedure involved in terminating the loan of securities. The Applicant requests that the first 3 sentences of condition (H) be replaced with the following:

The loan may be terminated by the lending plan at any time, whereupon the Borrower shall deliver Replacement Securities to the lending plan within 5 business days of notice of termination of the loan.

Although the Department does not object to the deletion of the reference to the trustee of the fund, the Department wants to make clear that the value of the securities that the Borrower is obligated to deliver upon termination of a loan of Agency Securities must be no less than the value of the loaned Agency Securities at the termination of the loan, as represented by the Applicants in correspondence dated September 26, 1994. The Department believes that this condition is integral to the proposed exemption and in the best interests of the participants and beneficiaries of the Plans. Consequently, in response to the Applicants' comments, the Department has modified the first 2 sentences of condition (H), and replaced the third sentence with the following:

The value of the securities that the Borrower is obligated to deliver upon termination of a loan of Agency Securities will be no less than the value of the loaned Agency Securities at the termination of the loan.

(d) The Applicants also request that the first sentence of the second paragraph of condition (H) be replaced with the following sentence:

If the Borrower fails to return Replacement Securities, the Collateral may be applied to purchase other Replacement Securities, to cover any other obligations of the Borrower under the agreement, or to pay other expenses associated with the sale and/or purchase.

The Department has no objection to the proposed modification, and accordingly, has made this substitution.

(e) In addition, the Applicants have requested that the following language be added immediately preceding the last paragraph of condition (H):

Notwithstanding the foregoing, the Borrower may, in the event the Borrower fails to return borrowed securities as described above, replace non-cash collateral with an amount of cash not less than the then current market value of the collateral, provided such replacement is approved by the lending fiduciary.

If the Borrower fails to comply with any condition of this exemption in the course of engaging in a securities lending transaction, the plan fiduciary who caused the plan to engage in such transaction shall not be deemed to have caused the plan to engage in a transaction prohibited by section 406(a)(1)(A) through (D) of the Act solely by reason of the Borrower's failure to comply with the conditions of the exemption.

The Department has no objection to the proposed additional language, and accordingly, has made the requested modification.

2. The Applicants have requested that the phrase ''issued and/or guaranteed'' replace the term ''issued'' wherever that term is used, in order to clarify that the Agency Securities may be either issued and/or guaranteed by an agency. In accordance with the Applicants' request, the Department has made the appropriate modifications to the exemption.

3. The Applicants wish to clarify that their assertion that over 95% of the Agency Securities traded in the market are effected using a generic trading method is merely an estimate and is not intended as a representation of fact.

4. The Applicants also wish to clarify that the Applicants' obligation to monitor the market value of the loaned securities on a daily basis extends to business days only.

5. The Department notes that the parenthetical ''plus interest'' in condition (e) of paragraph number 5 in the proposed exemption was included in the notice inadvertently.

The changes described above are hereby incorporated into the exemption as granted. Accordingly, after giving full consideration to the record, the Department has determined to grant the exemption, as described herein. In this regard, the Applicants' comments have been included as part of the public record for the exemption application. The complete application file is made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, room N–5638, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on November 1, 1994 at 59 FR 54635.

FOR FURTHER INFORMATION CONTACT: Virginia J. Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Vaquero Farms, Inc. Profit Sharing Plan and Agri-Bis, Inc. Profit Sharing Plan (the Plans)

Located in Stockton, California

[Prohibited Transaction Exemption 94–89; Application Nos. D–9711 and D–9712]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the past cash sale (the Sale) by the plans of certain promissory notes (the Notes) to Vaquero Farms, Inc. (the Applicant) and Agri-Bis, Inc., a related company, provided that the following conditions were met at the time of the sale: (1) The sales price of the Notes was not less than their aggregate fair market value on the date of the Sale; (2) the Sale was a one-time transaction for cash; (3) the Plans did not pay any fees or commissions in connection with the Sale; and (4) the Plans' independent fiduciary determined that the transaction was appropriate for and in the best interests of the Plans and their participants and beneficiaries.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 30, 1994 at 59 FR 50013.

EFFECTIVE DATE: This exemption is effective as of May 31, 1994, the date of the Sale.

FOR FURTHER INFORMATION CONTACT: Virginia J. Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must

operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 29th day of December, 1994.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95–110 Filed 1–3–95; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–9727, et al.]

Proposed Exemptions; Hospital Supplies, Inc. Pension Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Hospital Supplies, Inc. Pension Plan (the Plan) Located in Radnor, Pennsylvania; Proposed Exemption

[Application No. D–9727]

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 C.F.R. Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990.) If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale of two adjacent parcels of real property (the Properties) by the Plan to Armond J. Civera, Jr. (Mr. Civera) [1], a disqualified person with respect to the Plan, provided that the following conditions are satisfied:

(a) the proposed sale will be a one-time cash transaction;

(b) the Plan will receive for each Property the current fair market value established at the time of the sale by an independent qualified appraiser;

(c) the Plan will pay no expenses associated with the sale.

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan with one participant, Mr. Civera, who is also the trustee of the Plan and the owner of the Plan sponsor. Mr. Civera is a sole participant of the Plan. As of December 31, 1993, the Plan's assets were $594,061.63.[2] The Plan sponsor is a Pennsylvania corporation which provides consulting services to the medical industry and to the print technology industry (the Employer).

2. In October 1989, the Plan acquired a 100 percent interest in a single family residence built on a 1.17 acres of land, which is located at 1128 King of Prussia Road, Tredyffrin Township, Pennsylvania (Property 1). The total purchase price of Property 1, including related closing costs, was $170,000. In March 1993, the Plan also allocated approximately $60,000 for certain structural improvements for Property 1. This construction work was done by companies that have no relationship to the Plan and the Employer. It is represented that Property 1 was purchased from Roseanne Koczicki, who has no relationship to the Plan and the Employer. In March 1993, the Plan acquired a 100 percent interest in a 1.026 acre parcel of vacant land (Property 2), which is adjacent to Property 1. The total purchase price of Property 2, including related closing

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[1] Because Mr. Civera is the only participant in the Plan and the Employer is wholly owned by Mr. Civera there is no jurisdiction with respect to the Plan under Title I of the Act pursuant to CFR 2510.3–3(b) and (c). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

[2] In this regard, the Plan's financial statement lists the aggregate value of the Properties as $485,000.

costs, was $77,500. Subsequently, the Plan expended approximately $47,500 for improvements associated with the subdivision of Property 2. These improvements were done by entities that have no relationship to the Plan and the Employer. It is represented that Property 2 was purchased from Tom and Beth Nojunas, who also have no relationship to the Plan and the Employer. It is represented that neither Property is adjacent to any other properties owned by disqualified persons, and that neither Property has ever been used by a disqualified person. Furthermore, neither of the Properties are encumbered by any debt.

3. It is represented that Mr. Civera, in his trustee capacity, made the original decision to acquire the Properties. The Properties were originally acquired as long-term Plan investments and were to be developed and sold. However, the real estate market did not perform well and the Properties did not generate any income for the Plan. In this regard, it is represented that Property 1 has been vacant since it was originally acquired by the Plan.

4. The Properties were appraised on May 23, 1994 (collectively; the Appraisals) by Thomas M. Descano, ASA, an independent real estate appraiser certified in the State of Pennsylvania (Mr. Descano). In appraising Property 1, Mr. Descano relied primarily on the market comparison approach as well as the cost approach, and determined that the fair market value of Property 1 was $200,000. In appraising Property 2, Mr. Descano determined that the fair market value was $205,200. In the Appraisal of Property 2, Mr. Descano stated that the local market did not provide any comparable sales of vacant land, and as such he had to abstract land value from recent improved property sales. Mr. Descano represented that this is done by estimating the depreciated value of the improvements and then deducting that value from the sale price, thereby arriving at the approximate value of the land. On June 22, 1994, in a supplemental statement to the Appraisals, Mr. Descano stated that the adjacency of Property 1 and Property 2 does not merit a premium above the fair market value to Mr. Civera, the purchaser of both Properties.

5. Mr. Civera proposes to purchase the Properties from the Plan in a one-time cash transaction. The applicant states that the proposed exemption would be in the best interest and protective of the Plan because the transaction will divest the Plan of non-income producing assets, provide the Plan with liquidity, and enable the Plan to diversify its assets.[3] The applicant also notes that the transaction is protective of the Plan because as a result of the sale the Plan will receive the current fair market value for each Property established at the time of the sale by an independent qualified appraiser.

6. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 4975(c)(2) of the Code because:

(a) the proposed sale will be a one-time cash transaction;

(b) the Plan will receive the current fair market value for each Property established at the time of the sale by an independent qualified appraiser;

(c) the Plan will pay no expenses associated with the sale;

(d) the sale will provide the Plan with liquidity; and

(e) Mr. Civera as the sole participant of the Plan will be the only individual affected by the transaction.

Notice to Interested Persons

Because Mr. Civera is the sole participant of the Plan, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due 30 days from the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department at (202) 219–8883. (This is not a toll-free number.)

Jerome Companies Profit Sharing Plan and Trust (the Plan) Located in Barron, Wisconsin; Proposed Exemption

[Application No. D–09829]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale (the Sale) of the Guaranteed Investment Contract #62043 (the GIC) issued by Confederation Life Insurance Company (Confederation), a Canadian insurance corporation, by the Plan to Jerome Food, Inc. (the Employer), a Wisconsin corporation, the sponsoring employer and a party in interest with respect to the Plan; provided that (1) the Sale is a one-time transaction for cash; (2) the Plan experiences no loss nor incurs any expense from the Sale; and (3) the Plan receives as consideration from the Sale the greater of either the fair market value of the GIC as determined on the date of the Sale, or the principal amount of $500,000 plus simple interest accrued at the rate of 9.03 percent per annum on the principal amount of the GIC for the period from January 25, 1994, to the date of the Sale.

Summary of Facts and Representations

1. The Employer, located in Barron, Wisconsin, is an integrated turkey distributor, which raises and slaughters turkeys, packages and distributes whole turkeys, and processes and distributes specialty turkey products, such as ground turkey and GobbleStix (a registered trademark of the Employer). It is a closely held company which employs approximately 2,400 employees.

2. The Plan is a defined contribution plan with individual accounts for its participants that is intended to meet the qualification requirements of sections 401(a) and 401(k) of the Code. The Plan intends also to comply with the provisions of section 404(c) of the Act whereby participants self-direct the investments of assets in their respective individual accounts. As of December 31, 1993, the Plan had approximately 1,466 participants and total assets of $17,822,946.

In 1990 when the Plan invested in the GIC, the Vice President of Finance for the Employer selected various investment vehicles for the participants of the Plan, subject to the approval of the trustee for the Plan, Marquette Bank Minneapolis, N.A. (subsequently acquired by First Trust, N.A.)[4] All such investment decisions are now made by a subcommittee composed of officers/employees of the Employer and are subject to review and approval by the Corporate Executive Committee, which consists of the President and 6 Vice Presidents of the Employer.

The independent trustee for the Plan is First Trust, N.A. (the Trustee), a national banking association chartered by the Comptroller of the Currency. The

[3] This exemption,if granted, extends relief from section 4975(c)(1)(D) and (E) of the Code, for the sale of the Properties by the Plan to a disqualified person. However, no relief is provided herein for any prohibited transaction which may have arisen as a result of the Plan's acquisition and holding of the Properties.

[4] The Department notes that decisions to acquire and hold the GIC are governed by the fiduciary responsibility provisions of Part 4 of Title I of the Act. In this regard the Department is not proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the GIC.

Trustee is a wholly-owned subsidiary of First Bank System, Inc., a Delaware corporation headquartered in Minneapolis, Minnesota.

3. Approximately 2.8 percent of the total assets in the Plan are invested in the GIC which was acquired by the Plan on January 25, 1990, for the principal amount of $500,000. Currently there are 327 participants who have their respective individual accounts holding various proportional interests in the GIC.

The terms of the GIC guarantees the Plan a non-compounded 9.03 percent annual rate of return on its $500,000 investment until January 24, 1995, when the GIC expires and the principal amount is returned to the Plan. Interest earned by the GIC is payable to the Plan each year in January. All annual interest payments through January 24, 1994, have been paid by Confederation, leaving only the interest that has accrued since January 25, 1994, to be paid to the Plan. Under the terms of the GIC, the Plan may not deposit additional amounts nor withdraw amounts from its initial $500,000 investment.

4. Confederation, which is owned by its policyholders, has operations in Canada, United States and Britain, and has been in operation 123 years. In the United States, Confederation operates as the Confederation Life Insurance and Annuity Company of Atlanta.

At the time the Plan acquired the GIC, Standard & Poor's ranked Confederation as an ''AAA'' insurance company. Beginning in January 1992, Confederation ratings began to decrease as it suffered losses in its commercial mortgage and real estate investments in the United States and Canada. In April 1994, Confederation disclosed its net losses for 1993 were $29 million in Canadian dollars. On August 11, 1994, the board of directors of Confederation voted to turn over control of the Confederation to the Superintendent of Financial Institutions for Canada. On August 12, 1994, the Michigan Insurance Commissioner, through the Ingham County Circuit Court, Lansing, Michigan, had Confederation's United States subsidiary placed in conservatorship and rehabilitation to prevent the transfer of assets of Confederation located in the United States. The action by the Michigan Circuit Court suspended all payments on contracts of Confederation, including the GIC. It is not known whether, when, or under what circumstances Confederation will resume payments of interest pursuant to the terms of the GIC or whether it will be permitted to make payment of the principal upon maturity of the GIC.

5. In order to avoid the continued risk to the participants and beneficiaries of the Plan from the investment in the GIC, the Employer proposes to purchase the GIC from the Plan for cash in a one-time transaction with no loss nor expense to the Plan.[5] The Employer intends to pay the Plan the greater of either the fair market value of the GIC as determined on the date of the Sale, or the GIC's principal amount of $500,000 plus simple interest accrued at the rate of 9.03 percent per annum on the principal amount for the period from January 25, 1994, to the date of the Sale. (January 25, 1994, was the last date on which the Plan received its annual interest payment from Confederation.)

In addition the applicant represents that considering the unstable circumstances of Confederation and the uncertainty of reimbursing the holders of the GIC, the proposed Sale will enable the Plan to recoup its initial investment plus the accrued interest, and then invest the proceeds of the Sale in more stable investments that will generate a return to the Plan.

In a written statement the Trustee represented that in its capacity of independent fiduciary of the Plan and based upon all the surrounding facts and circumstances, including the status of Confederation, that the proposed Sale is in the best interests of the Plan and its participants and beneficiaries.

6. In summary, the applicant represents that the proposed transaction will satisfy the criteria for an exemption under section 408(a) of the Act because (a) the Plan will receive from the Employer in a one-time transaction cash in an amount that is not less than the fair market value of the GIC, or an amount that is equal to the total amount paid by the Plan for the GIC, plus earnings the GIC would have received to the date of the Sale if Confederation had not been placed under conservatorship and rehabilitation by the Circuit Court of Michigan; (b) the transaction will enable the Plan and its participants and beneficiaries to avoid any risk associated with the continued holding of the GIC; (c) the Plan will not incur any loss or expense from the proposed transaction; and (d) the Trustee of the Plan has determined that the proposed transaction is in the best interests of the Plan and its participants and beneficiaries.

[5] Section 3.04 of the GIC provides that the GIC may not be assigned. The applicant is negotiating with Confederation to obtain a waiver of this assignment restriction.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Iron Workers Pension Trust of Colorado (The Pension Plan); and Colorado Iron Workers (Erection) Statewide Joint Apprenticeship and Trust Fund (the Apprenticeship Plan; together, the Plans) Located in Denver, Colorado; Proposed Exemption

[Application Nos. D–9690 and L–9691]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the loan (the Loan) of $141,601.36 by the Pension Plan to the Apprenticeship Plan, under the terms described in this notice of proposed exemption, provided the following conditions are satisfied: (a) the Loan represents less than 25% of the assets of the Pension Plan; (b) the terms of the Loan are not less favorable to either Plan than those obtainable in arm's-length transactions with unrelated parties; (c) the trustees of each Plan approved the Loan as being appropriate for, and in the best interest of each Plan; (d) no trustee of either Plan made such determination on behalf of the other Plan; and (e) the property securing the Loan (the Property) has been appraised by a qualified, independent appraiser as having a fair market value in excess of 150% of the principal amount of the Loan.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective August 11, 1992.

Summary of Facts and Representations

1. The Pension Plan is a defined benefit plan which provides retirement benefits under a unit benefit formula. The Pension Plan is a Taft-Hartley plan which is maintained pursuant to a collective bargaining agreement between Local 24 of the International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO (the Union) and the participating employers. The Pension Plan had 983 participants as of March 31, 1991 and total assets of approximately $36 million as of July 31, 1992.

2. The Apprenticeship Plan is an employee welfare benefit plan which is

also maintained pursuant to the collective bargaining agreement between the Union and the participating employers. The Apprenticeship Plan is designed to provide funding for programs to recruit and train workers as iron workers and to provide continued and advanced training for existing iron workers. The Apprenticeship Plan had 554 participants and assets of $324,262 as of July 31, 1992. The applicants represent that one employee of the Apprenticeship Plan is a participant in the Pension Plan. Therefore, the Apprenticeship Plan is a party in interest with respect to the Pension Plan.

3. On August 11, 1992, the Pension Plan made the Loan of $141,601.36 to the Apprenticeship Plan. The Loan bears interest at a rate of 9.25%, and calls for equal monthly payments of $1,457.35, consisting of both principal and interest, amortized over a 15 year period. A balloon payment is scheduled to be made by the Apprenticeship Plan at the end of the fifth year, at which time the Loan will be repaid in full. Spelman Baird & Warner, an independent mortgage banking firm located in Denver, Colorado, has reviewed the terms of the Loan and has represented that the terms of the Loan are reasonable and comparable to loans between unrelated parties being made at the time the Loan was entered into.

4. The Loan is secured by a first mortgage on the Property, which is real estate located at 3385 Walnut Street, Denver, Colorado. The Property is used by the Apprenticeship Plan to conduct the training and apprenticeship programs offered by the Apprenticeship Plan. The Property has been appraised by Curtis W. Wells, MAI, an independent appraiser in Denver, Colorado, as having a fair market value of $233,000 as of June 25, 1992. Thus, the collateral-to-loan ratio for the Loan is approximately 165%.

5. The applicants represent that the Board of Trustees of each Plan determined that the Loan was in the best interest of its respective Plan. The applicants represent that there is one trustee who is common to both Plans, but that trustee has and will continue to abstain from all decisions involving the Loan. The applicants represent that none of the other members of either Board of Trustees will be representing any interests adverse to those of their respective Plans and will be acting for the exclusive benefit of their respective Plans.

6. RMI Capital Management Co. (RMI) is a registered investment adviser which is serving as an independent fiduciary for the Pension Plan with respect to this transaction. RMI represents that at the request of the Pension Plan, RMI investigated the possibility of the Pension Plan making the Loan to the Apprenticeship Plan. RMI determined that the Loan was a good investment opportunity for the following reasons: (a) the Loan was adequately collateralized by the Property; (b) RMI negotiated the terms of the Loan with the Apprenticeship Plan and closed the transaction; (c) the rate of interest on the Loan is a market rate of interest which is consistent with current market rates being charged by other mortgage lenders; (d) RMI selected the appraiser independently and verified the appraisal as reasonable; and (e) RMI did an in-depth investigation of the Apprenticeship Plan's credit history and determined that the Apprenticeship Plan was a good credit risk and would have no difficulty meeting its obligations under the Loan.[6]

7. RMI represents that it is a partnership owned by JBGP Corporation and Strategic Property Advisors, Inc. RMI is not owned or controlled by either Plan, nor are any of RMI's employees participants or employees of the Plans. RMI represents that with respect to this transaction, it determined the facts surrounding the Loan, the valuation of the Property and the structure of the Loan. RMI has also monitored, and will continue to monitor the Loan on behalf of the Pension Plan and take whatever action is necessary to enforce the Pension Plan's rights under the Loan.

8. In summary, the applicants represent that the subject transaction meets the criteria of section 408(a) of the Act because: (a) the Loan represents approximately 0.39% of the assets of the Pension Plan; (b) the Loan is at fair market rate terms not less favorable to either Plan than those obtainable in an arm's-length transaction with unrelated parties; (c) the Property securing the Loan has been appraised by a qualified, independent appraiser as having a fair market value approximately 1.65 times the principal amount of the Loan; (d) the trustees of both Plans have determined that the Loan is in the best interest of their respective Plans; (e) RMI, the Pension Plan's independent fiduciary, determined that the transaction is appropriate for, and in the best interest of, the Pension Plan, and (f) RMI has monitored, and will continue to monitor the Loan and take whatever action is necessary to enforce the Pension Plan's rights under the Loan.

NOTICE TO INTERESTED PERSONS: Notice of the proposed exemption will be provided by first class mail to all interested persons within 30 days of the date of publication of the notice of pendency in the **Federal Register**. The notice will include a copy of the notice of proposed exemption and will inform interested persons of their right to comment with respect to the proposed exemption. Comments to the Department are due within 60 days of the date of publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Employees' Savings Plan of Bassett-Walker, Inc. (the Plan) Located in Martinsville, Virginia; Proposed Exemption

[Application No. D–09894]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale (the Sale) of the Guaranteed Investment Contract No. 62012 (the GIC) issued by Confederation Life Insurance Company of Atlanta, Georgia (Confederation) by the Plan to VF Corporation, a Pennsylvania corporation headquartered in Wyomissing, Pennsylvania, a party in interest with respect to the Plan; provided that (1) the Sale is a one-time transaction for cash; (2) the Plan experiences no loss nor incurs any expense from the Sale; and (3) the Plan receives as consideration from the Sale the greater of either the fair market value of the GIC as determined on the date of the Sale, or $1.5 million, the principal amount of the GIC, plus simple interest accrued at

[6] On November 1, 1991, Rocky Mountain Investors, Inc. (now known as RMI) entered into a Consent Order and Final Judgment (the CO) with the Department and the United States District for the District of Colorado in *Martin* v. *Rocky Mountain Investors, Inc., et.al.*, Civil Action No. 91–S–1951 (D. Colo.). Pursuant to that CO, RMI agreed to comply with all terms of an attached ''Rocky Mountain Investors, Inc. Investment Policy and Underwriting Criteria'' (the Guidelines) in carrying out its fiduciary responsibilities with respect to employee benefit plans under the Act. The Guidelines were incorporated by reference into the CO. RMI represents that it acted in compliance with the Guidelines in approving the Loan on behalf of the Pension Plan, and further that the Loan itself is in compliance with the Guidelines.

the rate of 8.70 percent per annum on the principal amount of the GIC for the period from April 4, 1994, to the date of the Sale.

Summary of Facts and Representations

1. The sponsoring employer of the Plan is Bassett-Walker, Inc., a Virginia corporation headquartered in Martinsville, Virginia. It is engaged primarily in the manufacturing and marketing of high-quality fleece and printwear. Bassett-Walker, Inc. was incorporated on September 24, 1984, and is wholly-owned by VF Corporation, the proposed purchaser of the GIC.

VF Corporation, a Pennsylvania corporation headquartered in Wyomissing, Pennsylvania, was incorporated on December 4, 1899, and has its securities publicly traded on the New York and Pacific stock exchanges. It is engaged primarily in the domestic and international manufacturing and marketing of jeanswear, casual/sportswear, and intimate and other types of apparel.

2. The Plan is a profit sharing plan that maintains individual accounts for its participants and is intended to satisfy the qualification requirements of sections 401(a) and 401(k) of the Code. The net assets of the Plan were $27,158,367, as of December 31, 1993. There are currently approximately 5,547 participants and beneficiaries of the Plan.

The applicant represents that the Plan is administered by a committee (the Committee) which is appointed by the sponsoring employer pursuant to the terms of the Plan. The Committee has the discretionary responsibility for the overall administration of the Plan, including the appointment of legal counsel, accountants, and the trustee for the Plan. The current members of the Committee are Carl Reynolds (Chairman), Steven Fritz and Margaret Bouldin (Secretary), who are employees of the sponsoring employer of the Plan, and Louis J. Fecile, an officer of VF Corporation, the proposed purchaser of the GIC.

The applicant also represents that UMB Bank, N.A. (formerly known as United Missouri Bank, N.A.) was appointed trustee (the Trustee), for the Plan, effective February 2, 1993. The Trustee is located in Kansas City, Missouri. It acts as custodian of the assets of the Plan, ensures that the assets of the Plan are held in trust as required by the Act, and oversees the establishment and maintenance of investment and disbursement accounts of the Plan.

3. The GIC was acquired by the Plan, effective April 4, 1990, pursuant to $1.5 million tendered by the Plan to Confederation on April 3, 1990.[7] Under the terms of the GIC, simple interest was to be paid by Confederation to the Plan at a guaranteed rate of interest in the amount of 8.70 percent per annum through April 3, 1995. All annual interest payments through April 3, 1994, have been paid by Confederation, leaving only the interest yield that accrued since April 4, 1994, remaining to be paid to the Plan. Under the terms of the GIC, the Plan may not deposit additional amounts to nor withdraw amounts from its initial $1.5 million investment. As of August 31, 1994, the GIC was valued at $1,514,315 and represented approximately 5.04 percent of the total value of Plan assets.

On August 12, 1994, the Ingham County Circuit Court, Lansing, Michigan placed Confederation in conservatorship and rehabilitation, causing Confederation to suspend all payments on its contracts, including the GIC. The applicant represents that it is not known whether, when, or under what circumstances Confederation will resume interest payments under the terms of the GIC or whether it will be permitted to pay the principal amount of the GIC to the Plan upon the maturity of the GIC.

4. In order to eliminate the risk associated with continued investment in the GIC and to allow the Plan to distribute or otherwise invest the assets of the Plan currently invested in the GIC in more stable investments that produce a return to the Plan, VF Corporation proposes to purchase the GIC from the Plan.[8] The applicant represents that the Sale would eliminate the risks inherent in the continued investment in the GIC by the Plan and would be in the best interests of the Plan and its participants and beneficiaries.

The Trustee in a letter dated November 10, 1994 also has represented that the Sale as proposed is in the best interests of the Plan and its participants and beneficiaries and that the proposed transaction is protective of the rights of the Plan participants and beneficiaries.

The applicant states that the Sale would be a one-time transaction for cash and the Plan would not incur any expenses from the Sale nor experience any loss. The applicant also states that the Plan would receive as consideration for the Sale the greater of either the fair market value of the GIC as determined by the Trustee on the date of the Sale, or the amount of funds expended by the Plan in acquiring the principal amount of the GIC plus any interest accrued and not paid on the GIC until the date of the Sale.

5. In summary, the applicant represents that the proposed transaction will satisfy the criteria for an exemption under section 408(a) of the Act because (a) the Plan will receive from the Sale in a one-time transaction cash in amount that is not less than the fair market value of the GIC as determined by the Trustee, or an amount that is equal to the total amount paid by the Plan for the GIC plus earnings the GIC would have paid to the date of the Sale if Confederation had not been placed under conservatorship and rehabilitation by the Circuit Court of Michigan; (b) the transaction will enable the Plan and its participants and beneficiaries to eliminate any risk from continued holding of the GIC and invest the funds from the transaction in more stable and paying investments; (c) the Plan will not incur any loss nor expense from the proposed transaction; and (d) the Trustee of the Plan has determined that the proposed transaction is in the best interests of the Plan and its participants and beneficiaries as well as protective of the rights of the participants and beneficiaries.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Employee Profit Sharing-Savings Plan and Trust Agreement of Modern Globe, Inc. (the Plan) Located in Wyomissing, Pennsylvania; Proposed Exemption

[Application No. D–09893]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale (the Sale) of the Guaranteed Investment Company Contract No. 62580 (the GIC), issued by Confederation Life Insurance of Atlanta,

[7] The Department notes that decisions to acquire and hold the GIC are governed by the fiduciary responsibility provisions of Part 4 of Title I of the Act. In this regard the Department is not proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the GIC.

[8] Section 3.04 of the GIC provides that the GIC may not be assigned. The applicant represents that it is negotiating with Confederation to obtain a waiver of the assignment restriction.

Georgia (Confederation), by the Plan to VF Corporation, a Pennsylvania corporation (the Employer), the sponsoring employer and a party in interest with respect to the Plan; provided that (1) the Sale is a one-time transaction for cash; (2) the Plan experiences no loss nor incurs any expense from the Sale; and (3) the Plan receives as consideration from the Sale the greater of either the fair market value of the GIC as determined on the date of the Sale, or an amount that is equal to the total amount expended by the Plan when acquiring the GIC, plus all interest accruing under the terms of the GIC until date of Sale.

Summary of Facts and Representations

1. The Employer, a Pennsylvania corporation which was incorporated on December 4, 1899, is headquartered in Wyomissing, Pennsylvania, and its securities are publicly traded on the New York and Pacific stock exchanges. It is primarily engaged in the domestic and international manufacturing and marketing of jeanswear, casual/sportswear, and intimate and other types of apparel.

2. The Plan is a profit sharing plan that maintains individual accounts for its 838 participants and beneficiaries and is intended to satisfy the qualification requirements of sections 401(a) and 401(k) of the Code.[9] The net assets of the Plan were $12,468,562, as of December 31, 1993. The Plan was ''frozen'' effective December 31, 1992, resulting in no further contributions nor participants being added to the Plan; and all active participants became fully vested in their respective account balances. Under the amendments adopted December 1, 1992, the Employer was designated sponsor of the Plan and UMB Bank, N.A. of Kansas City, Missouri (the Trustee) became trustee of the Plan. The Trustee is custodian of Plan assets and oversees the establishment and maintenance of the investment and disbursement accounts for the Plan.

The Plan is administered by VF Pension Plan Committee (the Committee) which is appointed by the Board of Directors of the Employer. The Committee is responsible for the administration of the Plan, and appoints legal counsel, accountants, and the Trustee for the Plan. The members of the Committee are Harold E. Addis, Frank C. Pickard III, and Lori M. Tarnoski, each of whom is an officer of the Employer.

3. Confederation issued the GIC to the Plan effective November 20, 1991, for the consideration of $2 million.[10] The terms of the GIC provide that compounded interest is to accrue at the guaranteed rate of 6.50 percent per annum on the principal amount of the GIC through November 19, 1994, at which time the accrued interest and principal amount of the GIC is to be paid to the Plan. As of August 31, 1994, the applicant represents that the GIC was valued at $2,381,958 and equaled approximately 21.09 percent of the total value of the Plan assets.

On August 12, 1994, the Ingham County Circuit Court, Lansing, Michigan, placed Confederation in conservatorship and rehabilitation, causing Confederation to suspend all payments on its contracts, including the GIC. The applicant represents that it is not known whether, when, or under what circumstances Confederation will resume payments on its contracts, including payment of the interest and the principal amount of the GIC.

4. In order to eliminate the risk associated with continued investment in the GIC by the Plan and to allow the Plan to distribute or otherwise invest the assets currently invested in the GIC, the Employer proposes to purchase the GIC from the Plan.[11] The applicant represents that the elimination of the risks inherent in the continued investment in the GIC by the Plan would be in the best interests of the Plan and its participants and beneficiaries and would serve to protect their rights under the Plan.

The applicant represents that the Employer will pay the Plan for the GIC in a one-time transaction for cash, and any expenses in connection with the transaction will be absorbed by the Employer with the Plan experiencing no loss nor incurring any expense from the transaction. Also, the applicant represents that the GIC would be either purchased from the Plan at the higher of (1) its fair market value, as determined by the Trustee at the time of the Sale, or (2) at the amount expended by the Plan when acquiring the GIC plus all the interest accruing under the terms of the GIC until the date of the Sale.

In addition, the Trustee has represented in a letter dated November 10, 1994, that in its opinion the proposed purchase of the GIC by the Employer is in the best interests of the Plan and its participants and beneficiaries. Furthermore, the Trustee expressed the opinion that the proposed transaction is protective of the rights of the Plan's participants and beneficiaries.

5. In summary, the applicant represents that the proposed transaction will satisfy the criteria for an exemption under section 408(a) of the Act because (a) the Plan will receive from the Employer in a one-time transaction cash the greater of the fair market value of the GIC as determined by the Trustee, or an amount that is equal to the total amount expended by the Plan in acquiring the GIC plus all interest accruing under the terms of the GIC until the date of Sale; (b) the transaction will enable the Plan and its participants and beneficiaries to avoid any risk associated with the continued holding of the GIC; (c) the Plan will not incur any loss or expense from the proposed transaction; and (d) the Trustee of the Plan has determined that the proposed transaction is in the best interests of the Plan and its participants and beneficiaries and would serve to protect their rights under the Plan.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the

[9] The Plan was originally sponsored by Modern Globe, Inc., a Delaware corporation, which was wholly-owned by the Employer. As of December 1, 1992, Modern Globe, Inc. ceased to exist when it was merged into another wholly-owned subsidiary of the Employer.

[10] The Department notes that decisions to acquire and hold the GIC are governed by fiduciary responsibility provisions of Part 4 of Title I of the Act. In this regard the Department is not proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the GIC.

[11] Although section 3.04 of the GIC provides that it may not be assigned, the applicant represents that it is negotiating with Confederation to obtain a waiver of the assignment restriction.

exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 29th day of December, 1994.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits, Administration, U.S. Department of Labor.

[FR Doc. 95–109 Filed 1–3–95; 8:45 am]

BILLING CODE 4510–29–P

[Prohibited Transaction Exemption 94–82]

Marshall & Ilsley Trust Company

AGENCY: Department of Labor.

ACTION: Notice of technical correction.

On December 5, 1994, the Department of Labor (the Department) published in the **Federal Register** (59 FR 62422) and individual exemption which permits: (1) the in-kind transfer of assets of plans for which Marshall & Ilsley Trust Company or an affiliate (collectively, M&I) serves as a fiduciary (the Client Plans), other than plans established and maintained by M&I, that are held in certain collective investment funds maintained by M&I (the CIFs), in exchange for shares of the Marshall Funds, Inc. (the Funds), an open-end investment company registered under the Investment Company Act of 1940, for which M&I acts as investment adviser, custodian, and/or shareholder servicing agent, in connection with the termination of such CIFs; (2) the receipt of fees by M&I from the Funds for acting as an investment adviser to the Funds in connection with the investment by the Client Plans in shares of the Funds; and (3) the receipt and proposed retention of fees by M&I from the Funds for acting as custodian and shareholder servicing agent to the Funds as well as for any other services to the Funds which are not investment advisory services (i.e. ''secondary services'') in connection with the investment by the Client Plans in shares of the Funds.

Section I(f) in the first column on 59 FR 62423 should read as follows:

(f) The conditions set forth in paragraphs (e), (f) and (n) of Section II below are satisfied.

For Further Information Contact: Mr. E.F. Williams, of the Department, at (202) 219–8194.

Signed at Washington, DC, this 29th day of December, 1994.

Ivan L. Strasfeld,

Director, Office of Exemption Determinations, Pension and Welfare Benefits Administration.

[FR Doc. 95–111 Filed 1–3–95; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 94–105]

NASA Advisory Council, NASA Federal Laboratory Review Task Force; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Federal Laboratory Review Task Force of the NASA Advisory Council.

DATES: January 26, 1995, 12:30 p.m. to 4:15 p.m.

ADDRESSES: National Aeronautics and Space Administration, Program Review Center, Ninth Floor, Room 9H40, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Richard L. Kline, Code AE, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–4697.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—General Findings and Recommendations
—Aeronautics Enterprise Recommendations
—Scientific Research Enterprise Recommendations
—Mission to Planet Earth Enterprise Recommendations
—Space Technology Enterprise Recommendations
—Human Exploration and Development of Space Enterprise Recommendations
—Discussion

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors' register.

Dated: December 22, 1994.

Timothy M. Sullivan,

Advisory Committee Management Officer.

[FR Doc. 95–135 Filed 1–3–95; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, N.W., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. Date: January 23, 1995
Time: 8:30 a.m. to 5:00 p.m.

Room: 315
Program: This meeting will review applications for projects in Interpretive Research: Humanities Studies of Medicine, submitted to Division of Research Programs, for projects beginning after July 1, 1995.

2. Date: January 27, 1995
Time: 8:30 a.m. to 5:00 p.m.
Room: 315
Program: This meeting will review applications for projects in Interpretive Research: Humanities Studies of Technology, Industry and Architecture, submitted to the Division of Research Programs, for projects beginning after July 1, 1995.

3. Date: January 30, 1995
Time: 8:30 a.m. to 5:00 p.m.
Room: 315
Program: This meeting will review applications for projects in Interpretive Research: History and Philosophy of Science, submitted to the Division of Research Programs, for projects beginning after July 1, 1995.

David C. Fisher,

Advisory Management Committee Officer.

[FR Doc. 95–11 Filed 1–3–95; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–261]

Carolina Power & Light Company; H.R. Robinson Steam Electric Plant, Unit No. 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–23 issued to Carolina Power & Light Company (the licensee) for operation of H.R. Robinson Steam Electric Plant, Unit No. 2 (HBR), located in Darlington County, South Carolina.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would include provisions in Technical Specifications (TS) 5.3 and 5.4 which allow for the storage of fuel with an enrichment not to exceed 4.95 + 0.05 w/o U–235 in the new and spent fuel storage racks. The proposed action is in accordance with the licensee's application for amendment dated July 28, 1994.

The Need for Proposal Action

The proposed changes are needed so that the licensee can use higher fuel enrichment to provide the flexibility of extending the fuel irradiation and to permit operation for longer fuel cycles.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the TS. The proposed revisions would permit use of fuel enriched to a nominal 5.0 weight percent Uranium 235. The safety considerations associated with reactor operation with higher enrichment and extended irradiation have been evaluated by the NRC staff. The staff has concluded that such changes would not adversely affect plant safety. The proposed changes have no adverse effect on the probability of any accident. The higher enrichment, with fuel burnup to 60,000 megawatt days per metric ton Uranium, may slightly change the mix of fission products that might be released in the event of a serious accident, but such small changes would not significantly affect the consequences of serious accidents. No changes are being made in the types or amount of any radiological effluents that may be released offsite. There is no significant increase in the allowable individual or cumulative occupational radiation exposure.

With regard to potential nonradiological impacts of reactor operation with higher enrichment and extended irradiation, the proposed changes to the TS involve systems located with the restricted area, as defined in 10 CFR Part 20. They do not affect nonradiological plant effluents and have no other environmental impact.

The environmental impact of transportation resulting from the use of higher enrichment fuel and extended irradiation were published and discussed in the staff assessment entitled, ''NRC Assessment of the Environmental effect of Transportation Resulting from Extended Fuel Enrichment and Irradiation,'' dated July 7, 1988, and published in the **Federal Register** (53 FR 30355) on August 11, 1988. As indicated therein the environmental cost contribution of the proposed increase in the fuel enrichment and irradiation limits are either unchanged or may, in fact, be reduced from those summaries in Table S–4 as set forth in 10 CFR 51.52(c). Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed action.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any other alternative would have equal or greater environmental impacts and need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce the environmental impact of plant operations and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement related to operation of HBR.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendments.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendments dated July 28, 1994, that is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the H.B. Robinson Steam Electric Plant, Unit No. 2, at Hartsville Memorial Library, 147 West College, Hartsville, South Carolina 29550.

Dated at Rockville, Maryland, this 28th day of December 1994.

For the Nuclear Regulatory Commission.

Byron L. Siegel,

Acting Director Project Directorate II–1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–125 Filed 1–3–95; 8:45 am]

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Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from December 12, 1994, through December 21, 1994. The last biweekly notice was published on December 21, 1994 (59 FR 65809).

Notice Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By February 3, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one

contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3, Maricopa County, Arizona

Date of amendment requests: November 30, 1994

Description of amendment requests: The proposed amendment would relocate Table 3.3-2, ''Reactor Protective Instrumentation Response Times,'' and Table 3.3-5, ''Engineered Safety Features Response Times,'' of Technical Specifications (TS) 3/4.3.1 and 3/4.3.2, respectively, to the Palo Verde Updated Final Safety Analysis Report (UFSAR) in accordance with the guidance provided in Generic Letter (GL) 93-08. In addition, the proposed amendment would make administrative changes to two previous TS amendment requests to reflect the deletion of Tables 3.3-2 and 3.3-5. The amendment would also delete an obsolete footnote on page 3/4 3-17 of the Palo Verde Unit 2's TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis about the issue of no significant hazards consideration, which is presented below:

Standard 1 -- Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change relocates two tables of instrument response time limits from the TS to the UFSAR. The changes are in accordance with the guidance provided by the NRC in Generic Letter 93-08. The changes are administrative in nature and do not involve any modifications to plant equipment or affect plant operation. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Standard 2 - Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change relocates two tables of instrument response time limits from the TS to the UFSAR. The changes are in accordance with the guidance provided by the NRC in Generic Letter 93-08. The changes are administrative in nature, do not involve any modifications to plant equipment and cause no change in the method by which any safety-related system performs its function. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Standard 3 - Does the proposed change involve a significant reduction in a margin of safety?

The proposed change relocates two tables of instrument response time limits from the TS to the UFSAR. The changes are in accordance with the guidance provided by the NRC in Generic Letter 93-08. The changes are administrative in nature, do not change or alter regulatory requirements and do not affect the safety analysis. Plant procedures contain response time testing acceptance criteria that reflect the reactor trip and ESFAS [engineered safety feature actuation system] response time limits in the tables being relocated from the TS into the UFSAR. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensees' analysis and, based on that review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Attorney for licensees: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072-3999

NRC Project Director: Theodore R. Quay

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3, Maricopa County, Arizona

Date of amendment requests: December 7, 1994

Description of amendment requests: The proposed amendment would change Table 4.3-1 of Technical Specification 3/4.3.1 to allow verification of the shape annealing matrix elements used in the Core Protection Calculators. This would provide the option to use generic shape annealing matrix elements in the Core Protection Calculators. Presently, cycle-specific shape annealing elements are determined during startup testing after each core reload. Use of a generic shape annealing matrix would eliminate approximately 2 to 3 hours of critical path work during startup after a refueling outage.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis

about the issue of no significant hazards consideration, which is presented below:

Standard 1 -- Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed Technical Specification amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The Technical Specification amendment provides the option to use generic shape annealing matrix elements in the Core Protection Calculators. The design basis of the Core Protection Calculators is to provide the DNBR [departure from nucleate boiling ratio] and linear heat rate trip functions for the Reactor Protection System so that the Specified Acceptable Fuel Design Limits on DNBR and fuel centerline melt are not exceeded during normal operation or Anticipated Operational Occurrences, and assist the Engineered Safety Features Actuation System in limiting the consequences of postulated accidents. The generic shape annealing matrix elements will be validated during startup testing and will meet the same acceptance criteria as the cycle specific shape annealing matrix elements. If the generic shape annealing matrix elements are not valid, cycle specific shape annealing matrix elements would be used in the Core Protection Calculators. This change will not affect the Core Protection Calculators capability to protect the plant by tripping the reactor, based on a conservative calculation of minimum DNBR and peak linear heat rate, to ensure that the Specified Acceptable Fuel Design Limits are not violated in the event of an Anticipated Operational Occurrence. Therefore, the generic shape annealing matrix elements will not affect the safety analysis, since there is no change to the design basis of the Core Protection Calculator System.

Standard 2 -- Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed Technical Specification amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. Since the generic shape annealing matrix elements will still have to meet the same acceptance criteria as the cycle specific shape annealing matrix elements, the Core Protection Calculators will still generate axial power shapes that fall within the required uncertainties. The Core Protection Calculators will still trip the reactor, based on a conservative calculation of minimum DNBR and peak linear heat rate, to ensure that the Specified Acceptable Fuel Design Limits are not violated in the event of an Anticipated Operational Occurrence.

Standard 3 -- Does the proposed change involve a significant reduction in a margin of safety?

The proposed Technical Specification amendment will not involve a significant reduction in a margin of safety. There is no reduction in the margin of safety, since the generic shape annealing matrix elements will still have to meet the same acceptance criteria as the cycle specific shape annealing matrix elements. Therefore, this change will not affect the design basis of the Core Protection Calculators. The Core Protection Calculators will still provide a reactor trip based on a conservative calculation of minimum DNBR and peak linear heat rate.

The NRC staff has reviewed the licensees' analysis and, based on that review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Attorney for licensees: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072-3999

NRC Project Director: Theodore R. Quay

Arizona Public Service Company, et al., Docket No. STN 50-529, Palo Verde Nuclear Generating Station, Unit No. 2, Maricopa County, Arizona

Date of amendment request: November 30, 1994

Description of amendment request: The proposed amendment would change the pressurizer code safety valve lift setting from 2500 psia to 2475 psia. The lift setting is being changed to permit Unit 2 to operate with up to 1500 plugged tubes in each steam generator.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis about the issue of no significant hazards consideration, which is presented below:

Standard 1 -- Does the proposed change involve a significant increase in the probability or consequence of an accident previously evaluated?

The proposed Technical Specification amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. Chapters 6 and 15 of the [Palo Verde Nuclear Generating Station] PVNGS [Updated Final Safety Analysis Report] UFSAR have been reviewed to address the impact of these changes (1500 plugged tubes and a pressurizer code safety valve nominal lift setpoint of 2475 psia) on accident consequences. For most of the events that were previously analyzed in the UFSAR, the proposed change does not have a significant affect or adversely impact the accident analysis. For RCS [reactor coolant system] pressure peaking events, Loss of Condenser Vacuum (LOCV) and Feedwater Line Breaks (FLB), a new analysis was performed to justify the acceptability of the changes.

For the LOCV event (anticipated operational occurrence), the reanalysis determined that the peak RCS pressure, assuming 1500 plugged tubes and a pressurizer code safety valve nominal lift setpoint of 2475 psia, is 2728 psia. The maximum reactor coolant system (RCS) pressure reached for this event as described in UFSAR Section 15.2.3 is 2742 psia. Therefore, this change is bounded by the reference cycle (UFSAR analysis) and remains below the 110% (2750 psia) design pressure limit.

Several FLB scenarios are analyzed in support of PVNGS Unit 2 operation. The scenario with the highest system pressures is the large FLB with a loss of alternating current (LOAC). For the large FLB with a LOAC event (limiting fault event), assuming 1500 plugged tubes and a pressurizer code safety valve nominal lift setpoint of 2475 psia, is 2813 psia. The maximum RCS pressure reached for this event as described in UFSAR Section 15.2.8 is 2843 psia. The analysis shows that the RCS peak pressure for the large FLB with a LOAC (very low probability) event remains below the required value of 120% (3000 psia) of design pressure. Therefore, the analyses and reviews of the RCS pressure peaking events determined that the UFSAR design pressure limit is still bounding with this change. That is, the RCS design pressure limit will not be exceeded. Also, safety valves are accident mitigating devices and do not contribute to the probability of an event.

Standard 2 -- Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed Technical Specification amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The analyses and reviews show that the current licensing basis remains valid for this change (UFSAR design pressure limit is still bounding with this change). Safety valves are accident mitigating devices and do not contribute to the possibility of an accident. The pressurizer code safety valves are not manually or remotely operated, but are designed to automatically open to provide overpressure protection for pressure peaking events. The change in the pressurizer code safety valve setpoint to 2475 psia does not significantly increase the probability of a pressurizer code safety valve opening, since the pressure is still well above the Technical Specification Table 2.2-1 reactor trip setpoint of 2383 psia for high pressurizer pressure.

Standard 3 -- Does the proposed change involve a significant reduction in a margin of safety?

The proposed Technical Specification amendment does not involve a significant reduction in a margin of safety. The analyses and reviews show that the limits in the licensing and design basis are still valid with this change. The analyses show that the RCS peak pressure remains below the 110% (2750 psia) design pressure limit for the LOCV event and remains below the required value of 120% (3000 psia) of design pressure RCS peak pressure for the large FLB with a LOAC (very low probability) event. The analyses

and reviews of the RCS pressure peaking events determined that the UFSAR design pressure limit is still bounding with this change. Therefore, the proposed Technical Specification amendment maintains the margin of safety to the design pressure limit.

The NRC staff has reviewed the licensees' analysis and, based on that review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Attorney for licensees: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072-3999

NRC Project Director: Theodore R. Quay

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County,North Carolina

Date of amendments request: November 16, 1994Description of amendments request: The proposed revision to the Technical Specifications (TS) would change the Technical Specification 3/4.6.2 to remove the specific instrumentation requirements for monitoring of the suppression chamber average water temperature. Also, the proposed revision would change the TS Bases 3/4.6.2 to indicate the methods that are acceptable for determining suppression chamber average water temperature.Proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change maintains the same number of monitored locations from which an average suppression chamber water temperature can be derived, while making available additional valid RTD [resistance temperature detector] inputs from what was the redundant channel. No safety-related equipment, safety function or plant operation will be altered as a result of the proposed change. The SPTMS [suppression chamber temperature monitoring system] is neither an accident initiator nor does it provide any automatic accident mitigation function. The change does not affect the design, materials, or construction standards applicable to the suppression chamber average water temperature monitoring instrumentation.

2. The proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The fundamental function and objective of the system is not affected by the proposed change. As stated above, no safety-related equipment, safety function or plant operations will be altered as a result of the proposed change. The change does not affect the design, materials, or construction standards applicable to the suppression chamber average water temperature instrumentation.

3. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed change allows the substitution of a qualified RTD already installed at a monitored location to insure the suppression chamber average water temperature remains valid. It does not involve any changes to the plant design or operation, therefore, no margins of safety, as defined by the plant's accident analyses, are impacted. Deletion of the defined instrument channels will not affect the ability to verify the suppression chamber ''average'' water temperature is being maintained below the maximum average temperatures required by the specification. This will insure the suppression chamber is Operable and able to perform its intended safety function.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: William H. Bateman

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: December 12, 1994

Description of amendment request: The requested change would revise the containment spray (CS) nozzle surveillance interval from 5 to 10 years.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The requested change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The requested change extends the surveillance interval for performance of qualitative flow testing of the CS nozzles. A revision to this surveillance interval can in no way increase the probability of any accident previously evaluated.

Containment spray nozzle testing is not intended to track degradation of equipment by monitoring or trending performance. Rather, this surveillance constitutes a test of the passive design of the spray nozzles, i.e., it merely demonstrates whether the nozzles are or are not blocked or clogged. Based upon industry and plant-specific operating experience, a single failure rendering a significant number of nozzles inoperable as a result of blockage is considered highly unlikely. Since the reliability or functioning of the spray nozzles will not be affected by the revised surveillance interval, the consequences of any accident previously evaluated will not be increased. The requested change does not affect the physical design or operation of the plant, does not alter assumptions contained within the Updated Final Safety Analysis Report, and will not affect other Technical Specifications that preserve safety analysis assumptions. Therefore, operation of the facility in accordance with the requested change will not involve a significant increase in the consequences of any accident previously evaluated.

2. The requested change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The requested change extends the surveillance interval for performance of qualitative flow testing of the CS nozzles. This change in the spray nozzle surveillance interval will not change or affect the physical plant or the modes of plant operation defined within the facility Operating License. This change does not involve the addition or modification of plant equipment, nor does it alter the design or operation of plant systems. Therefore, operation of the facility in accordance with the requested change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The requested change does not involve a significant reduction in the margin of safety.

The requested change extends the surveillance for performance of qualitative flow testing of the CS nozzles. This revised surveillance interval will not change or otherwise influence the degree of operability assumed for the CS system within the plant safety analyses. As demonstrated by plant-specific and industry experience, an operational failure of the containment spray nozzles is considered highly unlikely. Since prior testing has demonstrated proper functioning of the CS spray nozzles, and operational single-failures are considered highly unlikely, a reduction in testing frequency should not affect the ability of the CS system to mitigate the affects of a large loss-of-coolant or steam release accident.

Therefore, operation of the facility in accordance with the requested change will not result in a significant reduction in the margin or safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: William H. Bateman

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: October 24, 1994

Description of amendment request: The proposed amendments would restructure the primary containment integrity and primary containment leakage technical specifications (TS) to reduce the repetition of those requirements contained in NRC regulations such as Appendix J to 10 CFR 50. The amendments also support proposed exemptions from Appendix J requirements related to the scheduling of containment integrated leak rate tests (CILRT). In addition to the restructuring and scheduling changes, the proposed amendments incorporate (1) the relocation of the list of primary containment isolation valves in accordance with Generic Letter 91-08, ''Removal of Component Lists from Technical Specifications,'' and (2) a revision of the interval for functional testing of hydrogen recombiners from 6 months to 18 months in accordance with Generic Letter 93-05, ''Line-Item Technical Specifications Improvements to Reduce Surveillance Requirements for Testing During Power Operation.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated because of the following:

a. The relocation of Technical Specification 3/4.6.1.2, Primary Containment Leakage, and Surveillance Requirements 4.6.1.1.a, 4.6.4.3, and 4.6.6.1.d to specification 3/4.6.1.1, Primary Containment Integrity, as Surveillance Requirement 4.6.1.1.b continues to assure that Primary Containment leakage is maintained within the analyzed limit assumed for accident analysis by testing in accordance with 10 CFR part 50, Appendix J as modified by approved exemptions.

The requirement to be less than 0.75 L_a for as-left Type A test and less than 0.60 L_a for Type B and C tests prior to first unit startup following testing performed in accordance with 10 CFR part 50, Appendix J, as modified by approved exemptions, provides margin for degradation between tests and thus primary containment integrity is maintained during the time period between required leakage testing. The current Limiting Condition for Operation 3.6.1.2 in conjunction with Surveillance Requirements 4.6.1.2 basically require the same leakage limits as proposed Surveillance Requirement 4.6.1.1.b. The Limiting Condition for Operation (LCO) is required to be less than 1.0 L_a and is applicable during a fuel cycle for the Type A test. The LCO for Type B and C combined leakage total is currently required to be less than 0.60 L_a. The proposed Surveillance Requirement maintains the following:

1.The current LCO for Overall Containment leakage (as determined by a Type A test) and for the Type B and C combined leakage during the cycle by requiring overall containment leakage to be less than 1.0 L_a and Type B and C leakage total less than 0.60 L_a.

2. The associated limits specified in the current Action Statements are maintained by verifying Overall Containment leakage to be less than 0.75 L_a and Type B and C leakage total less than 0.60 L_a prior to startup from an outage in which the applicable leakage testing is conducted.

Therefore, there is no change to the consequences of an accident previously evaluated, because maintaining leakage within the analyzed limit assumed for accident analysis does not change either the onsite or offsite dose consequences resulting from an accident. In addition to this, containment leakage is not an accident initiator, so there is no effect on the probability of accident initiators. Thus there is no increase in the probability of an accident previously analyzed.

b. Relocation of Technical Specification table of Primary Containment Isolation Valves, Table 3.6.3-1, to the LaSalle UFSAR is an administrative change to remove the component list of Primary Containment Isolation Valves, Table 3.6.3-1, from the Technical Specifications. The Limiting Condition for Operation (LCO), 3.6.3, is being revised to define which components the LCO applies to. The wording of the revised LCO encompasses all of the components listed in the current Technical Specification Table 3.6.3. Removal of this component list does not change the probability of any accident initiators or change any other relevant initial assumptions. Also, there is no change to the consequences of an accident previously evaluated, because removing this list from Technical Specifications does not change either the onsite or offsite dose consequences resulting from the event. The component list will be controlled by an Administrative Procedure and can only be changed by the 10 CFR 50.59 change process with review and approval per the Onsite Review and Investigative Function. Therefore, there is no increase in either the probability or consequences of an accident previously evaluated.

c. The change in the functional test interval for the Drywell and Suppression Chamber Hydrogen Recombiner systems from ''once per 6 months'' to ''once per 18 months'' was determined by the NRC in NUREG 1366 and Generic Letter 93-05 to be acceptable by evaluation of the industry Licensing Event Reports (LERs) to assess the reliability of hydrogen recombiners. The conclusion was that the interval should be changed, because of the redundancy and apparent high reliability. A review of LaSalle LERs has shown only one LER that involved the operability of the hydrogen recombiner system and that was due to a Part 21 issue regarding circuit breaker environmental qualification. The breakers were replaced with qualified breakers. Therefore, the LaSalle Hydrogen Recombiner reliability is consistent with or better than that found by the NRC in determining this surveillance interval extension based on all LERs. Also, redundancy is the same as that assumed by the NRC; because, LaSalle has two hydrogen recombiner subsystems that are shared by Unit 1 and Unit 2. Both hydrogen recombiners subsystems are required to be Operable for either or both units in Operational Conditions 1 and 2. Based on LaSalle operating experience, the hydrogen recombiner subsystems are expected to continue to be demonstrated operable when the functional test is performed at an 18 month frequency.

Therefore, there is minimal or no change to the consequences of an accident previously evaluated, because at least one of the hydrogen recombiner subsystems is expected to be available to meet its design function to reduce the potential for hydrogen explosion or hydrogen burn in the primary containment. By preserving the integrity of the primary containment, there is no change to either the onsite or offsite dose consequences resulting from an accident. In addition to this, control of hydrogen concentration by use of a hydrogen recombiner subsystem is not an accident initiator, so there is no effect on the probability of accident initiators. Thus there is no significant increase in the probability of an accident previously analyzed.

d. The first exemption request is from the requirements of paragraph III.A.6(b) of Appendix J to allow LaSalle County Station Unit Two to return to or resume a Type A test schedule of three times in ten years (40 plus or minus 10 months). Due to consecutive failures, 10 CFR 50 Appendix J requires that Type A tests be performed every refueling outage on Unit Two until two consecutive Type A tests are satisfactory. 10 CFR Part 50 has an exemption process and is specified in 10 CFR Part 50.12(a), which states:

''The Commission may, upon application by any interested person or upon its own

initiative, grant exemptions from the requirements of the regulations of this part,...''

The exemption process requires showing that the granting of the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are required to be present for the granting of an exemption. One of the special circumstances that would apply in this instance is 10 CFR part 50.12(a)(2)(ii) which states:

''Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule''.

This requires that it be shown that unacceptable containment leakage will be identified and corrected, by alternative methods. The alternative method is specifically Type B and C tests, which will identify any local penetration leakage. This is acceptable, because Type C test failures have been the cause for failures of as-found Type A tests in the LaSalle Unit 2 first, third, and fourth refueling outages.

Exceeding the allowable leakage rate during the performance of the Type A test is indicative of either a passive or a structural component that is leaking or that there is an inadequacy in the Local Leak Rate Test (Type B and C tests) program. When the failure of a Type A test is due to a passive or structural component, the only test for adequate repair would be the Type A test. For a Local Leak Rate Test program inadequacy, the Type A test would serve as a means of verification of the results of the test program. The Type A tests have not found new significant Type B or C tested local penetration leakage that has not been identified by Type B or C testing alone. Therefore, the LaSalle Local Leak Rate Test program is adequate to find and correct Type B and C containment penetration leakage.

When it is determined that Type A tests failed as a direct result of as-found Type B and C minimum path leakage penalty additions and not due to a non Type B or C tested components or structures, then performance of the Type A test more frequently as required by 10 CFR Part 50, Appendix J, due only to Type B and C test failures is redundant to the performance of Type B and C tests. Therefore, Type B or C tested penetration leakage that can be determined by Type B or C tests is evaluated and corrected, as applicable, to maintain overall containment leakage within limits, without an additional Type A test.

Primary Containment leakage which includes the minimum path Primary Containment Isolation Valve leakage is an assumption in any analyzed accident which could involve an offsite radioactive release. Because performance of Type B and C tests will find and allow correction/repair of leaking valves/penetrations, verification of as-found and as-left local leakage assures that Primary Containment leakage will be within the analyzed limit assumed for accident analysis.

Therefore, for this one-time exemption for LaSalle Unit 2, there is little or no increase in the consequences of an accident previously evaluated involving the dose previously calculated either onsite or offsite at the site boundary due to any analyzed accident. In addition to this, containment leakage is not an accident initiator, so there is no effect on the probability of accident initiators. Thus there is no significant increase in the probability of an accident previously analyzed.

e. The request for a partial exemption from paragraph III.D of Appendix J to 10 CFR 50 involves a deletion of the requirement to perform the third Type A test for each 10-year service period during the shutdown for the 10-year plant inservice inspections. There is no significant benefit in coupling these two surveillances (i.e., the Type A test and the 10-year ISI program). Each of the two surveillances is independent of the other and provides assurance of different plant characteristics. The Type A test assures the required leak-tightness for the reactor containment building be less than Appendix J acceptance criteria. This demonstrates compliance with the guidelines of 10 CFR Part 100 based on the assumptions used in the UFSAR which conform to NRC Safety Guide 4. The 10-year ISI program provides assurance of the integrity of the plant structures, systems, and components in compliance with 10 CFR 50.55(a). There is no safety-related concern necessitating their coupling to the same refueling outage. As a result, this change cannot increase the consequences (i.e., offsite dose) of any accident previously evaluated. Furthermore, since the decoupling of the test schedules has no affect on the test's effectiveness, decoupling their schedules will not increase the probability of an accident.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

a. Technical Specification 3/4.6.1.2, Primary Containment Leakage, and Surveillance Requirements 4.6.1.1.a, 4.6.4.3, and 4.6.6.1.d are being relocated to specification 3.4.6.1.1, Primary Containment Integrity, as Surveillance Requirement 4.6.1.1.b. The proposed Surveillance Requirement 4.6.1.1.b assures that Primary Containment leakage is maintained within the analyzed limit assumed for accident analysis by testing in accordance with 10 CFR part 50, Appendix J as modified by approved exemptions. Primary containment leakage is an assumption in accident analyses, and is maintained by both the current specifications and the proposed specification. The leakage does not cause an accident and no new failure modes are created. Therefore this request for exemption does not create the possibility of a new or different kind of accident from any accident previously evaluated.

b. This is an administrative change to control the list of Primary Containment Isolation Valves outside the LaSalle Unit 1 and Unit 2 Technical Specifications. The administrative controls provided to control this component list assure that the design and operation of the plant will continue to be in accordance with the UFSAR, Facility License and the associated Technical Specifications. Therefore, the possibility of a new or different kind of accident from any previously evaluated is not created.

c. The change in the functional test interval for the Drywell and Suppression Chamber Hydrogen Recombiner systems from ''once per 6 months'' to ''once per 18 months'' is based on good equipment performance on a 6 month frequency. The expected outcome of the 18 month surveillances, based on the low failure rate at a six month frequency, is to show the hydrogen recombiner subsystems Operable. This system is for mitigating the consequences of an accident that causes generation of hydrogen and oxygen in the primary containment. No new failure modes are created by this change in surveillance frequency. Therefore, the possibility of a new or different kind of accident from any previously evaluated is not created.

d. The first exemption is from the requirements of paragraph III.A.6(b) of Appendix J to allow LaSalle County Station Unit Two to return to or resume a Type A test schedule of three times in ten years (40 plus or minus 10 months). Containment leakage testing, including both Type B and C testing and Type A testing as specified in the LaSalle County Station Safety Analysis Report were evaluated in Section 6.2.6 of Safety Evaluation Report, NUREG-0519, and found to be acceptable. Since Type B and C testing will find and verify correction of penetration leakage when Type B and C test as-found penalties are specifically what caused the failure of the as-found Type A tests, then Type B and C testing will provide adequate assurance of the continued integrity of the Primary Containment without increasing the frequency of Type A tests. As a result, the Primary Containment will continue [to] be maintained as designed and previously evaluated.

Based on this, the requirement of two acceptable as-found Type A tests prior to returning to the Appendix J paragraph III.D frequency of three times in ten years (40 plus or minus 10 months) is not necessary to assure that the primary containment remains within the analyzed leakage limits. Containment leakage is an assumption for the dose consequences of accident analyses, and not an accident initiator. Also, no new failure modes are created by this exemption. Therefore this Amendment does not create the possibility of a new or different kind of accident.

e. The request for a partial exemption from paragraph III.D of Appendix J to 10 CFR 50 involves a deletion of the requirement to perform the third Type A test for each 10-year service period during the shutdown for the 10-year plant inservice inspections. The proposed exemption does not involve any change to the plant design or operation. As discussed above, this change cannot increase the consequences of any accident previously evaluated. As a result, no new failure modes are created. Therefore, this proposed change cannot create the possibility of any new or different kind of accident from any accident previously evaluated.

3) Involve a significant reduction in the margin of safety because:

a. Technical Specification 3/4.6.1.2, Primary Containment Leakage, and Surveillance Requirements 4.6.1.1.a, 4.6.4.3,

and 4.6.6.1.d are being relocated to specification 3/4.6.1.1, Primary Containment Integrity, as proposed Surveillance Requirement 4.6.1.1.b. The proposed Surveillance Requirement 4.6.1.1.b continues to assure that Primary Containment leakage is maintained within the analyzed limit assumed for accident analysis by testing in accordance with 10 CFR part 50, Appendix J as modified by approved exemptions.

As stated in 1)a. above, the proposed Surveillance Requirement 4.6.1.1.b maintains the acceptance criteria and limits for continued operation of the current specification for primary containment leakage. Therefore, the margin of safety is not reduced by this change. Also, the proposed addition of a definition for the maximum allowable primary containment leakage rate assures that the margin of safety is maintained.

The leakage limits for MSIVs and hydrostatically tested valves are maintained by relocating the current surveillance requirements to specification 3/4.6.3, with the acceptance criteria of the current specification retained. Thus preserving the current margin of safety by maintaining the leakage rates as assumed in the accident analyses.

b. The Limiting Condition for Operation for Technical Specification 3.6.3, Primary Containment Isolation Valves, is revised by this Technical Specification change to specifically define the components to which the LCO applies. Therefore, removal of Technical Specification Table 3.6.3-1, which lists the specific components to which the LCO applies does not change the scope or applicability of the specification. The component list will be controlled administratively with any changes to the list made in accordance with the 10 CFR 50.59 change process. Therefore, this is an administrative change only and there is no reduction in the margin of safety.

c. The change in the functional test interval for the Drywell and Suppression Chamber Hydrogen Recombiner systems from ''once per 6 months'' to ''once per 18 months'' is based on good equipment performance on a 6 month frequency. The expected outcome of the 18 month surveillances, based on the low failure rate at a six month frequency, is to show the hydrogen recombiner subsystems Operable. The change in frequency has no affect on the hydrogen or oxygen generation assumptions or the recombination rate of the hydrogen recombiner subsystems. Therefore, the margin of safety is not reduced or changed by this surveillance interval change.

d. The first exemption is from the requirements of paragraph III.A.6(b) of Appendix J to allow LaSalle County Station Unit Two to return to or resume a Type A test schedule of three times in ten years (40 plus or minus 10 months). The limit of total leakage determined from Type B and C tests will remain the same, providing a margin of 40 percent to the maximum allowable containment leakage rate (L_a) at the design basis accident pressure specified in proposed Technical Specification definition of L_a. This 40 percent is as specified by 10 CFR Part 50, Appendix J. In addition to this, administrative guidelines have been set for each penetration/valve, so that any abnormal leakage will be corrected by adjustment or repair as needed. Any postponement of repairs is based on a technical evaluation and then only if the total Type B and Type C leakage is maintained at less than 0.60 L_a. Repairs will be required to restore the leakage rate to less than the administrative limit at the next refueling outage.

This request for exemption is based the fact that Type B and C testing minimum path leakage rate penalties are the direct cause of the failure of as-found Type A tests. The leakage through Type B and C tested penetrations is best measured and corrected via a local leak test. Therefore, verification of an adequate margin of safety is assured by conducting Type B and C tests, and not another increased frequency Type A test.

e. The request for a partial exemption from paragraph III.D of Appendix J to 10 CFR 50 involves a deletion of the requirement to perform the third Type A test for each 10-year service period during the shutdown for the 10-year plant inservice inspections. The proposed exemption does not change the acceptance criteria that must be met for inservice inspections, does not relax the condition of containment that must be met prior to plant restart, and does not change the requirements that must be met between plant refueling outages. Therefore, the proposed change does not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: Robert A. Capra

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of amendment request: November 21, 1994

Description of amendment request: The proposed amendment would revise the Technical Specifications to allow a one-time extension of the allowed outage time for an inoperable reserve source of offsite power.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

The proposed changes will extend the allowed outage time for the Reserve source of off-site power, on a one time basis, to allow the installation of high speed protective relays on the unit system auxiliary transformers which will increase the level of protection from ground faults on the low voltage (secondary) side of the transformers. Operation of Zion, Units 1 and 2, in accordance with the proposed requirements will not affect the initiators or precursors of any accident previously evaluated. Operation in accordance with the proposed requirements will not increase the likelihood that a transient initiating event will occur because transients are initiated by equipment malfunction and/or catastrophic system failure. As a result, the probability of occurrence of accidents previously evaluated is not significantly increased.

During the [system auxiliary transformer] SAT outage, power to the shut down unit will be provided by backfeeding off-site power through the unit main power transformers and the UAT to supply the unit non-essential 4-KV service buses. Emergency on-site power will be available to the shut down unit from at least one unit specific [emergency diesel generator] EDG when fuel is in the reactor core. This will ensure that at least one train of Residual Heat Removal (RHR) will have an emergency source of AC power at all times. RHR Train A is powered by ESF bus 149(249) which can be energized by the 1B(2B) EDG during a loss of off-site power. RHR Train B is powered by bus 148(248) which can be energized by the 1A(2A) EDG. Because the 'O' EDG must be operable for the operating unit, it will also be available to energize the Division 7 ESF bus on the shut down unit. The 'O' EDG can supply buses 147 and 247 simultaneously if the need should arise during an emergency.

Power to the operating unit (opposite unit) will be provided by the SAT and the UAT in the normal at-power configuration. Emergency on-site will be provided by the two unit specific EDGs (A and B) and the common 'O' EDG. In accordance with the proposed requirements, the Reserve source of off-site power will not be removed from service unless all three EDGs are operable and the normal source of off-site power is operable. Administrative controls will be in place to limit activities in the switchyard that could impact the reliability of the remaining source of off-site power to the unit.

The Zion PRA was used to compare the impact of extending the action time versus the impact of manual reactor shutdown on core damage probability. The PRA result concluded that the risk of continuing to operate the operating unit for an additional 11 days with the shutdown unit's SAT out of service is not significantly greater than the risk of manually shutting down the operating unit at the expiration of the current 72 hour action statement and is not significant when compared to the total core damage probability in a year.

The revised surveillance requirements will provide additional assurance that redundant sources of power are maintained operable while the reserve source of off-site power is

unavailable. The ability to safely shut down the operating unit and mitigate the consequences of all accidents previously evaluated will be maintained. The reserve source of off-site power is not relied upon in any design basis accident. Therefore, based on the previous discussion, the proposed changes do not involve a significant increase in consequences of any accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any previously analyzed.

The proposed changes to the Technical Specifications do not involve the addition of any new or different types of safety-related equipment, nor does it involve the operation of equipment required for safe operation of the facility in a manner different from those addressed in the safety analysis. No safety related equipment or function will be altered as a result of the proposed changes. Also, the procedures governing normal plant operation and recovery from an accident are not changed by the proposed Technical Specification changes. The proposed changes will extend the allowed outage time for the Reserve source of off-site power, on a one-time basis, to allow the installation of high speed protective relays on the unit system auxiliary transformers which will increase the level of protection from ground faults on the low voltage (secondary) side of the transformers. The addition of the high speed relaying has been evaluated pursuant to 10 CFR 50.59, and no unreviewed safety questions were identified.

Requirements will be modified to require additional assurance that the remaining off-site source of AC power and the on-site source of emergency (emergency diesel generators) are OPERABLE. Since no new failure modes or mechanisms are added by the proposed changes, the possibility of a new or different kind of accident is not created.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed changes will extend the allowed outage time for the reserve source of off-site power, on a one-time basis, to allow for installation of high speed protective relays on the unit system auxiliary transformers which will increase the level of protection from ground faults on the low voltage (secondary) side of the transformers.

During the SAT outage, power to the operating unit (opposite unit) will be provided by the unit SAT and the UAT in the normal configuration. Emergency on-site power will be provided by the two unit specific EDGs (A and B) and the common 'O' diesel generator. Because the accident analyses take no credit for offsite power availability, this temporary degradation will not impact the analysis results.

No safety system setpoints are changed by this proposal. There is no impact on any physical design margins, and no analytical results are affected by this change. The revised surveillance requirements will provide additional assurance that redundant sources of power are maintained operable while the Reserve source of off-site power is unavailable.

Based on the above discussion, the ability to safely shut down the operating unit and mitigate the consequences of all accidents previously evaluated will be maintained. Therefore, the margin of safety is not significantly affected.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085

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NRC Project Director: Robert A. Capra

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: October 5, 1994

Description of amendment request: The proposed amendment would (1) revise primary coolant system (PCS) pressure-temperature (P-T) limits, power-operated relief valve (PORV) setting limits, and primary coolant pump starting limits to accommodate reactor vessel fluence for an additional 4 effective full power years (up to 2.192 x 10^{19}nvt). The existing P-T limit curves are calculated for a fluence of 1.8 x 10^{19} could be reached as early as March 1, 1995; (2) require the high pressure safety injection (HPSI) pumps to be ''rendered incapable of injection into the PCS'' when the PCS is below 300°F, rather than the existing requirement to render both HPSI pumps ''inoperable'' when the PCS is below 260°F. This change supports the assumption in the P-T limit analyses that HPSI injection would not occur below 300°F; and (3) establish a more restrictive limit on pressurizer heatup rate to achieve consistency between design assumptions and technical specification (TS) limits. The limit in the existing TS is less restrictive than used in design calculations. Neither the design heatup rate nor the TS heatup rate limit is achievable with installed equipment.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The following evaluation supports the finding that operation of the facility in accordance with the proposed Technical Specifications would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The revision of the Primary Coolant Pump [PCP] starting limits, PCS P-T curves, and PORV setting limits would not cause any changes to the capability or operation of plant systems that would affect the probability of occurrence or consequences of an accident. These revisions simply update the existing requirements to account for additional reactor vessel fluence.

The reduction of the allowable pressurizer heatup rate would have no effect on operation of the plant. The current limit is physically unobtainable with installed equipment. The proposed change better aligns the Technical Specification limits with the design analysis. The change in the pressurizer heatup rate limit will not increase the probability or consequences of an accident.

Requiring the HPSI pumps to be operable when above 325°F, rather than when above 300°F does not affect the probability or consequences of any accident previously evaluated. Neither the existing 300°F requirement nor the proposed 325°F requirement has an analytical base. This requirement was recently changed from 325°F to 300°F simply for uniformity. With the revised P-T limit analysis requirement to assure that inadvertent HPSI injection will not occur below 300°F, it is necessary to revert to the former limit of 325°F to provide time to transition between these two contrasting HPSI pump requirements.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The revised specifications, PCP starting limits, PCS P-T limits, pressurizer heatup rate, PORV setting limits, and HPSI pump restrictions, all are directly related to, and intended to prevent, a previously analyzed event, failure of the Reactor Coolant Pressure Boundary. Revision of these limits would not create the possibility of a new or different kind of accident.

3. Involve a significant reduction in a margin of safety.

The revised PCP starting limits, PCS P-T limits, and PORV setting limits are calculated using a similar methodology as the limits which they replace. Therefore they provide the same margin of safety.

The revised pressurizer heatup rate reduces the currently allowable limit which is in the direction of increased margin of safety. Since there is no equipment installed which would cause either the existing or the proposed limit to be reached, there will be no change on the operation of the plant equipment. Therefore reducing the limit on the pressurizer heatup rate will not involve a significant reduction in the margin of safety.

Requiring the HPSI pumps to be operable when above 325°F, rather than when above 300°F does not involve a significant reduction in any margin of safety. Neither the existing 300°F requirement nor the proposed

325°F requirement has an analytical base. This requirement was recently changed from 325°F to 300°F simply for uniformity. With the revised P-T limit analysis requirement to assure that inadvertent HPSI injection will not occur below 300°F, it is necessary to revert to the former limit of 325°F to provide time to transition between these two contrasting HPSI pump requirements.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201

NRC Project Director: John N. Hannon

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One,Unit No. 1, Pope County, Arkansas

Date of amendment request: November 8, 1994

Description of amendment request: The proposed amendment revises technical specifications (TSs) associated with requirements for performing the containment integrated leak rate test (ILRT). The proposed change describes the ILRT test frequency by referencing the test frequency requirements included in 10 CFR Part 50, Appendix J. The existing specifications paraphrase the Appendix J requirements, but include differences that result in interpretation problems.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change revises Technical Specification 4.4.1.1.4 to reference the testing frequency requirements of 10 CFR 50, Appendix J, and to state that NRC approved exemptions to the applicable regulatory requirements are permitted. The current requirements of TS 4.4.1.1.4 paraphrase the requirements of Section III.D.1.(a) of Appendix J. The proposed administrative revision simply deletes the paraphrased language and directly references Appendix J. No new requirements are added, nor are any existing requirements deleted. An approved exemption to Section III.D.1.(a) of Appendix J would not necessarily affect the requirements of TS 4.4.1.1.4, unless the proposed clarification phrase permitting the use of approved exemptions is added. Any specific changes to the requirements of Section III.D.1(a) will require a submittal from Entergy Operations under 10CFR50.12 and subsequent review and approval by the NRC prior to implementation. The proposed change is stated generically to avoid the need for further TS changes if different exemptions are approved in the future.

The proposed change, in itself, does not affect reactor operations or accident analysis and has no radiological consequences. The change provides clarification so that TS changes will not be necessary in the future to correspond to applicable NRC approved exemptions from the requirements of Appendix J. Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or different Kind of Accident from any Previously Evaluated.

The proposed change provides clarification to a specification which paraphrases a codified requirement. Since the proposed amendment would not change the design, configuration or method of operation of the plant, it would not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in the Margin of Safety.

The proposed change is administrative and clarifies the relationship between the requirements of TS 4.4.1.1.4, Appendix J, and any approved exemptions to Appendix J. It does not, in itself, change a safety limit, an LCO, or a surveillance requirement on equipment required to operate the plant. The NRC will directly approve change proposed exemption to III.D.1.(a) of Appendix J prior to implementation. Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: William D. Beckner

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: December 2, 1994

Description of amendment request: The proposed amendments would replace Appendix B, ''Environmental Technical Specifications'' with an Environmental Protection Plan (Nonradiological) and revise the Operating Licenses to reflect these changes. The proposed changes are administrative in nature, altering only the format and location of programmatic controls and procedural details relative to nonradiological environmental monitoring.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1) The proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the Environmental Technical Specifications (ETS) are administrative in nature, altering only the format and location of programmatic controls and procedural details relative to nonradiological environmental values. The proposed Environmental Protection Plan (EPP) (Nonradiological) contains the programmatic controls now residing in the ETS, with appropriate plant procedures serving as implementing documents. The proposed changes to the operating licenses are also administrative in nature and change the Appendix B reference from ETS to EPP. Compliance with applicable regulatory requirements will be maintained. In addition, the proposed changes do not alter the conditions or assumptions in any of the accident analyses. Therefore, these proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2) The proposed amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the ETS do not involve any change to the configuration or method of operation of any plant equipment. These proposed changes are administrative in nature and consist of replacing the ETS with an EPP. The proposed changes to the operating licenses are also administrative in nature and change the Appendix B reference from ETS to EPP. Accordingly, no new failure modes have been identified for any plant system or component important to safety nor has any new limiting single failure been identified as a result of the proposed changes. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3) The proposed amendments do not result in a significant reduction in the margin of safety.

The proposed changes to the ETS relate primarily to matters involving recordkeeping, reporting, and administrative procedures or requirements. No significant change in the type or quantity of any effluent release will result from this action. These changes replace

the ETS with an EPP. The proposed EPP contains the programmatic controls now residing in the ETS, with appropriate plant procedures serving as implementing documents to ensure compliance with applicable regulatory requirements. The proposed changes to the operating licenses are also administrative in nature and change the Appendix B reference from ETS to EPP. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Herbert N. Berkow

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: November 21, 1994

Description of amendment request: The proposed amendment would eliminate the Main Steam Isolation Valve (MSIV) - Leakage Control System (LCS) including the primary containment isolation valves associated with the MSIV - LCS, along with increasing the allowable MSIV leakage rates.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

I. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to TS Section 3.6.1.2 do not involve a change to structures, components, or systems that would affect the probability of an accident previously evaluated. The TS limits for MSIVs are increased from 46 scf per hour for all four main steam lines to less than or equal to 100 scf per hour for any one MSIV and a combined maximum pathway leakage rate of less than or equal to 300 scf per hour for all four main steam lines. The consequences of an accident are affected as discussed in this section.

The proposed changes to TS Section 3.6.1.4 eliminate the Main Steam Isolation Valves (MSIVs) Leakage Control System (LCS) requirements from the TS. As described in Section 6.7 of the FSAR, the LCS is manually initiated in about 20 minutes following a design basis Loss of Coolant Accident (LOCA). Since the LCS is operated only after an accident has occurred, these proposed changes have no effect on the probability of an accident.

Since MSIV leakage and operation of the LCS are included in the radiological analysis for the design basis LOCA as described in Section 15.6.5 of the FSAR, the proposed changes do not affect the precursors of other analyzed accidents. Analysis of the effects of the proposed changes do, however, result in acceptable radiological consequences for the design basis LOCA previously evaluated in Section 15.6.5 of the FSAR.

SSES, Units 1 and 2 have an inherent MSIV leakage treatment capability as discussed below. We propose to use the drain lines associated with the main steam lines and main turbine condenser as an alternative to the guidance in Regulatory Guide 1.96, ''Design of Main Steam Isolation Valve Leakage Control System For Boiling Water Nuclear Power Plants'', Revision 0, May 1975, for MSIV leakage treatment. If approved, we will incorporate this alternate method in the appropriate operational procedures and Emergency Operating Procedures.

The Boiling Water Reactor Owners' Group (BWROG) has evaluated the availability of main steam system piping and main condenser alternate pathways for processing MSIV leakage, and has determined that the probability of a near coincident LOCA and a seismic event is much smaller than for other plant safety risks. Accordingly, this alternate MSIV leakage treatment pathway is available during and after a LOCA. Nevertheless, the BWROG has also determined that main steam piping and main condenser design are extremely rugged, and the design requirements applied to SSES Unit 1 and Unit 2 main steam system piping and main condenser contain substantial margin, based on the original design requirements. Therefore, the alternate treatment method has been evaluated for its capability to mitigate the consequences of a LOCA, and has been evaluated to assure its availability considering a seismic event.

In order to determine the capability of the main steam piping and main condenser alternate treatment pathway, the BWROG has reviewed earthquake experience data on the performance of non-seismically designed piping and condensers during past earthquakes. The data is summarized in General Electric (GE) Report, ''BWROG Report for Increasing MSIV Leakage Rate Limits and Elimination of Leakage Control Systems,'' NEDC 31858P, Revision 2, submitted to the NRC by BWROG letter dated October 4, 1993. This study concluded that the possibility of a failure that could cause a loss of steam or condensate in Boiling Water Reactor (BWR) main steam piping or condensers in the event of a design basis (i.e., safe shutdown) earthquake is highly unlikely, and that such a failure would also be contrary to a large body of historical earthquake experience data, and thus unprecedented.

A verification has been performed of the seismic adequacy of the Unit 1 and Unit 2 main steam piping and main condenser consistent with the guidelines discussed in Section 6.7 of NEDC-31858P, Revision 2, to provide reasonable assurance of the structural integrity of these components. An evaluation, including the walkdown report outliers, ''MSIV Leakage Alternate Treatment Method Seismic Evaluation,'' for Unit 1 and Unit 2, is attached. The results of the evaluation clearly demonstrate that the MSIV Leakage Alternate Treatment Method meets the intent of 10CFR100 Appendix A, with regards to seismic qualification. Except for the requirement to establish a proper flow path from the MSIVs to the condenser, the proposed method is passive and does not require any additional logic control and interlocks. The method proposed for MSIV leakage treatment is consistent with the philosophy of protection by multiple barriers used in containment design for limiting fission product release to the environment.

A plant-specific radiological analysis has been performed in accordance with NEDC-31858P, Revision 2, to assess the effects of the proposed increase to the allowable MSIV leakage rate in terms of control room and off-site doses following a postulated design basis LOCA. This analysis utilizes the hold-up volumes of the main steam piping and condenser as an alternate method for treating the MSIV leakage. As discussed earlier, there is reasonable assurance that the main steam piping and condenser remain intact following a design basis earthquake. The radiological analysis uses standard conservative assumptions for the radiological source term consistent with Regulatory Guide (RG) 1.3, Assumptions Used for Evaluating the Potential Radiological Consequences of a Loss-Of-Coolant Accident for Boiling Water Reactor, Revision 2, dated April 1974.

The analysis results demonstrate that dose contributions from the proposed MSIV leakage rate limit of 100 scfh per steam line, not to exceed a total of 300 scfh for all four main steam lines, and from the proposed deletion of the LCS, result in an insignificant increase to the LOCA doses previously evaluated against the regulatory limits for the off-site doses and control room doses contained in 10CFR100 and 10CFR50, Appendix A, General Design Criterion (GDC) 19, respectively. The off-site and control room doses resulting from a LOCA are discussed in Section 15.6.5 of the FSAR. The off-site and control room doses resulting from a LOCA associated with the proposed changes are the sum of LOCA doses evaluated in the power uprate revision to the design basis DBA-LOCA calculation (EC-RADN-1009) and the additional doses calculated using the alternate MSIV leakage treatment method. Enclosure 3 [of application dated November 21, 1994] summarizes the off-site and control room doses and compares the alternate treatment method doses to the original MSIV-LCS treatment method doses.

The 30-day whole body doses at the Low Population Zone (LPZ) did not change and remained at .37 rem for the alternate treatment method. The 30-day control room whole body doses increased slightly from .38

rem to .76 rem for the alternate treatment method. The increase in control room dose is not significant since the revised doses are well below the regulatory limits, i.e., .76 rem calculated versus the limit of 5 rem in the control room. The two-hour whole body dose at the Exclusion Area Boundary (EAB) decreased slightly from 2.47 rem to 2.217 rem.

The 30-day thyroid dose at the LPZ increased from 30.4 rem for the MSIV-LCS treatment method to 41.74 rem for the alternate treatment method. This increase is not significant since the revised dose of 41.74 rem is well within the regulatory limit of 300 rem. The two-hour thyroid dose at the EAB decreased slightly from 127.8 rem to 125.61 rem. The 30-day control room thyroid dose increased from 14.19 rem for the MSIV-LCS treatment method to 18.55 rem for the alternate treatment method. The increased control room thyroid dose is not significant since the revised dose remains well below the regulatory limit of 30 rem.

The 30-day control room beta dose increased insignificantly from 12 rem for the MSIV-LCS treatment method to 12.17 rem for the alternate treatment method, remaining a small fraction relative to the limit of 75 rem.

In summary, the proposed changes discussed above do not result in a significant increase in the radiological consequences of a LOCA when the same assumptions and methods specified in the FSAR are used, recognizing that radiological consequences calculated in the FSAR and for these proposed changes are significantly higher than those using more realistic assumptions and methods. Nevertheless, the calculated off-site and control room doses resulting from a LOCA remain well below the regulatory limits.

The proposed change to TS Table 3.6.3-1 deletes the LCS valves from the list of primary containment isolation valves. This proposed change is consistent with the proposed deletion of the LCS. The LCS lines that are connected to the main steam piping are welded and/or capped closed to assure primary containment integrity is maintained. The welding and post weld examination procedures will be in accordance with American Society of Mechanical Engineers (ASME) Code, Section III requirements. These welds and/or caps will be periodically tested as part of the Containment Integrated Leak Rate Test (CILRT). This proposed change does not involve an increase in the probability of equipment malfunction previously evaluated in the FSAR. In fact, this proposed change reduces the probability of equipment malfunction since, upon implementation of these proposed changes, the plant will be operated with less primary containment isolation valves subjected to postulated failure. This proposed change has no effect on the consequences of an accident since the LCS lines will be welded and/or cap closed, thus assuring that the containment integrity, isolation and leak test capability are not compromised.

The proposed change to TS Table 3.8.4.2.1-1 deletes the LCS motor operated valves from the list of ''Motor Operated Valves Thermal Overload Protection - Continuous.'' The proposed change has no effect on the probability or consequences of an accident since the valves are eliminated and not performing a safety function.

Therefore, as discussed above, the proposed changes do not involve a significant increase in the probability or consequences from any accident previously evaluated.

II. Create the possibility of a new or different kind of accident from any accident previously evaluated.

As stated in Section I, the proposed changes do not involve a change to structures, components, or systems that would affect the probability of an accident previously evaluated , nor would these changes create any new or different kind of accident from any previously evaluated. The proposed changes will introduce and take credit for a new level of operational performance for existing plant systems and components to mitigate the consequences of the accident. The effect on this equipment has been evaluated and found to provide an acceptable level of reliability resulting in the required level of protection. This conclusion is based on the evaluation performed in NEDC 31858P, Revision 2, and the plant specific seismic evaluation provided in the Enclosure 2 [of application dated November 21, 1994], ''MSIV Leakage Alternate Treatment Method Seismic Evaluation.'' The Leakage Control System has been installed to direct any leakage past the MSIVs during the LOCA; acting after the accident has occurred. The resulting consequences of the evaluated accidents have been affected as discussed in Section I resulting in no significant increase in the probability or consequences of said accident. Therefore, reliance on different equipment than previously assumed to mitigate the consequences of an accident does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The BWROG evaluated MSIV performance and concluded that MSIV leakage rates up to 200 scfh per valve will not inhibit the capability and isolation performance of the MSIVs to effectively isolate the primary containment. Implementation of the proposed changes does not result in modifications which could adversely impact the operability of the MSIVs. The LOCA has been analyzed using the main steam piping and main condenser as a treatment method to process MSIV leakage at the proposed maximum rate of 100 scfh per main steam line, not to exceed 300 scfh total for all four main steam lines. Therefore, the proposed TS Section 3.6.1.2 change to increase the allowed MSIV leakage rate does not create any new or different kind of accident from any accident previously evaluated.

The proposed TS Section 3.6.1.4 change to eliminate the LCS does not create the possibility of a new or different kind of accident from any accident previously evaluated because the removal of the LCS does not affect any of the remaining SSES Unit 1 and Unit 2 systems, and the LOCA has been re-analyzed using the proposed alternate method to process MSIV leakage. The associated proposed change to delete the LCS isolation valves from TS Table 3.6.3-1 and Table 3.8.4.2.1-1 does not create the possibility of a new or different kind of accident. The affected main steam piping will be welded and/or capped closed to assure that the primary containment integrity, isolation, and leak testing capability are not compromised. The affected LCS motor operated valves will be eliminated so their thermal overloads will not need to be bypassed.

Therefore, as discussed above, the proposed changes do not create the possibility for any new or different kind of accident from any accident previously evaluated.

III. Involve a significant reduction in a margin of safety.

The proposed change to TS Section 3.6.1.2 to increase the MSIV allowable leakage does not involve a significant reduction in the margin of safety. As discussed in the current Bases for TS Section 3/4.6.1.2, the allowable leak rate limit specified for the MSIVs is used to quantify a maximum amount of leakage assumed to bypass primary containment in the LOCA radiological analysis. Accordingly, results of the re-analysis supporting these proposed changes are evaluated against the dose limits contained in 10CFR100 for the off-site doses, and 10CFR50, Appendix A, GDC 19, for the control room doses. As discussed above, sufficient margin relative to the regulatory limits is maintained even when assumptions and methods (e.g., RG 1.3) that are considered highly conservative relative to more realistic assumptions and methods are used in the analysis.

Results of the radiological analysis demonstrate that the proposed changes do not involve a significant reduction in the margin of safety. Whole body doses, in terms of margin of safety, are insignificantly reduced by .38 rem in the control room. The margin of safety remains constant for the LPZ whole body dose or actually increases by .253 rem for the EAB whole body dose. The margin of safety for thyroid dose category is reduced by 11.34 rem at the LPZ and 4.36 rem in the control room. The margin of safety is found to increase for the EAB thyroid dose by 2.19 rem. The margin of safety for beta dose is insignificantly reduced by .17 rem in the control room. The reductions in the margin of safety are not significant since the revised calculated doses are highly conservative yet remain well below the regulatory limits, and therefore, a substantial margin to the regulatory limits is maintained.

The proposed change to eliminate the LCS from TS Section 3.6.1.4 does not reduce the margin of safety, in fact, the overall margin of safety is increased. The function of the LCS for MSIV leakage treatment will be replaced by alternate main steam drain lines and condenser equipment. This treatment method is effective in reducing the dose consequences of MSIV leakage over an expanded operating range compared to the capability of the LCS and will, thereby, resolve the safety concern that the LCS will not function at MSIV leakage rates higher than the LCS design capacity. Except for the requirement to establish a proper flow path from the MSIVs to the condenser, the proposed method is passive and does not require any new logic control and interlocks. This proposed method is consistent with the

philosophy of protection by multiple barriers used in containment design for limiting fission product release to the environment. Furthermore, as previously identified, based on the evaluations discussed in NEDC-31858P, Revision 2, and the seismic evaluation provided in the Enclosure 2 [of application dated November 21, 1994] report, ''MSIV Leakage Alternate Treatment Method Seismic Evaluation,'' the design of the MSIV leakage alternate drain pathway, meets the intent of the 10CFR100, Appendix A requirement for seismic qualification. Therefore, the proposed method is highly reliable and effective for MSIV leakage treatment.

The revised calculated LOCA doses remain within the regulatory limits for the off-site and the control room. Therefore, the proposed method maintains a margin of safety for mitigating the radiological consequences of MSIV leakage for the proposed TS leakage rate limit of 100 scfh per main steam line, not to exceed a total of 300 scfh for all four main steam lines.

The proposed change to delete LCS isolation valves from TS Table 3.6.3-1 and Table 3.8.4.2.1-1 does not reduce the margin of safety. Welded and/or capped closure of the LCS lines assures that the primary containment integrity and leak testing capability are not compromised. These welds and/or caps will be periodically leak tested as part of the CILRT. The LCS motor operated valves will be eliminated so their thermal overloads will not need to be bypassed. Therefore, the proposed deletion of the LCS isolation valves does not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

NRC Project Director: John F. Stolz

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: November 18, 1994

Description of amendment request: The proposed change would revise the Reactivity Control System Technical Specification Limiting Conditions for Operation for boration flow paths and charging pumps by reducing the number of operable charging pumps required for boron addition in Mode 4 from two to one.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident or malfunction of equipment important to safety previously evaluated.

The Emergency Core Cooling System (ECCS) requirements assume that only one charging pump will be available below 350°F without single failure considerations on the bases of the stable reactivity condition of the reactor and limited core cooling requirements. Therefore, the Mode 4 Applicability has been deleted from LCOs 3.2.1.2 and 3.2.1.4, and was added to LCOs 3.2.1.1 and 3.2.1.3 consistent with the requirements of LCO 3.5.3.

The current Bases for the Unit 2 Technical Specification for boration system flow paths via the charging pumps supports the use of a similar LCO for Salem Unit 1.

The limitation for a maximum of one centrifugal charging pump to be operable when the RCS temperature is less than or equal to 312°F has been added to LCO 3.1.2.3 for clarity and is consistent with the Cold Overpressure Protection (POPS) analysis and the requirements of Technical Specification 3.5.3.

The requirements for Boric Acid Transfer Pump operability are adequately addressed in Technical Specifications 3.1.2.1 and 3.1.2.2 which specify the boron injection flow paths to be operable and the components required to perform this function. This includes the availability of the transfer pumps to meet this Technical Specification requirement.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated in the UFSAR.

2. Will not create the possibility of a new or different kind of accident from any previously evaluated.

As discussed in response to Question 1 above, the proposed amendment to the number of charging pumps required to be operable in Mode 4 is consistent with the current Technical Specification requirements for the ECCS LCO and the POPS. The current bases for the Unit 2 Technical Specification for boration system flow paths via the charging pumps supports the use of a similar LCO for Salem Unit 1. The requirements for Boric Acid Transfer Pump operability for Unit 1 are adequately addressed in Technical Specifications 3.1.2.1 and 3.1.2.2 which specify the boron injection flow paths to be operable and the components required to be available to perform this function including the transfer pumps. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Will not involve a significant reduction in a margin of safety. The proposed amendment to the number of charging pumps required to be operable in Mode 4 will not result in any changes to the assumptions or conditions for the current ECCS analysis and POPS analysis. The current bases for the Unit 2 Technical Specification for boration system flow paths via the charging pumps supports the use of a similar LCO for Salem Unit 1 (i.e., the Bases are essentially the same). The requirements for Boric Acid Transfer Pump operability for Unit 1 are adequately addressed in Technical Specifications 3.1.2.1 and 3.1.2.2 which specify the boron injection flow paths to be operable and the components required to be available to perform this function including the transfer pumps. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW, Washington, DC 20005-3502

NRC Project Director: John F. Stolz

Southern Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: December 19, 1994Description of amendments request: The proposed change to Table 3.7-3 of the Technical Specifications includes the revision to the main steam safety valve (MSSV) setpoint tolerance from plus or minus 1 percent to plus or minus 3 percent and modifies the bases to 3/4.7.1.1 to increase the relieving capacity of the MSSVs to at least 12,984,660 pounds per hour which corresponds to approximately 112 percent of total secondary steam flow at 100 percent rated thermal power. In addition, modifications to Table 3.7-1 are proposed to reduce the allowable power range neutron flux high setpoints for multiple inoperable steam generator safety valves. The proposed amendment includes an editorial correction to Bases 3/4.7.1.2 to indicate required auxiliary feedwater flow at ''1133 psia'' rather than ''1133 psig.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed license amendment does not involve a significant increase in the

probability or consequences of an accident previously evaluated.

These proposed changes to the Farley Technical Specifications do not result in a condition where the design, material and construction standards of the MSSVs that were applicable prior to the proposed change are altered. The valves will continue to function as designed. All applicable safety analyses have been reviewed, evaluated or reanalyzed and all applicable safety criteria continue to be met. No accident sequences are altered because of the proposed amendment. The radiological consequences for the Steam Generator Tube Rupture were reanalyzed and 10 CFR 100 criteria continue to be met. All other FSAR radiological analyses remain bounding. Analyses have been performed to justify the proposed high nuclear flux setpoint changes. All acceptance criteria for these analyses continue to be met. Therefore, the proposed amendment does not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed license amendment does not create the possibility of a new or different accident from any accident previously evaluated.

The MSSVs continue to have the required pressure relieving capacity to ensure that system design pressure remains below 110% of shell design pressure. The proposed changes are not accident initiators nor do they create any new accident scenarios or any new limiting single failures. The ability of the MSSVs to respond to an accident condition is not impaired by the proposed changes. The proposed high nuclear flux setpoints for multiple valves out of service ensure all applicable safety criteria for accident analyses are met. No new accident scenarios are created by these proposed changes. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed license amendment does not involve a significant reduction in the margin of safety.

Acceptance criteria for accident analysis continue to be met. Radiological consequences for the affected Chapter 15 analysis remain within 10 CFR 100 acceptance criteria. No safety limits or safety system setpoint requires modification due to the proposed changes. The current secondary side over-pressure limit of 100% of steam generator shell design pressure is not violated. Analysis for the high nuclear flux setpoints have verified that there is no reduction in margin for the events analyzed. Therefore, there is not significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201

NRC Project Director: William H. Bateman

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: September 9, 1994

Description of amendment request: The proposed amendment would revise Technical Specification 3/4.8.1 and its associated Bases to improve emergency diesel generator reliability and availability. Several surveillance requirements would be revised or eliminated, and guidance provided in Regulatory Guide 1.9, Revision 3, and Generic Letter 93-05 would be incorporated.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a significant hazards consideration because operation of Callaway Plant with these changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

These proposed changes do not involve a change in the operational limits or physical design of the emergency power system. Emergency diesel generator operability and reliability will continue to be assured while minimizing the number of required emergency diesel generator starts. Also, emergency diesel generator reliability will be enhanced by minimizing service test conditions which can lead to premature failures.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

These proposed changes do not involve a change in the operational limits or physical design of the emergency power system. The performance capability of the emergency diesel generator will not be affected. Emergency diesel generator reliability and availability will be improved by the implementation of the proposed changes. There is no actual impact on accident analysis.

3. Involve a Significant Reduction in the Margin of Safety.

These proposed changes do not involve a change in the operational limits or physical design of the emergency power system. The performance capability of the emergency diesel generator will not be affected. Emergency diesel generator reliability and availability will be improved by the implementation of the proposed changes. No margin of safety is reduced.

Based on the above discussions, it has been determined that the requested technical specification revision does not involve a significant increase in the probability or consequences of an accident or other adverse condition over previous evaluations; or create the possibility of a new or different kind of accident or condition over previous evaluations; or involve a significant reduction in a margin of safety. The requested license amendment does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, DC 20037

NRC Project Director: Leif J. Norrholm

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: September 9, 1994

Description of amendment request: The proposed amendment would revise Technical Specification 3.8.2.1 and 3.8.2.2, 125-volt D.C. busses for battery bank and chargers and provides for the installation of swing chargers during the next refueling outage. Technical Specifications 3.8.3.1 and 3.8.3.2 would be revised to address the 120-volt A.C. Vital Busses.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes to the Technical Specifications do not involve a significant hazards consideration because operation of Callaway Plant in accordance with these changes would not:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

These proposed Technical Specification changes do not involve any hardware changes nor do they affect the probability of any event initiators. There will be no change to normal plant operating parameters or accident mitigation capabilities. There will be no increase in the consequences of any accident or equipment malfunction.

2) Create the possibility for accident or malfunction of equipment of a different type than previously evaluated in the FSAR.

The proposed Technical Specification changes do not involve any design changes nor are there any changes to the method by which any safety-related plant system performs its safety function. The normal manner of plant operation is unaffected. No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of these changes.

Involve a significant reduction in the margin of safety.

There will be no affect [SIC] on the manner in which safety limits or limiting safety system settings are determined, nor will there be any effect in those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on DNBR limits, F_Q, F-delta-H, LOCA PCT, peak local power density or any other margin of safety.

Based on the information presented above, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated, create the possibility of a new or different kind of accident from any previously evaluated, or involve a significant reduction in a margin of safety. Therefore, it is concluded that the proposed changes meet the requirements of 10 CFR 50.92(c) and does [SIC] not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, DC 20037

NRC Project Director: Leif J. Norrholm

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: August 27, 1993

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) to be consistent with recent revisions to 10 CFR Part 20 and 10 CFR 50.36a. Administrative changes are also proposed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated. The changes as proposed consist of revisions to the Technical Specifications to meet new regulatory requirements as contained in 10CFR20 and 10CFR50.36a, and other related changes of an administrative nature. There is no change in the types and amounts of effluents released, nor will there be any increase in individual or cumulative occupational radiation exposures. None of the changes proposed will affect any plant hardware, plant design, safety limit settings, or plant system operation, 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 change will not create the possibility of a new or different kind of accident from any accident previously evaluated. The changes as proposed do not physically alter the plant nor do they change the operation of the plant.

3. The proposed change does not involve a significant reduction in the margin of safety. The changes will not increase the amount or types of effluents that may be released offsite, nor do they significantly increase individual or cumulative occupational radiation exposures. These changes will not alter any of the requirements or responsibilities for protection of the public and/or employees against radiation hazards.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301

Attorney for licensee: John A. Ritsher, Esquire, Ropes and Gray, One International Place, Boston, Massachusetts 02110-2624

NRC Project Director: Walter R. Butler

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: March 31, 1994

Description of amendment request: The proposed amendment would modify the requirements for avoidance and protection from thermal hydraulic instabilities to be consistent with the Boiling Water Reactor (BWR) Owner's Group long-term solution Option 1-D described in the Licensing Topical Report, ''BWR Owner's Group Long-Term Stability Solutions Licensing Methodology, NEDO-31960 June 1991'' and NEDO-31960, Supplement 1, dated March 1992. NEDO-31960 and NEDO-31960, Supplement 1, were accepted by the NRC staff in a letter to L.A. England (BWR Owner's Group) dated July 12, 1993.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated. The implementation of BWR Owner's Group long term stability solution Option 1-D at Vermont Yankee does not modify the assumptions contained in the existing accident analysis. The use of an exclusion region and the operator actions required to avoid and minimize operation inside the region do not increase the possibility of an accident. Conditions of operation outside of the exclusion region are within the analytical envelope of the existing safety analysis. The operator action requirement to exit the exclusion region upon entry minimizes the possibility of an oscillation occurring. The actions to drive control rods and/or to increase recirculation flow to exit the region are maneuvers within the envelope of normal plant evolutions. The flow biased scram has been analyzed and will provide automatic fuel protection in the event of an instability. Thus, each proposed operating requirement provides defense in depth for protection from an instability event while maintaining the existing assumptions of the accident analysis.

2. The proposed amendment will not create the possibility of a new or different kind of accident from an accident previously evaluated. As stated in 1), the proposed operating requirements either mandate operation within the envelope of existing plant operating conditions of force specific operating maneuvers within those carried out in normal operation. Since operation of the plant with all of the proposed requirements are within the existing operating basis, an unanalyzed accident will not be created through implementation of the proposed change.

3. The proposed amendment will not involve a significant reduction in a margin of safety. Each of the proposed requirements for plant thermal hydraulic stability provides a means for fuel protection. The combination of avoiding possible unstable conditions and the automatic flow biased reactor scram provides an in depth means for fuel protection. Therefore, the individual or combination of means to avoid and suppress an instability supplements the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301

Attorney for licensee: John A. Ritsher, Esquire, Ropes and Gray, One International Place, Boston, Massachusetts 02110-2624

NRC Project Director: Walter R. Butler

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: November 29, 1994

Description of amendment request: Virginia Electric and Power Company plans to insert fuel assemblies containing fuel rods, guide thimble tubes, instrumentation tubes, and mid-span grids fabricated with Westinghouse Electric Corporation's (Westinghouse's) advanced zirconium alloy material, ZIRLO, into the Surry Units 1 and 2 reactors, beginning with Cycle 14 at each unit. In the current fuel design, these components are fabricated from Zircaloy-4.

Because the Technical Specifications define the fuel rod cladding material as Zircaloy-4, implementation of this material change requires changes to the Technical Specifications. Technical Specification 5.3.A.1 is being modified to allow the use of either Zircaloy-4 or ZIRLO fuel rod cladding, and an additional reference for the calculation of the heat flux hot channel factor for loss-of-coolant-accident evaluations of fuel with ZIRLO cladding is being defined in Technical Specification 6.2. The use of the ZIRLO fabricated guide thimble tubes, instrumentation tubes, and mid-span grids does not require changes to the Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Specifically, operation of Surry Power Station in accordance with the Technical Specifications changes will not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated. The Surry fuel assemblies containing fuel rods, guide thimble tubes, instrumentation tubes and mid-span grids fabricated with ZIRLO alloy meet the same fuel assembly and fuel rod design bases as the current fuel assemblies fabricated with Zircaloy-4 components. In addition, the 10 CFR 50.46 criteria will be applied to the fuel rods, guide thimble tubes, instrumentation tubes and mid-span grids fabricated with ZIRLO alloy. The use of these fuel assemblies will not result in a change to the Surry Units 1 and 2 reload design and safety analysis limits. The ZIRLO alloy is similar in chemical composition to Zircaloy-4, and also has physical and mechanical properties similar to those of Zircaloy-4. Thus the cladding integrity is maintained and the structural integrity of the fuel assembly is not affected. The ZIRLO clad fuel rods improve corrosion resistance and dimensional stability. Since the dose predictions in the safety analyses are not sensitive to the fuel rod cladding material changes as specified in this report, the radiological consequences of accidents previously evaluated in the safety analyses remain valid. Therefore, neither the probability of occurrence nor the consequences of any accident previously evaluated is significantly increased.

2. Create the possibility of a new or different kind of accident from any accident previously identified, since the Surry Units 1 and 2 fuel assemblies containing fuel rods, guide thimble tubes, instrumentation tubes and mid-span grids fabricated with ZIRLO alloy will satisfy the same design bases used for previous fuel regions containing Zircaloy-4 components. Since the original design criteria are being met, the fuel rods, guide thimble tubes, instrumentation tubes and mid-span grids fabricated with ZIRLO alloy will not be initiators for any new accident. Applicable design and performance criteria will continue to be met and no single failure mechanisms have been created. In addition, the use of these fuel assemblies does not involve any alteration to plant equipment or procedures which would introduce any new or unique operational modes or accident precursors. Therefore, the possibility for a new or different kind of accident from any accident previously evaluated is not created.

3. Involve a significant reduction in a margin of safety. The Surry Units 1 and 2 fuel assemblies containing fuel rods, guide thimble tubes, instrumentation tubes and mid-span grids fabricated with ZIRLO alloy do not change the Surry Units 1 and 2 reload design and safety analysis limits. The use of fuel assemblies containing fuel rods, guide thimble tubes, instrumentation tubes and mid-span grids fabricated with ZIRLO alloy will take into consideration the normal core operating conditions allowed in the Technical Specifications. For each cycle reload core these fuel assemblies will be specifically evaluated using approved reload design methods and approved fuel rod design models and methods. This will include consideration of the core physics analysis peaking factors and core average linear heat rate effects. Analyses or evaluations will be performed each cycle to confirm that the 10 CFR 50.46 criteria will be met for the use of fuel with fuel rods, guide thimble tubes, instrumentation tubes and mid-span grids fabricated with ZIRLO alloy. Therefore, the margin of safety as defined in the Bases to the Surry Units 1 and 2 Technical Specifications is not significantly reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Project Director: Mohan C. Thadani, Acting

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: December 2, 1994

Description of amendment request: The proposed amendment would revise Kewaunee Nuclear Power Plant (KNPP) Technical Specification (TS) 3.2 by eliminating the requirements for the charging pumps, high concentration boric acid in the boric acid storage tanks (BASTs), the boric acid transfer pumps, and boric acid heat tracing. Changes to TS 3.3 and Table TS 3.5.3 are also being proposed to add requirements associated with the emergency core cooling system (ECCS) accumulators, remove the requirements associated with the boric acid storage tanks, and to increase the minimum required boron concentration in the refueling water storage tank (RWST). Additionally, the surveillance requirements involving the BASTs, associated valves and heat tracing located in Table TS 4.1-1, Table TS 4.1-2 and Section 4.5 would be eliminated. Supporting analysis for the limiting design basis accident conditions have been performed using the proposed minimum RWST boron concentration of 2400 ppm.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

Significant Hazards Determination for Proposed Changes to Technical Specification (TS) 3.2 and Table TS 3.5-3.

The proposed changes were reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed changes will not:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated;

Neither the charging pumps, the high concentration boric acid, the BASTs, the boric acid transfer pumps nor the boric acid heat tracing system are accident initiators. Therefore, a change to these systems will not significantly increase the probability of an accident previously evaluated. The effect of a reduction in initial safety injection boron concentration on the accident analysis was evaluated. The limiting accidents were the Large-Break Loss-of-Coolant Accident

(LOCA) and the Steam Line Break (SLB) event. A decrease in the initial safety injection boron concentration from 20,000 ppm to 2400 ppm will not adversely affect the Large or Small-Break Loss-of-Coolant Accident analysis because the evaluation models used in analyzing these accidents do not take credit for the high concentration boric acid stored in the BASTs. However, the evaluation models did take credit for boron in maintaining the long term post LOCA reactor core sub-critical. An analysis was performed which concluded that the inventory contained in the BASTs would not be required provided the minimum RWST boron concentration was increased to 2400 ppm. The SLB event is the other design basis event that could be affected by the proposed elimination of the high boron concentration BASTs as a source of safety injection fluid. Analyses have been performed which conclude that the BASTs are not required and that a minimum RWST boron concentration of only 1950 ppm is sufficient to provide adequate protection for the SLB event although 2400 ppm will be maintained to address post-LOCA subcriticality thus providing further safety margin. The results of these analyses indicate that the departure from nucleate boiling (DNB) design basis continues to be met. (A minimum Departure from Nucleate Boiling Ratio (DNBR) of 1.45 can be maintained throughout the event.) Finally, the containment pressure and temperature remains within the acceptable containment design limits. Since these criteria have been satisfied, there will be no adverse effect on the health and safety of the public and the consequences of any accident previously evaluated have not significantly increased.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated;

Neither the charging pumps, the removal of the BASTs from initial SI pump injection, nor the elimination of both the boric acid transfer pumps and the boric acid heat tracing system as safety-related components would create the possibility of a new or different kind of accident from any accident previously evaluated.

Furthermore, the reactivity control function of the boron in the CVCS and SI systems is not being changed. Therefore, the proposed changes will not adversely affect the health and safety of the public or create the possibility of a new or different kind of accident from any accident previously evaluated.

3) Involve a significant reduction in the margin of safety.

The reduction in the initial concentration of boron injected into the reactor coolant system for accident mitigation has been analyzed. These analyses conclude that all applicable criteria for a LOCA are satisfied. A decrease in the initial safety injection boron concentration from 20,000 ppm to 2400 ppm will not adversely effect the Large- or Small-Break Loss-of-Coolant Accident analysis because the evaluation models used in analyzing these accidents do not take credit for the high concentration boric acid stored in the BASTs. However, in order to maintain the long term post LOCA reactor core sub-critical, a minimum RWST boron concentration of 2400 ppm is required. To meet this requirement, the RWST boron concentration is being raised to 2400 ppm. All criteria of 10 CFR 50.46 can be achieved for both the Large or Small-Break LOCA with no BASTs and 2400 ppm boron in the RWST. Since all criteria of 10 CFR 50.46 are satisfied, there is no adverse effect on the health and safety of the public and there is not a significant reduction in the margin of safety for these casualties.

Since both the core response and the containment response can be limiting in the SLB event, both were considered in the boron concentration reduction analysis. This analysis concludes that a minimum RWST boron concentration of 1950 ppm is sufficient to provide adequate protection for the SLB event, although a 2400 ppm boron solution will be maintained to provide protection for the post LOCA concerns. Since the containment pressure and temperature remains within the acceptable containment design limits, and a minimum DNBR of 1.45 can be maintained throughout the event, there is not a significant reduction in the margin of safety for this event and therefore there is no adverse effect on the health and safety of the public.

These proposed changes involve the conversion of the TS to Word Perfect format now being used at WPSC. Minor typographical errors and format inconsistencies were corrected. These proposed changes are administrative in nature; accordingly, these proposed changes do not involve a significant hazards consideration.

Additionally, the proposed changes are similar to example C.2.e.(i) in 51 FR 7751. Example C.2.e.(i) states that changes which are purely administrative in nature; i.e., to achieve consistency throughout the Technical Specifications, correct an error, or a change in nomenclature, are not likely to involve a significant hazard.

Significant Hazards Determination for Proposed Changes to Table TS 4.1-1, ''Minimum Frequencies for Checks, Calibrations and Test of Instrument Channels'' and Table TS 4.1-2 ''Minimum Frequencies for Sampling Tests''

The proposed changes were reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed changes will not:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or

2) Create the possibility of a new or different kind of accident from any accident previously evaluated, or

3) Involve a significant reduction in the margin of safety.

The above listed surveillance requirements insure BAST operability. The BASTs will no longer be relied upon as a source of boron for safety injection, and will serve no safety related function. Whether the BASTs are operable or not will have no effect on plant safety. Therefore, elimination of the surveillance requirements which insure BAST operability is possible without any adverse effect on the health and safety of the public and presents no significant hazards.

Significant Hazards Determination for Proposed Changes to Technical Specification TS 3.3 and Section 4.5.

The proposed changes were reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed changes will not:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

Neither the RWST, the boron solution contained within the RWST nor valves SI-3, SI-4A/B are accident initiators. Therefore, a change to these systems will not significantly increase the probability of an accident previously evaluated. The effect of a reduction in initial Safety Injection boron concentration on the accident analysis was evaluated. The limiting accidents were the Large-Break Loss-of-Coolant Accident (LOCA) and the Steam Line Break (SLB) event. A decrease in the initial safety injection boron concentration from 20,000 ppm to 2400 ppm will not adversely effect the Large or Small-Break Loss-of-Coolant Accident analysis because the evaluation models used in analyzing these accidents do not take credit for the high concentration boric acid stored in the BASTs. However, the evaluation models did take credit for boron in maintaining the long term post LOCA reactor core sub-critical. An analysis was performed which concluded that the BASTs could be eliminated provided the minimum RWST boron concentration was increased to 2400 ppm. The SLB event is the other design basis event that could be affected by the proposed elimination of the high concentration BASTs as a safety-related source for reactivity control injection fluid. However, analyses have been performed which conclude that a minimum RWST boron concentration of only 1950 ppm is sufficient to provide adequate protection for the SLB event although 2400 ppm will be maintained to address post-LOCA subcriticality thus providing further safety margin. The results of these analyses indicate that the departure from nucleate boiling (DNB) design basis continues to be met. (A minimum Departure from Nucleate Boiling Ratio (DNBR) of 1.45 can be maintained throughout the event.) Furthermore, maintaining the suction of the SI pumps to the RWST with valves SI-4A or SI-4B open with power removed places the system in a normal SI sequence and eliminates the requirement to switch suction from the BASTs to the RWST. This eliminates a potential failure mechanism and increases the overall reliability of the ECCS system. Finally, the containment pressure and temperature remains within the acceptable containment design limits.

Since these criteria have been satisfied, there will be no adverse effect on the health and safety of the public and the consequences of any accident previously evaluated have not significantly increased.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

This change to the Technical Specifications allows use of 2400 ppm boron for safety injection. SI pump suction would be directly from the RWST. This eliminates

the necessity of shifting suction from the BASTs to the RWST, reducing the complexity of the operation. Since the pumps remain connected to the RWST throughout the injection phase, there is no possibility of a new or different kind of accident from any accident previously evaluated.

Neither the reduction in initial boron concentration for safety injection, nor the increase in the boron concentration in the RWST would create the possibility of a new or different kind of accident from any accident previously evaluated.

Lastly, the reactivity control function of the boron in the CVCS and SI systems is not being changed. Therefore, the proposed changes will not adversely affect the health and safety of the public or create the possibility of a new or different kind of accident from any accident previously evaluated.

3) Involve a significant reduction in the margin of safety.

The change in concentration of boron injected into the primary system for accident mitigation has been analyzed. These analyses conclude that all applicable criteria for a LOCA are satisfied. A change in safety injection boron concentration to 2400 ppm will not adversely affect the Large or Small-Break LOCA analysis because the evaluation model codes used in analyzing these accidents did not take credit for boron. However, a minimum RWST boron concentration of 2400 ppm is required to maintain long term post LOCA reactor core sub-criticality. To meet this requirement, the RWST minimum boron concentration is being raised to 2400 ppm. All criteria of 10 CFR 50.46 can be achieved for both the Large or Small-Break LOCA with 2400 ppm boron in the RWST. Since all criteria of 10 CFR 50.46 are satisfied, there is no adverse effect on the health and safety of the public and there is not a significant reduction in the margin of safety for these casualties.

Since both the core response and the containment response can be limiting in the SLB event, both were considered in the boron concentration reduction analysis. Although a minimum RWST boron concentration of 1950 ppm is sufficient to provide adequate protection for the SLB event, a 2400 ppm boron solution will be maintained to provide protection for the post large break LOCA concerns. Since the containment pressure remains below the design pressure, and a minimum DNBR of 1.45 can be maintained throughout the event, there is not a significant reduction in the margin of safety for this event.

These proposed changes involve the conversion of the TS to Word Perfect format now being used at WPSC. Minor typographical errors and format inconsistencies were corrected. These proposed changes are administrative in nature; accordingly, these proposed changes do not involve a significant hazards consideration.

Additionally, the proposed changes are similar to example C.2.e.(i) in 51 FR 7751. Example C.2.e.(i) states that changes which are purely administrative in nature; i.e., to achieve consistency throughout the Technical Specifications, correct an error, or a change in nomenclature, are not likely to involve a significant hazard.

Significant Hazards Determination for Proposed Changes to Technical Specification (TS) Section 4.5 ''Emergency Core Cooling System and Containment Air Cooling System Tests.''

The proposed changes were reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed changes will not:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or

2) Create the possibility of a new or different kind of accident from any accident previously evaluated, or

3) Involve a significant reduction in the margin of safety.

The above listed surveillance requirements insure BAST operability. The BASTs will no longer be relied upon as a source of boron for safety injection, and will serve no safety related function. Whether the BASTs are operable or not will have no effect on plant safety. Therefore, elimination of the surveillance requirements which insure BAST operability is possible without any adverse effect on the health and safety of the public and presents no significant hazards.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P. O. Box 1497, Madison, Wisconsin 53701-1497.

NRC Project Director: Leif J. Norrholm

Previously Published Notices Of Consideration Of Issuance Of Amendments ToFacility Operating Licenses, Proposed No Significant Hazards Consideration Determination,And Opportunity For A Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One,Unit No. 2, Pope County, Arkansas

Date of amendment request: November 29, 1994

Brief description of amendment request: The proposed amendment would delete requirements to perform the full complement of steam generator surveillances as outlined in the technical specifications (TSs) when the steam generators are subjected to special inspections that are in addition to inspections that are required by the TSs.

Date of individual notice in the **Federal Register:** December 5, 1994 (59 FR 62416)

Expiration date of individual notice: January 4, 1995

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Notice Of Issuance Of Amendments To Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental

Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Arizona Public Service Company, et al., Docket No. STN 50-528, Palo Verde Nuclear Generating Station, Unit No. 1, Maricopa County, Arizona

Date of application for amendment: November 22, 1994

Brief description of amendment: The amendment adds a note to Technical Specification Table 3.7-2. The note allows continuous operation of Unit 1 during Cycle 5 at 100-percent maximum steady state power with one main steam safety valve inoperable per steam generator. This note applies only during the current fuel cycle (Cycle 5) for Unit 1.

Date of issuance: December 19, 1994

Effective date: December 19, 1994

Amendment No.: 87

Facility Operating License No. NPF-41: The amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes (59 FR 61907, dated December 2, 1994). The notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by December 19, 1994, but stated that, if the Commission makes a final no significant hazards consideration determination, any such hearing would take place after issuance of the amendment. The Commission's related evaluation of the amendment, finding of exigent circumstances, and final determination of significant hazards consideration is contained in a Safety Evaluation dated December 19, 1994.

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072-3999

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson SteamElectric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: October 7, 1994

Brief description of amendment: The amendment revises the introduction to TS Section 6.9.3.3 to require the approved revision number for the referenced analytical methods to be listed in the Core Operating Limits Report. The methodology referenced in 6.9.3.3.b.f (XN-NF-82-49(A)) has been updated to clarify that all supplements are included. New methodologies ANF-89-151(A) and EMF-92-081(A) will be added to TS Section 6.9.3.3.b.

Date of issuance: December 12, 1994

Effective date: December 12, 1994

Amendment No.: 154

Facility Operating License No. DPR-23. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** November 9, 1994 (59 FR 55868)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 12, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Hartsville Memorial Library, 147 West College, Hartsville, South Carolina 29550

Consolidated Edison Company of New York, Docket No. 50-247, Indian PointNuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: February 18, 1994, as supplemented by letters dated June 3, 1994, November 1, 1994, December 2, 1994, December 14, 1994 and December 16, 1994.

Brief description of amendment: The amendment revises surveillance intervals for the Vapor Containment Sump Discharge Flow and Temperature Channel, the Loss of Power Undervoltage and Degraded Voltage Relays, and the Control Rod Protection System Trip to accommodate a 24-month refueling cycle. In addition it changes the trip setpoint for the Control Rod Protection System Trip. These revisions are being made in accordance with the guidance provided by Generic Letter 91-04, ''Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle.''

Date of issuance: December 20, 1994

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 179

Facility Operating License No. DPR-26: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 28, 1994 (59 FR 22003) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 20, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: July 19, 1994

Brief description of amendments: These amendments change Technical Specification 3.1.5 for each unit for the standby liquid control system (SLCS) to remove the operability requirement for the SLCS while the plant is in Operational Condition 5 (refueling) with any control rod withdrawn, and to delete the 18-month system surveillance requirement (Surveillance Requirement 4.1.5.d.3).

Date of issuance: December 20, 1994

Effective date: December 20, 1994

Amendment Nos.: 136 and 106

Facility Operating License Nos. NPF-14 and NPF-22. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 17, 1994 (59 FR 42344)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 20, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: July 22, 1994

Brief description of amendments: The amendment removes the surveillance frequency details regarding 10 CFR Part 50, Appendix J, Types B and C testing from the Technical Specifications.

Date of issuance: December 19, 1994

]Effective date: December 19, 1994

Amendment Nos. 83 and 44

Facility Operating License Nos. NPF-39 and NPF-85. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 14, 1994 (59 FR 47180) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 19, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500

High Street, Pottstown, Pennsylvania 19464.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: October 7, 1994

Brief description of amendment: The amendment revises Technical Specification (TS) 4.6E.4 and the associated Bases to establish that the manual cycling of reactor coolant system safety/relief valves (SRVs) during plant startups is to be accomplished within 12 hours after steam pressure and flow are adequate to perform the testing. TS 4.6E.4 had previously required that this testing be performed within 12 hours of continuous power operation at a reactor steam dome pressure of at least 940 psig. The amendment also makes several editorial changes to clarify the intent of TSs involving SRV testing and performance requirements.

Date of issuance: December 16, 1994

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 219

Facility Operating License No. DPR-59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 9, 1994 (59 FR 55889)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 16, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey Date of application for amendments: September 9, 1994

Brief description of amendments: The amendments revise the Technical Specification surveillance requirements regarding visual inspection of snubbers and are consistent with the guidance provided in Generic Letter 90-09, ''Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Actions.''

Date of issuance: December 12, 1994

Effective date: December 12, 1994

Amendment Nos. 161 and 142

Facility Operating License Nos. DPR-70 and DPR-75. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 9, 1994 (59 FR 55889)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 12, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey Date of application for amendments: March 28, 1994, as supplemented June 1, 1994, and August 24, 1994

Brief description of amendments: The amendments revise the sustained degraded voltage relay trip setpoint and the allowable value due to changes in the switchyard configuration.

Date of issuance: December 14, 1994

Effective date: December 14, 1994

Amendment Nos. 162 and 143

Facility Operating License Nos. DPR-70 and DPR-75. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 8, 1994 (59 FR 29633) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 14, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Tennessee Valley Authority, Docket Nos. 50-259, 50-260, and 50-296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of application for amendments: October 7, 1993 (TS 313)

Brief description of amendments: The changes include the addition of the high range primary containment radiation monitors and recorders and the wide range gaseous effluent radiation recorder and monitor, which were installed at the Browns Ferry facility in response to NUREG 0737 ''Clarification of TMI Action Plan Requirements'' and GL 83-36, into the technical Specifications (TS) for Units 1 and 3. Similar changes to the Unit 2 TS were issued previously (Amendment Nos. 125 and 171). The amendment also clarifies that the high range primary containment radiation recorders and monitors are both part of the instrument loop. The amendment contains administrative typographical changes which provide consistency for the TS tables and footnotes for Units 1 and 3.

Date of issuance: December 21, 1994

Effective Date: December 21, 1994

Amendment Nos.: 214, 230, 187

Facility Operating License Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 22, 1993 (58 FR 67863)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 21, 1994.No significant hazards consideration comments received: None

Local Public Document Room location: Athens Public library, South Street, Athens, Alabama 35611

TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: November 11, 1994, as supplemented by letter dated November 16, 1994.

Brief description of amendments: The proposed amendment would modify Comanche Peak Steam Electric Station Technical Specification Table 4.8-1, ''Diesel Generator Test Schedule,'' by excluding two valid failures of the Unit 2 Train B diesel generator from contributing towards an accelerated test schedule.

Date of issuance: December 9, 1994

Effective date: December 9, 1994

Amendment Nos.: Unit 1 - Amendment No. 33; Unit 2 - Amendment No. 19

Facility Operating License Nos. NPF-87 and NPF-89. The amendments revised the Technical Specifications.Public comments requested as to proposed no significant hazards consideration: Yes (59 FR 69399, dated November 23, 1994). The notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by December 23, 1994, but stated 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 of the amendments, finding of exigent circumstances, and final determination of no significant hazards consideration is contained in a Safety Evaluation dated December 9, 1994.

Local Public Document Room location: University of Texas at Arlington library, Government

Publications/Maps, 702 College, P.O. Box 19497, Arlington, Texas 76019.

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: March 29, 1994

Brief description of amendments: These amendments revise Point Beach Nuclear Plant Technical Specification 15.3.2, ''Chemical and Volume Control System,'' by eliminating the necessity for high concentration boric acid and removing the operability requirements for the associated heat tracing. The basis for Section 15.3.2 and applicable surveillances in Table 15.4.1-2 are also revised to support the above changes.

Date of issuance: December 12, 1994

Effective date: Date of issuance, to be implemented within 45 days.

Amendment Nos.: 158 & 162

Facility Operating License Nos. DPR-24 and DPR-27. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 20, 1994 (59 FR 37091) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 12, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241.

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: September 12, 1994

Brief description of amendments: These amendments revise Point Beach Nuclear Plant Technical Specification (TS) 15.3.3, ''Emergency Core Cooling System, Auxiliary Cooling Systems, Air Recirculation Fan Coolers, and Containment Spray,'' by incorporating allowed outage times similar to those contained in NUREG-1431, Revision 0, ''Westinghouse Owner's Group Improved Standard Technical Specifications,'' and by clarifying the operability requirements for the service water pumps. The changes also clarify the completion times for placing a unit in hot or cold shutdown, if a limiting condition for operation cannot be met.

Date of issuance: December 21, 1994

Effective date: Date of issuance, to be implemented within 45 days

Amendment Nos.: 159 & 163

Facility Operating License Nos. DPR-24 and DPR-27. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 24, 1994 (59 FR 53844)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 21, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241.

Dated at Rockville, Maryland, this 27th day of December 1994.

For The Nuclear Regulatory Commission.

Elinor G. Adensam,

Acting Director, Division of Reactor Projects - III/IV, Office of Nuclear Reactor Regulation.

[Doc. 95–5 Filed 1–3–95; 8:45 am]

BILLING CODE 7590–01–F

OFFICE OF PERSONNEL MANAGEMENT

Federal Salary Council; Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meetings.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act (P.L. 92–463), notice is hereby given that the forty-second and forty-third meetings of the Federal Salary Council will be held at the time and place shown below. At the meetings the Council will continue discussing issues relating to locality-based comparability payments authorized by the Federal Employees Pay Comparability Act of 1990 (FEPCA). The meetings are open to the public.

DATES: January 30, 1995, at 10:00 a.m.; February 28, 1995, at 10:00 a.m.

ADDRESSES: Office of Personnel Management, 1900 E Street NW., Room 7B09, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Ruth O'Donnell, Chief, Salary Systems Division, Office Of Personnel Management, 1900 E Street NW., Room 6H31, Washington, DC 20415–0001. Telephone number: (202) 606–2838.

For the President's Pay Agent.

Lorraine A. Green,

Deputy Director.

[FR Doc. 95–10 Filed 1–3–95; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

Under Review by the Office of Management and Budget

Acting Agency Clearance Officer: Richard T. Redfearn, (202) 942–8800.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, D.C. 20549.

Reinstatement

Rule 144A Information Request for Qualified Institutional Buyers

[File No. 270–342]

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) the Securities and Exchange Commission has submitted for reinstatement an information request for issuers regarding market developments under rule 144A. Respondents incur an estimated average burden of 45 minutes to complete the information request.

General comments regarding the estimated burden hours should be directed to the Clearance Officer of the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Richard T. Redfearn, Acting Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 and Clearance Officer for the Securities and Exchange Commission, Office of Management and Budget, (Project No. 3235–0406), New Executive Office Building, Washington, D.C. 20503.

Dated: December 27, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–119 Filed 1–3–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20798; 812–9330]

Dean Witter Select Equity Trust, Select 10 International Series

December 27, 1994.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Dean Witter Select Equity Trust, Select 10 International Series.

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act that would

exempt applicant from section 12(d)(3) of the Act.

SUMMARY OF APPLICATION: Applicant requests an order on behalf of its series (the ''Series'') and the Series' component trusts (the ''Trusts'') to permit each Trust to invest up to ten percent of its total assets in securities of issuers that derived more than fifteen percent of their gross revenues in their most recent fiscal year from securities related activities.

FILING DATE: The application was filed on November 17, 1994. Applicants agree to file an additional amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 23, 1995 and should be accomplished by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issue contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, c/o Dean Witter Reynolds Inc., Two World Trade Center, New York, NY 10048, Attn.: Thomas Hines.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Law Clerk, at (202) 942–0573, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Each Series will be a series of Dean Witter Select Equity Trust, Select 10 International Series, a unit investment trust registered under the Act, composed of one or more separate Trusts. Dean Witter Reynolds Inc. is applicant's depositor (the ''Sponsor'').

2. Each Trust will invest approximately 10%, but in no event more than 10.5%,[1] of the value of its total assets in each of the ten common stocks in the Financial Times Index or the Hang Seng Index with the highest dividend yields as of its initial date of deposit, and hold those stocks over the life of the Trust (presently anticipated to be approximately one year).

3. The Financial Times Index comprises 30 common stocks chosen by the editors of the Financial Times (London) as representative of British industry and commerce. The companies are major factors in their industries and their stocks are widely held by individuals and institutional investors. The Hang Seng Index comprises 33 of the stocks listed on the Hong Kong Stock Exchange and includes companies intended to represent four major market sectors: commerce and industry, finance, properties, and utilities. The Hang Seng Index is a recognized indicator of stock market performance in Hong Kong.

4. The portfolio securities deposited in each Trust will be chosen solely according to the formula described above, and will not necessarily reflect the research opinions or buy or sell recommendations of the Sponsors. The Sponsor will have no discretion as to which securities are purchased. Securities deposited in a Trust may include securities of issuers that derived more than fifteen percent of their gross revenues in their most recent fiscal year from securities related activities.

5. During the 90-day period following the initial date of deposit, the Sponsor may deposit additional securities while maintaining to the extent practicable the original proportionate relationship among the number of shares of each stock in the portfolio. Deposits made after this 90-day period generally must replicate exactly the proportionate relationship among the face amounts of the securities comprising the portfolio at the end of the initial 90-day period, whether or not a stock continues to be among the ten highest divided yielding stocks.

6. A Trust's portfolio will not be actively managed. Sales of portfolio securities will be made in connection with redemptions of units issued by a Trust and at termination of the Trust. The Sponsor has no discretion as to when securities will be sold except that it is authorized to sell securities in extremely limited circumstances, namely, upon failure of the issuer of security in a Trust to declare or pay anticipated cash dividends, institution of certain materially adverse legal proceedings, default under certain documents materially and adversely affecting future declaration or payment of dividends, or the occurrence of other market or credit factors that in the opinion of the Sponsor would make the retention of such securities in a Trust detrimental to the interests of the unit holders. The adverse financial condition of an issuer will not necessarily require the sale of its securities from a Trust's portfolio.

Applicant's Legal Analysis

1. Section 12(d)(3) of the Act, with limited exceptions, prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter, or investment adviser. Rule 12d3–1 under the Act exempts the purchase of securities of an issuer that derived more than fifteen percent of its gross revenues in its most recent fiscal year from securities related activities, provided that, among other things, immediately after such acquisition, the acquiring company has invested not more than five percent of the value of its total assets in securities of the issuer. Section 6(c) of the Act provides that the SEC may exempt a person from any provision of the Act or any rule thereunder, if and to the extent that the 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.

2. Applicant requests an exemption under section 6(c) from section 12(d)(3) to permit any Trust to invest up to approximately 10%, but in no event more than 10.5%, of the value of its total assets in securities of an issuer that derives more than fifteen percent of its gross revenues from securities related activities. Applicant and each Trust will comply with all provisions of rule 12d3–1, except for the five percent limitation in paragraph (b)(3) of the rule.

3. Section 12(d)(3) was intended to prevent investment companies from exposing their assets to the entrepreneurial risks of securities related businesses, to prevent potential conflicts of interest, and to eliminate certain reciprocal practices between investment companies and securities related businesses. One potential conflict could occur if an investment company purchased securities or other interests in a broker-dealer to reward

[1] The Sponsor will attempt to purchase equal values of each of the ten common stocks in a Trusts' portfolio and may choose to purchase the securities in odd lots in order to achieve this goal. However, it is more efficient if securities are purchased in 100 share lots and 50 share lots. As a result, the Sponsor may choose to purchase securities of a securities related issuer which represent over 10%, but in no event more than 10.5% percent, of a Trust's assets on the initial date of deposit to the extent necessary to enable the Sponsor to meet its purchase requirements and to obtain the best price for the securities.

that broker-dealer for selling fund shares, rather than solely on investment merit. Applicant believes that this concern does not arise in connection with its application because neither applicant nor the Sponsor has discretion in choosing the portfolio securities or percentage amount purchased. The security must first be included in the Financial Times Index or the Hang Seng Index, which indexes are unaffiliated with the Sponsor and applicant, and must also qualify as one of the ten highest dividend yielding securities.

4. Applicant also believes that the effect of a Trust's purchase on the stock of parents of broker-dealers would be *de minimis.* Applicant asserts that the common stocks of securities related issuers represented in the Financial Times Index of the Hang Seng Index are widely held, have active markets, and that potential purchases by any Trust would represent an insignificant amount of the outstanding common stock and the trading volume of any of these issues. Accordingly, applicant believes that it is highly unlikely that Trust purchases of these securities would have any significant impact on the securities' market value.

5. Another potential conflict of interest could occur if an investment company directed brokerage to a broker-dealer in which the company has invested to enhance the broker-dealer's profitability or to assist it during financial difficulty, even though that broker-dealer may not offer the best price and execution. To preclude this type of conflict, applicant and each Series agree, as a condition of this application, that no company held in the portfolio of a Trust nor any affiliate thereof will act as a broker for any Trust in the purchase or sale of any security for its portfolio. In light of the above, applicant believes that its proposals meets the section 6(c) standards.

Condition

Applicant and each Series agree that any order granted under this application may be conditioned upon no company held in a Trust's portfolio nor any affiliate thereof acting as broker for any Trust in the purchase or sale of any security for a Trust's portfolio.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30 Filed 1–3–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35142; File No. SR–Amex–94–58]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Its Options Floor Brokerage Fee and Bond Charge

December 23, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. § 78s(b)(1), notice is hereby given that on December 14, 1994, the American Stock Exchange, Inc. (''Amex'') or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') 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 Amex proposes to increase two charges imposed on members and member organizations—its options floor brokerage fee and its bond charge. The schedule of fee changes is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to increase two charges imposed on members and member organizations—its options floor brokerage fee and its bond charge. The options floor brokerage fee payable by clearing firms of $.015 per contract side for all customer and non-market making member firm principal activity would be increased to $.03. The bond charge of $.00005 (per dollar face value of the bond) on bonds up to a face value of $1 million would be increased to $.0001 (per dollar face value on the bond) with no cap on the face value of the bond. In addition, the charge, previously imposed only on corporate bonds, would now be imposed on government bonds as well. These two fee increases are scheduled to take effect on January 3, 1995.

2. Statutory Basis

The fee change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(4) in particular in that it is intended to assure the equitable allocation of reasonable dues, fees and other charges among members, issuers and other persons using the Exchange's facilities.

B. Self-Regulatory organization's Statement on Burden on Competition

The fee change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the fee change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. 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 Act.

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, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–94–58 and should be submitted by January 25, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–25 Filed 1–3–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35146; File No. SR–Amex–94–50]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Proposed Commentary .02 to Rule 60

December 23, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. § 78s(b)(1), notice is hereby given that on November 14, 1994, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. 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 text of the proposed rule change is as follows: *italics* indicate words to be added.

Rule 60 Commentary

.01 Electronic Display Book—NYSE Disclaimer

No Change.

.02 On-Line Comparison System and Other NYSE Facilities

The Amex has entered into an agreement with the New York Stock Exchange under which Amex members and member organizations will be utilizing the NYSE's On-Line Comparison System (''OCS'') for the comparison of Amex equity and bond transactions. The Amex may enter into additional agreements with the NYSE in the future relating to the use of other NYSE systems, services, or facilities by Amex members and member organizations. In connection with member or member organization use of OCS or any such other NYSE system, service, or facility, the New York Stock Exchange shall not be liable for any damages sustained by a member or member organization growing out of the use or enjoyment thereof by the member or member organization.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex has reached agreement with the New York Stock Exchange to integrate the Amex's Equity Intra-Day Comparison System (''IDC'') into the NYSE's On-Line Comparison System (''OCS''), so that Amex equity and bond transactions can be compared through OCS. This will enable members to utilize the same computer terminal for the comparison of both Amex and NYSE securities and thus lessen the cost to the member firm community. The integration is being accomplished in two steps. Amex listed corporate bonds began to be compared through OCS on October 21, 1994 and equities are expected to be phased in by the end of the first quarter of 1995.

The Amex Constitution (Article IV, Section 1(e)) currently provides that the Exchange shall not be liable for any damages incurred by a member firm growing out of its use of the facilities afforded by the Exchange for the conduct of its business (which includes the use of the Exchange's trading systems), except as the Exchange may otherwise provide. The NYSE Constitution has a similar provision regarding use of its facilities by its members. These provisions reflect the common understanding that exchanges should not bear the risk and liability associated with member firm use of their systems. In connection with the OCS agreement, the NYSE is requiring that, like the Amex, it be protected from liability with regard to Amex member firm use of OCS. This is similar to protection which the NYSE requested and obtained when the Amex licensed the NYSE's electronic equity display book for use on the Amex floor in 1992. At that time, the Exchange adopted a Commentary under Rule 60 providing the protection requested by the NYSE with respect to Amex member firm use of the display book.

As the Exchange may enter into additional agreements with the NYSE in the future relating to the use of other NYSE systems, services, or facilities by Amex member firms, it is proposed that the Exchange adopt a liability disclaimer provision that covers not only the current situation involving the use of OCS, but also all future situations where Amex member firms are using other NYSE facilities in accordance with similar agreements with the NYSE.[1] The new Commentary to Rule 60 will be disseminated to the membership, upon SEC approval.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it will foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. The proposed rule change is also consistent with Section 17A of the Act in that is fosters the accurate clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

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[1] The NYSE acknowledges that under New York State Common Law, a liability disclaimer such as the instant one does not insulate the NYSE from loss due to gross negligence or willful misconduct. Conversation between Steve Abrams and Michael Simon, Milbank, Tweed, Hadley & McCloy, Counsel to NYSE, and Amy Bilbija, Attorney, Commission, dated December 2, 1994.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–94–50 and should be submitted by January 25, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–26 Filed 1–3–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35155; File No. SR–CHX–94–26]

Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Notice of Filing of Proposed Rule Change Relating to Implementation of a Three-Day Settlement Standard

December 27, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 30, 1994, the Chicago Stock Exchange, Incorporated (''CHX'') filed with the Securities and exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by CHX. On December 14, 1994, CHX filed an amendment to the proposed rule change.[2] 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 purpose of this proposed rule change is to amend CHX's rules to accommodate the implementation of a three business day settlement standard for securities transactions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

It its filing with the Commission, CHX included statements concerning the propose of and basis for the purposed 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. CHX 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

On October 13, 1993, the Commission adopted Rule 15c6–1 under the Act which establishes a three-day settlement standard for most securities transactions. Rule 15c6–1 becomes effective June 7, 1995.[3] CHX's proposed rule change will amend its rules relating to delivery time frames, ex-dates, and liability for erroneous reports in order to comply with Rule 15c6–1 and a three business day settlement standard.

Under Article XX, Rule 9 of CHX's rules, regular way settlement currently requires delivery five business days after the trade date (''T+5''). Under the proposal, regular way settlement will occur three business days after the trade date (''T+3''). Seller's option trades currently can settle not less than six business days nor more than sixty days following the day of the contract. Under the proposed rule change, seller's option trades can settle not less than four business days (''T+4'') nor more than sixty days following the day of the contract. Trades made for next day delivery permit delivery on the next business day following the day of the contract. Currently, such trades also may specify in the contract that delivery will occur on the second, third, or fourth full business day following the day of the contract. The proposal will eliminate the ability to specify the third or fourth full business day. Rule 9 also will be amended to eliminate references to the fourth and fifth full business day preceding the final day so that only on the second and third full business day for subscription must bids and offers be made for next day settlement.

Article XXVII, Rule 1 will be amended to provide that transactions in stocks shall be ex-dividend or ex-rights on the second business day preceding the record date rather than on the fourth business day. With regard to a record date on other than a business day, transactions in stocks will be ex-dividend or ex-rights on the third preceding business day rather than on the fifth business day.

Article XXVII, Rule 2 prescribes when ex-warrant trading will begin. The ex-warrant period will be changed to the second business day preceding the date of expiration of the warrants instead of the fourth business day. When warrant expiration occurs on other than a business day, the ex-warrant period will begin on the third business day preceding the expiration date instead of on the fifth business day.

Article XXX, Rule 15 applies to erroneous comparisons and other errors. All claims which involve erroneous comparisons will need to be made within two business days of the original trade date rather than within three business days. Claims which concern the omission of a report which was properly due will need to be made

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] Letter from David Rusoff, Foley & Lardner, to Christine Sibille, Division of Market Regulation, Commission (December 16, 1994).

[3] Securities Exchange Act Releases Nos. 33023 (October 6, 1993), 58 FR 52891 (order adopting Rule 15c6–1) and 34952 (November 9, 1994), 59 FR 59137 (order changing effective date from June 1, 1995, to June 7, 1995).

within two business days of the date the order should have been executed rather than three business days. Claims which involve a lack of comparison of a reported transaction will need to be made within two business days of the original trade rather than three business days.

The CHX's implementation of the proposed rule change will be consistent with the June 1995 T+3 conversion schedule which the National Securities Clearing Corporation has developed for industry use. The schedule is as follows.

Trade date	Settlement cycle	Settlement date
June 2 Friday	5 day ..	June 9 Friday.
June 5 Monday .	4 day ..	June 9 Friday.
June 6 Tuesday	4 day ..	June 12 Monday.
June 7 Wednesday.	3 day ..	June 12 Monday.

If the Commission determines to alter the exemptions currently provided in Rule 15c6–1, CHX may need to undertake additional rule amendments. It is intended that the proposed rule change become effective the same date as Rule 15c6–1.

CHX believes that the proposed rule change is consistent with Section 6(b)(5) of the Act in that it protects investors and the public interest by reducing the risk to clearing corporations, their members, and public investors which is inherent in settling securities transactions. This is accomplished by reducing the time period for settlement of most securities transactions which will correspondingly decrease the number of unsettled trades in the clearance and settlement system at any given time.

The proposed change also is consistent with proposed rule 15c6–1 which requires brokers or dealers to settle most securities transactions no later than the third business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction.

(B) Self-Regulatory Organization's Statement on Burden on Competition

CHX does not believe that the proposed rule change will impose a burden on competition.

(C) Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of CHX. All submissions should refer to (File No. SR–CHX–94–26) and should be submitted by January 25, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27 Filed 1–3–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35147; File No. SR–NYSE–94–39; SR–Phlx–94–29; SR–PSE–94–34; SR–BSE–94–15; SR–CHX–94–28; SR–NASD–94–67]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc., Philadelphia Stock Exchange, Inc., Pacific Stock Exchange, Inc., Boston Stock Exchange, Inc., Chicago Stock Exchange, Inc., and National Association of Securities Dealers, Inc. Relating to Short Interest Reporting Requirements

December 23, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. § 78s(b)(1), notice is hereby given that on October 27, 1994, the New York Stock Exchange, Inc., Philadelphia Stock Exchange, Inc., Pacific Stock Exchange, Inc., Boston Stock Exchange, Inc., Chicago Stock Exchange, Inc., and National Association of Securities Dealers, Inc. (the ''SROs'') [1] filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as describe in Items I, II and III below, which Items have been prepared by the self-regulatory organizations. 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 changes consist of (1) revisions to the rules of the SROs with existing short interest reporting requirements, and (2) adoption of short interest reporting rules for the SROs currently without any such requirement. All of the proposed rule changes will require members and member organizations of the SROs to report short interest positions to the SROs if the particular SRO is the designated examining authority for that member.[2]

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 SROs included statements concerning the purpose of and basis for the proposed rule change and discussed any

[1] The self-regulatory organizations listed herein will collectively be referred to as the (''SROs'').

[2] The NASD, however requires reporting for all members of their short positions not otherwise reported to another SRO, irrespective of its DEA status. In doing so, the NASD seeks to ensure that it receives short position reporting for all NASDAQ securities. Conversation with Suzanne Rothwell, NASD, and Amy Bilbija, Commission, dated December 21, 1994.

comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The SROs have prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The current NYSE and NASD rules require clearing member firms to report positions resulting from short sales, as that term is defined in Rule 3b–3 of the Securities Exchange Act of 1934, in Exchange listed securities and, with respect to the NASD, securities included in the NASDAQ System. Such reports are required on a monthly basis, submitted via electronic transmission of the data through the Securities Industry Automation Corporation (''SIAC''). The SROs utilize such data, in general, to surveil market activity. In addition, the NYSE publishes a monthly release of short interest information as a service to listed companies, the investing public, market professionals and other interested parties.

The SROs have worked closely with each other as members of the Inter-Market Surveillance Group (''ISG''), a group which includes representatives of every U.S. securities self-regulatory organization, to address problems that reach across marketplaces. ISG members have identified uniform short position reporting as an important surveillance tool that can be utilized to good effect in monitoring possible anomalous trading situations. Each member of the ISG is planning to adopt similar provisions.

Generally, the SROs propose to require all members to report short interest positions to the SRO that is the designated examining authority (''DEA'') for that member. In addition, most SROs will require those members for which the SRO is not the DEA to report to the SRO which is its DEA, unless that SRO does not have a reporting requirement. In cases where no reporting is required by the DEA, the member would be required to report short position information to the SRO where it is a member irrespective of its non-DEA status.

Reports to the SROs would primarily include listed and registered securities, not otherwise reported to another SRO. Reporting would be required at such times as designated by the SROs. Finally, most rules would clarify that both proprietary and customer positions must be reported.

The full text of each SRO's proposed rule change is available at the Commission's Public Reference Room and at the offices of each respective SRO.

2. Statutory Basis

The SROs believe that the basis under the Securities Exchange Act of 1934 (the ''Act'') for the proposed rule changes is the requirement under Section 6(b)(5) and 15A(b)(6), as applicable, that an SRO have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The proposed rule changes are consistent with these objectives in that they would enhance the Exchanges' regulatory and surveillance capabilities with respect to short interest reporting, augment market transparency for certain securities, enable investors to make more informed decisions, and provide greater disclosure for regulatory purposes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The SROs do not believe that the proposed rule changes will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The SROs have neither solicited nor received written comments on the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of each SRO. All submissions should refer to File No. SR–NYSE–94–39; SR–Phlx–94–29; SR–PSE–94–34; SR–BSE–94–15; SR–CHX–94–28; SR–NASD–94–67, as applicable, and should be submitted by January 25, 1995.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28 Filed 1–3–95; 8:45 am]

BILLING CODE 8010–01M

[Release No. 34–35154; File No. SR–SCCP–94–07]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing of Proposed Rule Change Relating to Implementation of a Three-Day Settlement Standard.

December 27, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 14, 1994, the Stock Clearing Corporation of Philadelphia (''SCCP'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by SCCP. On December 19, 1994, SCCP filed an amendment to the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] Letter from Sharon S. Metzker, SCCP, to Christine Sibille, Division of Market Regulation, Commission (December 12, 1994).

proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Term of Substance of the Proposed Rule Change

SCCP proposes to modify SCCP rules 18 and 40 to be in conformity with the three business day settlement standard. SCCP requests that the Commission delay effectiveness of the proposed rule change until the effective date of Commission Rule 15c6–1.

II. Self-Regulatory Organization's Statements Regarding the Proposed Rule Change

In its filing with the Commission, SCCP 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 SCCP 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

On October 6, 1993, the Commission adopted Rule 15c6–1 under the Act which will become effective June 7, 1995.[3] The rule establishes three business days after the trade date (''T+3'') instead of five business days (''T+5'') as the standard settlement cycle for most broker-dealer trades. In the release adopting Rule 15c6–1, the Commission concluded that a T+3 settlement cycle, as compared to the current T+5 settlement cycle, will reduce credit and liquidity risks and will increase efficiency in broker-dealer and clearing agency operations.

SCCP has identified those rules which require amendment to provide for compliance with a T+3 settlement cycle by member and member organizations. The rules are as follows.

Rule 18 (''Insolvency''), Section 6 currently provides that upon the insolvency of a participant, no contracts, pending settlement up to and including T+3 shall be settled by SCCP. Rule 18, Section 7 currently provides that on or after T+4, SCCP will buy in the securities due it from an insolvent participant and will sell out the securities due to the participant from SCCP. The time frames contained in these sections will be shortened by two days.

Rule 40 (''Instruments with Exercise Privileges'') states that a Participant is advised of potential liability based on its short value positions the fourth business day after the trade date. Under the proposed rule change, the participants will be advised on the second business day.

SCCP's implementation of the proposed rule change will be consistent with the T+3 conversion schedule which SCCP and the National Securities Clearing Corporation (''NSCC'') have developed for industry use. The Conversion schedule for June 1995 is as follows.

Trade date	Settlement cycle	Settlement date
June 2, Friday	5 day	June 9, Friday.
June 5, Monday	4 day	June 9, Friday.
June 6, Tuesday	4 day	June 12, Monday.
June 7, Wednesday	3 day	June 12, Monday.

If the Commission determines to alter the exemptions currently provided in Rule 15c6–1, SCCP may need to submit additional rule amendments. It is intended that this proposed rule change will become effective the same date as Commission Rule 15c6–1 becomes effective.

The proposed rule change is consistent with Section 17A of the Act in that it will facilitate the safeguarding of securities and funds which are in SCCP's custody or control or for which SCCP is responsible. The proposed change also is consistent with Commission Rule 15c6–1 which requires brokers or dealers to settle most securities transactions no later than the third business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction.

B. Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety 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 SCCP consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of SCCP. All submissions should refer to File No–SCCP–94–07 and should be submitted by January 25, 1995.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–29 Filed 1–3–95; 8:45 am]

BILLING CODE 8010–01–M

[3] Securities Exchange Act Release Nos. 33023 (October 6, 1993), 58 FR 52891 (order adopting Rule 15c6–1) and 34952 (November 9, 1994), 59 FR 59137 (order changing effective date from June 1, 1995, to June 7, 1995).

SMALL BUSINESS ADMINISTRATION

[License No. 09/09–0342]

GC&H Partners; Notice of Surrender of License

Notice is hereby given that GC&H Partners, One Maritime Plaza, San Francisco, California 94111 has surrendered its license to operate as a small business investment company

under the Small Business Investment Act of 1958, as amended (the Act). GC&H Partners was licensed by the Small Business Administration on April 30, 1984.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on this date, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 15, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 95–136 Filed 1–3–95; 8:45 am]

BILLING CODE 8025–01–M

[License No. 02/02–0292]

Winfield Capital Corporation; Notice of Filing of an Application for Transfer of Ownership and Control

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) by Winfield Capital Corporation, 237 Mamaroneck Avenue, White Plains, New York 10605, for transfer of ownership and control of its license, under the Small Business Investment Act of 1958, as amended, (the Act) (15 U.S.C. *et. seq.*). Winfield Capital Corporation was licensed on April 19, 1972.

The Applicant currently operates with private capital totaling $1,250,000. as part of this application for change of control and ownership, new investors (Messrs. Paul A. Perlin and Mr. David Greenberg, listed below) have negotiated with existing shareholders of the Applicant to purchase through an executed stock purchase agreement, all of the outstanding common stock of the Applicant. Simultaneously, and with the assistance of one of the new investors, the Applicant intends to raise new equity capital in an amount up to $3.0 million through a private placement of the company's securities. The proposed majority Shareholders of Winfield Capital Corporation subsequent to the sale of the company's securities are as follows:

Name	Percentage of ownership
Mr. Paul A. Perlin, 137 East 36th Street, New York, New York 10016	[1] 14.80
Mr. David Greenberg, 7 Stream Court, Owings Mills, Maryland 21117	[1] 8.60
Mr. Stanley M. Pechman, President, Winfield Capital Corporation, 237 Mamaroneck Avenue, White Plains, New York 10605	1.90
All Directors and Officers as a Group (5 persons)	25.3

[1] These ownership percentages reflect the purchase of all current outstanding shares of Winfield Capital Corporation's common stock and does not assume any investment in the simultaneous private placement of additional securities being offered. It is anticipated however, that Perlin and Greenberg will be investing in the aggregate approximately $400,000 in the offering, thereby increasing both individuals proposed holding to in excess of 10 percent of the Applicant.

It is estimated that there will be less than 50 beneficial owners of the Applicant's common stock subsequent to the transactions contemplated by this application. It is not anticipated that any corporation, partnership or other entity except for Mr. Paul A. Perlin and Mr. David Greenberg will own 10 percent or more of the outstanding shares of the Applicant subsequent to this transaction.

As part of the change of control there will be change in the management and composition of the Board of Directors of the Applicant. The new proposed Officers and Directors of Winfield Capital Corporation are as follows:

Name	Title
Mr. Paul A. Perlin, 137 East 36th Street, New York, New York 10016.	Chairman, Chief Executive Officer, Director.
Mr. Stanley M. Pechman, President, Winfield Capital Corporation, 237 Mamaroneck Avenue, White Plains, New York 10605.	President and Director.
Mr. Bruce A. Kaufman, 5–15 117th Street, 2F, College, Point, New York 10017.	Secretary and Treasurer.
Mr. David Greenberg, 7 Stream Court, Owings Mills, Maryland 21117.	Director.
Mr. R. Scott Perlin, 40 East 94th Street, New York, New York 10128.	Director.

The Applicant will continue operations subsequent to the planned private placement with private capital net of expenses of approximately $4,100,000.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW, Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Greater New York Metropolitan Area.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies).

Dated: December 27, 1994.

Darryl K. Hairston,

Deputy Associate Administrator for Investment.

[FR Doc. 95–137 Filed 1–3–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Airport Improvement Program Grant Assurances; Proposed Modification and Opportunity to Comment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed modification of airport improvement program grant assurances and of opportunity to comment.

SUMMARY: The FAA proposes to modify the standard grant assurances required of a sponsor before receiving a grant under the Airport Improvement Program (AIP). Pursuant to applicable law, the Secretary of Transportation is required to provide notice in the **Federal Register** and an opportunity for the public to comment upon proposals to modify the assurances or to require any additional AIP assurances. These modifications are necessary for two reasons.

First, much of Federal transportation law was repealed and reenacted without substantive change by enactment of the Codification of Certain U.S. Transportation Laws as Title 49, United States Code, Pub. L. No. 103–272, 108 Stat. 745 (July 5, 1994). Aviation programs, including the AIP, are now found in Subtitle VII of Title 49, rather than the original statutes under which those programs were originally established. Consequently, statutory

citations in the existing grant assurances are now obsolete and the modifications published here cite current law.

Second, Pub. L. 103–272 was amended by enactment of the Federal Aviation Administration Authorization Act of 1994, Pub. L. No. 103–305 (August 23, 1994) (the 1994 Act), which made substantive changes to the statutory grant assurances. The modifications to the grant assurances also incorporate those changes.

For ease of reading, Title 49, Subtitle VII, as amended by the 1994 Act will be cited throughout the remainder of this notice as Title 49, U.S.C., as amended. In the actual assurance, however, the reference further specifies Subtitle VII.

DATES: These proposed modifications to the Grant Assurances will be effective on an interim basis on January 4, 1995. Comments must be submitted on or before February 3, 1995. Any revision to the interim Assurances which are necessary or appropriate in response to comments received will be adopted on or before May 4, 1995.

ADDRESSES: Comments may be delvered or mailed to the FAA, Airports Financial Assistance Division, APP–500, Room 615, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. James Borsari (Management and Program Analyst) Telephone (202) 267–8822.

SUPPLEMENTARY INFORMATION: The Secretary must receive certain assurances from a sponsor (applicant) seeking financial assistance for airport planning, airport development, noise compatibility planning or noise mitigation under Title 49, U.S.C., as amended. These assurances are submitted as part of a sponsor's application for Federal assistance and are incorporated into all grant agreements. As need dictates, these assurances are modified from time to time to reflect new Federal requirements. Notice of such proposed modifications is published in the **Federal Register** and an opportunity provided for comment by the public. The current assurances were published on February 3, 1988, at 53 Fed. Reg. 3104 and amended on September 6, 1988, at 53 Fed. Reg. 34361, on August 29, 1989, at 54 Fed. Reg. 35748 and on June 10, 1994 at 59 Fed. Reg. 30076.

FAA uses three separate sets of standard assurances: Airport Sponsors (owners/operators); Planning Agency Sponsors; and Nonairport Sponsors Undertaking Noise Compatibility Program Projects (hereinafter referred to as Nonairport Sponsor Assurances). FAA is planning to modify the assurances currently in use to reflect some changes in the general requirements as discussed below. The changes contained herein affect all three sets of assurances.

Section A, ''General,'' subsection 2, of the Airport Sponsor Assurances, Nonairport Sponsor Assurances, and Planning Agency Sponsor Assurances is modified to delete references to the Airport and Airway Improvement Act of 1982, as amended; the Aviation Safety and Noise Abatement Act of 1979; and the Airport and Airway Safety and Capacity Expansion Act of 1987. In their place is inserted the reference to the codification of transportation related laws, Pub. L. No. 103–272, 108 Stat. 745 (July 5, 1994), which repealed and recodified these acts without substantive change to their content.

Section C, subsection 1, ''General Federal Requirements, Federal Legislation,'' in each set of assurances is modified to delete the references to the Federal Aviation Act of 1958, 49 U.S.C. 1301, *et seq.*; Airport and Airway Improvement Act of 1982, as amended, 49 U.S.C. 2201, *et seq.*; and the Aviation Safety and Noise Abatement Act of 1979, 49 U.S.C. 2101, *et seq.* These acts were repealed by Pub. L. No. 103–272, which codified the above at 49 U.S.C. 40101 *et seq.* without substantive change to their content.

Section C, subsection 11, of the Airport Sponsors Assurances, ''Local Approval,'' is deleted in its entirety due to the 1994 Act's repeal of Section 30 of the Airport and Airway Development Act of 1970, as amended.

A new section C, subsection 11, ''Preventive Maintenance,'' is added to the Airport Sponsor Assurances due to a new requirement in section 107(a) of the 1994 Act which is effective for all projects approved after January 1, 1995, for the replacement or reconstruction of pavement at an airport.

Section C, subsection 22, of the Airport Sponsor Assurances, ''Economic Nondiscrimination,'' is amended by deleting the word ''equal'' in subsection (b)(1), since the FAA can find no statutory basis for the inclusion of that word.

Section C, subsection 26, of the Airport Sponsor Assurances, ''Reports and Inspections,'' is deleted in its entirety and is substituted by a new subsection 26, ''Reports and Inspections.'' The new subsection consists of language taken from the existing assurance which was recast without substantive change using subparagraphs to improve readability. It also includes language necessary to implement section 111 of the 1994 Act, ''Airport Financial Reports,'' which imposes on each airport sponsor a new reporting requirement to submit certain reports regarding revenue use at the airport.

Issued in Washington, D.C. on December 20, 1994.

Paul L. Galis,

Director, Office of Airport Planning and Programming.

Airport Improvement Program Grant Assurances

1. The Airport Sponsor Assurances are amended as follows:

a. Section A.2 is revised to read as follows:

A. General

* * * * *

2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term ''public agency sponsor'' means a public agency which controls a public-use airport; the term ''private sponsor'' means a private owner of a public-use airport; and the term ''sponsor'' includes both public agency sponsors and private sponsors.

b. Section C.1 is revised as follows:

C. Sponsor Certification. The Sponsor hereby assures and certifies, with respect to this grant, that:

1. General Federal Requirements.

* * * * *

Federal Legislation

a. Title 49, U.S.C., subtitle VII, as amended.
b. Davis-Bacon Act—40 U.S.C. 276(a), et seq.[1]
c. Federal Fair Labor Standards Act—29 U.S.C. 201, et seq.
d. Hatch Act—5 U.S.C. 1501, et seq.[2]
e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970—42 U.S.C. 4601, et seq.[1, 2]
f. National Historic Preservation Act of 1966—Section 106—16 U.S.C. 470(f).[1]
g. Archeological and Historic Preservation Act of 1974—16 U.S.C. 469 through 469c.[1]
h. Flood Disaster Protection Act of 1973—Section 102(a)—42 U.S.C. 4012a.[1]
i. Rehabilitation Act of 1973—29 U.S.C. 794.
j. Civil Rights Act of 1964—Title VI—42 U.S.C. 2000d through d–4.
k. Age Discrimination Act of 1975—42 U.S.C. 6101, et seq.
l. Architectural Barriers Act of 1968—42 U.S.C. 4151, et seq.[1]
m. Powerplant and Industrial Fuel Use Act of 1978—Section 403—2 U.S.C. 8373.[1]
n. Contract Work Hours and Safety Standards Act—40 U.S.C. 327, et seq.[1]
o. Copeland Antikickback Act—18 U.S.C. 874.[1]
p. National Environmental Policy Act of 1969—42 U.S.C. 4321, et seq.[1]
q. Endangered Species Act—16 U.S.C. 668(a), et seq.[1•523]

r. Single Audit Act of 1984—31 U.S.C. 7501, et seq.[2]

2. Drug-Free Workplace Act of 1988—41 U.S.C. 702 through 706.

c. Section C.11, ''Local Approval,'' is deleted.

d. A new section, C.11, is added to read as follows:

11. Preventive Maintenance. With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any payment constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.

e. Section C.22 is revised to replace the word ''equal'' in paragraph b(1) with the word ''reasonable'' to read as follows:

22. Economic Nondiscrimination.

* * * * *

b. * * *

(1) furnish said services on a fair, reasonable, and not unjustly discriminatory basis to all users thereof, and

* * * * *

f. Section C.26 is revised to read as follows:

26. Reports and Inspections. It will:

(a) submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public;

(b) make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;

(c) for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request;

(d) for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of the grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and

(e) in a format prescribed by the Secretary, provide to the Secretary and make available to the public, not later than 60 days following each of its fiscal years ending after March 1, 1995, an annual report listing in detail:

(i) all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and

(ii) all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

2. The Planning Agency Sponsor Assurances are amended as follows:

a. Paragraph A.2 is revised to read as follows:

A. General

* * * * *

2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. A sponsor is a planning agency designated by the Secretary of Transportation which is authorized by the State or States or political subdivisions concerned to engage in areawide planning.

b. Section C.1 is revised as follows:

C. Sponsor Certification. The Sponsor assures and certifies, in respect to this grant, that:

1. General Federal Requirements.

* * * * *

Federal Legislation

a. Title 49, U.S.C., subtitle VII, as amended.

b. Federal Fair Labor Standards Act—29 U.S.C. 201, et seq.

c. Hatch Act—5 U.S.C. 1501, et seq.

d. Rehabilitation Act of 1973—29 U.S.C. 794.

e. Civil Rights Act of 1964—Title VI—42 U.S.C. 2000d–1 through d–4.

f. Age Discrimination Act of 1975—42 U.S.C. 6101, et seq.

g. Single Audit Act of 1984—31 U.S.C. 7501, et seq.

h. Drug-Free Workplace Act of 1988—41 U.S.C. 702 through 706.

3. The Nonairport Sponsor Assurances are amended as follows:

a. Section A.2 is revised to read as follows:

A. General

* * * * *

2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, subtitle as amended. Sponsors are units of local government in the areas around the airport which is the subject of the noise compatibility program.

b. Section C.1 is revised as follows:

C. Sponsor Certification. The Sponsor hereby assures and certifies, in respect to this grant, that:

I. General Federal Requirements.

* * * * *

Federal Legislation

a. Title 49, U.S.C., subtitle VII, as amended.

b. Davis-Bacon Act—40 U.S.C. 276(a), et seq.

c. Federal Fair Labor Standards Act—29 U.S.C. 201, et seq.

d. Hatch Act—5 U.S.C. 1501, et seq.

e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970—42 U.S.C. 4601, et seq.

f. National Historic Preservation Act of 1966—Section 106—16 U.S.C. 470(f).

g. Archeological and Historic Preservation Act of 1974—469a through 469c.

h. Flood Disaster Protection Act of 1973—Section 102(a)—42 U.S.C. 4012a.

i. Rehabilitation Act of 1973—29 U.S.C. 794.

j. Civil Rights Act of 1964—Title VI—42 U.S.C. 2000d–1 through d–4.

k. Age Discrimination Act of 1975—42 U.S.C. 6101, et seq.

l. Architectural Barriers Act of 1968—U.S.C. 4151, et seq.

m. Powerplant and Industrial Fuel Use Act of 1978—Section 403—42 U.S.C. 8373.

n. Contract Work Hours and Safety Standards Act—40 U.S.C. 327, et seq.

o. Copeland Antikickback Act—18 U.S.C. 874.

p. National Environmental Policy Act of 1969—42 U.S.C. 4321, et seq.

q. Endangered Species Act of 1973—16 U.S.C. 668(a), et seq.

r. Single Audit Act of 1984—31 U.S.C. 7501, et seq.

s. Drug-Free Workplace Act of 1988—41 U.S.C. 702 through 706.

[FR Doc. 95–78 Filed 1–3–95; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting on Aircraft Certification Procedures Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss aircraft certification procedures issues.

DATES: The meeting will be held on January 19, 1995, at 9:00 a.m.

Arrange for oral presentations by January 12, 1995.

ADDRESSES: The meeting will be held at the General Aviation Manufacturers Association, Suite 801, 1400 K Street, NW, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Ball, Aircraft Certification Service (AIR–1), 800 Independence

Avenue, SW, Washington, DC 20591, telephone (202) 267–8235.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking advisory committee to be held on January 19, 1995 at the General Aviation Manufacturers Association, Suite 801, 1400 K Street, NW, Washington, DC 20005. The agenda for the meeting will include:

Opening Remarks
Review of Action Items
Working Group Reports
ICPTF
ELT
Delegation System
Parts
Production Certification
New Business

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by January 12, 1995, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director for Aircraft Certification Procedures or by bringing the copies to him at the meting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION COINTACT**.

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

Issued in Washington, DC, on December 23, 1994.

Daniel P. Salvano,

Assistant Executive Director for Aircraft Certification Procedures, Aviation Rulemaking Advisory Committee.

[FR Doc. 95–79 Filed 1–3–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Interagency Committee on Aircraft Noise Meeting Agenda

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public forum.

SUMMARY: The FAA is issuing this notice to advise the public of a forum sponsored by the Federal Interagency Committee on Aircraft Noise (FICAN) to discuss aircraft noise issues.

DATES: The forum will be held on March 2, 1995.

ADDRESS: The forum will be held at Reserve Auditorium, Naval Air Station Miramar, San Diego, CA.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Connor, Manager, Technology Division (AEE–100), Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, fax (202) 267–5594.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a public forum sponsored by the Federal Interagency Committee on Aircraft Noise (FICAN) to be held on March 2, 1995.

On March 16, 1993, representatives of the agencies that participated on the Federal Interagency Committee on Noise (FICON) met and agreed to establish a standing committee to be known as FICAN. The standing interagency committee will provide a permanent aviation noise research and development (R&D) forum, which will assist agencies in providing adequate forums for discussion of public and private proposals, identify needed research, and encouraging R&D efforts in these areas. FICAN held their first public forum on July 27, 1994 in Atlanta GA. The public forum consisted of presentations by the FICAN members on current and future aircraft noise research projects, followed by an open comment and discussion period.

The agenda for the meeting will include:

- Presentation of current and future aircraft noise research projects that are funded by the Federal members of FICAN.
- Public concern/discussion and comment period.

Attendance is open to the public, but will be limited to the space available. The public must make arrangements by February 17, 1995 to present oral statements at the forum. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**. Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the forum. Written comments should be addressed to the person listed under the heading **FOR FURTHER INFORMATION CONTACT**. Comments must be received on or before March 6, 1995.

Thomas Connor,

Manager, Technology Division, Office of Environment and Energy.

[FR Doc. 95–80 Filed 1–3–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 94–83; Notice 2]

Decision that Nonconforming 1990 BMW 750iL Passenger Cars are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1990 BMW 750iL passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1990 BMW 750iL passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified version of the 1990 BMW 750iL), and they are capable of being readily altered to conform to the standards.

DATES: This decision is effective January 4, 1995.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5406).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA

publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Liphardt & Associates, Inc. of Ronkonkoma, New York (Registered Importer R–90–004) petitioned NHTSA to decide whether 1990 BMW 750iL passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on October 12, 1994 (59 FR 51655) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP 91 is the vehicle eligibility number assigned to vehicles admissible under this decision.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby decides that a 1990 BMW 750iL not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1990 BMW 750iL originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. § 30115, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 21, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 95–106 Filed 1–3–95; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 94–105; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1973 Triumph Spitfire MkIV Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1973 Triumph Spitfire MkIV passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1973 Triumph Spitfire MkIV that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATE: The closing date for comments on the petition is February 3, 1995.

ADDRESS: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St. SW., Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, as is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas (''Wallace'') (Registered Importer 90–005) has petitioned NHTSA to decide whether 1973 Triumph Spitfire MkIV passenger cars are eligible for importation into the United States. The vehicle which Wallace believes is substantially similar is the 1973 Triumph Spitfire MkIV that was manufactured for importation into, and sale in, the United States and certified by its manufacturer, British Leyland, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1973 Triumph Spitfire MkIV to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Wallace submitted information with its petition intended to demonstrate that the non-U.S. certified 1973 Triumph Spitfire MkIV, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1973 Triumph Spitfire MkIV is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence . . . .*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 New Pneumatic Tires, 111 *Rearview Mirror*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, *201 Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield*

Retention, and 302 *Flammability of Interior Materials.*

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* placement of the appropriate symbol on the hazard warning signal control.

Standard No. 105 *Hydraulic Brake Systems:* installation of a brake system warning light, with the word ''Brake'' inscribed on its lens.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model and sealed beam headlamps; (b) installation of amber reflectors and lamps as front sidemarkers and red reflectors and lamps as rear sidemarkers.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch and a warning buzzer in the steering lock assembly.

Standard No. 115 *Vehicle Identification Number:* installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 208 *Occupant Crash Protection:* installation of a seat belt warning system, activated by a microswitch in the seat belt latch. The petitioner states that the non-U.S. certified 1973 Triumph Spitfire MkIV is equipped with Type 2 seat belt assemblies incorporating a latch mechanism that releases both the upper torso restraint and the lap belt simultaneously at a single point by means of a pushbutton. Additionally, the petitioner states that the upper torso restraint adjusts by means of an emergency locking retractor.

Standard No. 214 *Side Door Strength:* installation of reinforcing beams with a peak crush resistance of not less than two times the curb weight of the vehicle, or 7000 pounds, whichever is less.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Additionally, the petitioner states that front and rear bumper guards must be installed on the non-U.S. certified 1973 Triumph Spitfire MkIV to comply with the Bumper Standard found in 49 CFR Part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated 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. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 21, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 95–107 Filed 1–3–95; 8:45 am]

BILLING CODE 4910–59–P

National Highway Traffic Safety Administration

[Docket No. 94–78; Notice 2]

Decision That Nonconforming 1971 MGB GT Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1971 MGB GT passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1971 MGB GT passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified version of the 1971 MGB GT), and they are capable of being readily altered to conform to the standards.

DATE: This decision is effective January 4, 1995.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

G&K Automotive Conversion, Inc. of Santa Ana, California (Registered Importer R–90–007) petitioned NHTSA to decide whether 1971 MGB GT passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on October 12, 1994 (59 FR 51656) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP 90 is the vehicle eligibility number assigned to vehicles admissible under this decision.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby decides that a

1971 MGB GT not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1971 MGB GT originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. § 30115, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 21, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 95–104 Filed 1–3–95; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 94–106; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1991 Mercedes-Benz 200E Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1991 Mercedes-Benz 200E passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1991 Mercedes-Benz 200E that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date of comments on the petition is February 3, 1995.

ADDRESS: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania (Registered Importer No. R–90–009) has petitioned NHTSA to decide whether 1991 Mercedes-Benz 200E (Model ID 124.021) passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1991 Mercedes-Benz 300E. Champagne has submitted information indicating that Daimler Benz A.G., the company that manufactured the 1991 Mercedes-Benz 300E, certified that vehicle as conforming to all applicable Federal motor vehicle safety standards and offered it for sale in the United States.

The petitioner contends that it carefully compared the 200E to the 300E, and found the two models to be substantially similar with respect to compliance with most applicable Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the 1991 model 200E, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as the 1991 model 300E that was offered for sale in the United States, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the 1991 model 200E is identical to the certified 1991 model 300E with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence . . . .*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*

Additionally, the petitioner states that the 1991 model 200E complies with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: (a) substitution of a lens marked ''Brake'' for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies; (d) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims*: installation of a tire information placard.

Standard No. 111 *Rearview Mirrors:* replacement of the passenger side rear view mirror, which is convex, but lacks the required warning statement.

Standard No. 114 *Theft Protection:* installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 *Vehicle Identification Number:* installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power Window Systems:* rewiring of the power window

system so that the window transport is inoperative when the ignition is switched off.

Standard No. 206 *Door Locks and Door Retention Components:* replacement of the rear door locks and lock buttons with U.S.-model parts.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a U.S.-model seat belt in the driver's position, or a belt webbing-actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer; (c) replacement of the driver's side aid bag with a U.S.-model component; (d) installation of a U.S.-model knee bolster on the driver's side. The petitioner states that lap and shoulder restraints are also furnished at the two front designated seating positions and the rear outboard seating positions, and that a lap belt is furnished at the rear center seating position.

Standard No. 214 *Side Door Strength:* installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated 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. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 21, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 95–108 Filed 1–3–95; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 94–51; Notice 2]

Decision That Nonconforming 1990 Mercedes-Benz 560SEL Passenger Cars are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1990 Mercedes/Benz 560SEL passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1990 Mercedes-Benz 560SEL passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified version of the 1990 Mercedes-Benz 560SEL), and they are capable of being readily altered to conform to the standards.

DATE: This decision is effective January 4, 1995.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania (Registered Importer R–90–009) petitioned NHTSA to decide whether 1990 Mercedes-Benz 560SEL passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on October 12, 1994 (59 FR 51657) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP 89 is the vehicle eligibility number assigned to vehicles admissible under this decision.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby decides that a 1990 Mercedes-Benz 560SEL (Model ID 126.039) not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1990 Mercedes-Benz 560SEL originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. § 30115; and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8

Issued on December 21, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 95–103 Filed 1–3–95; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 94–81; Notice 2]

Decision That Nonconforming 1995 Mercedes-Benz Gelaendewagen G320 (Long Wheel Base Type 463) Multi-Purpose Passenger Vehicles are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1995 Mercedes-

Benz Gelaendewagen G320 (long wheel base Type 463) multi-purpose passenger vehicles are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1995 Mercedes-Benz Gelaendewagen G320 (long wheel base Type 463) MPVs not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they have safety features that comply with, or are capable of being altered to comply with, all such standards.

DATE: The decision is effective January 4, 1995.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards. Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. § 30141(a)(1)(B) (formerly section 108(c)(3)(A)(i)(II) of the Act, 15 U.S.C. § 1397(c)(3)(A)(II)) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

Europa International, Inc. of Santa Fe, New Mexico (''Europa'') (Registered Importer No. R–91–002) petitioned NHTSA to decide whether 1995 Mercedes-Benz Gelaendewagen G320 (long wheel base Type 463) MPVs are eligible for importation into the United States. NHTSA published notice of the petition on October 3, 1994 (59 FR 50330) to afford an opportunity for public comment. That notice identified the vehicle that is the subject of the petition as a ''300GE Type 463 Gelaendewagen.'' In a letter dated November 23, 1994, Europa informed NHTSA that this vehicle is officially designated as the ''G320 Type 463 Gelaendewagen.'' That designation is consequently used in this notice.

As described in the notice of the petition, Europa claimed that Mercedes-Benz Gelaendewagen G320 (long wheel base Type 463) MPVs have safety features that comply with Standard Nos. 102 *Transmission Shift Lever Sequence* * * * (based on visual inspection and operation), 103 *Defrosting and Defogging Systems* (based on inspection), 104 *Windshield Wiping and Washing Systems* (based on operation), 106 *Brake Hoses* (based on visual inspection of certification markings), 107 *Reflecting Surfaces* (based on visual inspection), 113 *Hood Latch Systems* (based on information in owner's manual describing operation of secondary latch mechanism), 116 *Brake Fluids* (based on visual inspection of certification markings and information in owner's manual describing fluids installed at factory), 119 *New Pneumatic Tires for Vehicles other than Passenger Cars* (based on visual inspection of certification markings), 124 *Accelerator Control System* (based on operation and comparison to U.S.-certified vehicles), 201 *Occupant Protection in Interior Impact* (based on test data and certification of vehicle to European standard), 202 *Head Restraints* (based on test data and certification of vehicle to European standard), 204 *Steering Control Rearward Displacement* (based on test film), 205 *Glazing Materials* (based on visual inspection of certification markings), 207 *Seating Systems*, (based on test results and certification of vehicle to European standard), 209 *Seat Belt Assemblies* (based on certification markings), 211 *Wheel Nuts, Wheel Discs and Hubcaps* (based on visual inspection), 214 *Side Impact Protection* (based on test results), 219 *Windshield Zone Intrusion* (based on engineering evaluation of Standard No. 208 compliance test film and test data), and 302 *Flammability of Interior Materials* (based on composition of upholstery).

The petitioner also contended that the 1995 Mercedes-Benz Gelaendewagen G320 (long wheel base Type 463) MPV is capable of being altered to comply with the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked ''Brake'' for a lens with an ECE Symbol on the brake failure indicator lamp; (b) installation of a speedometer/odometer calibrated in miles per hour.

Standard No. 105 *Hydraulic Brake Systems:* placement of warning label on brake fluid reservoir cap.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model sealed beam headlamps; (b) installation of U.S.-model side marker lamps and reflectors; (c) installation of a high mounted stop lamp. The petitioner asserted that testing performed on the taillamp reveals that it complies with the standard, even though it lacks a DOT certification marking, and that all other lights are DOT certified.

Standard No. 111 *Rearview Mirrors:* inscription of the required warning statement on the convex surface of the passenger side rearview mirror.

Standard No. 114 *Theft Protection:* installation of a warning buzzer in the steering lock electrical circuit.

Standard No. 115 *Vehicle Identification Number:* installation of a VIN plate that can be read from outside the left windshield pillar.

Standard No. 118 *Power-Operated Window Systems:* rewiring of the power window system so that the window transport is inoperative when the front doors are open.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* installation of a tire information placard. The petitioner asserted that even though the tire rims lack a DOT certification marking, they comply with the standard, based on their manufacturer's certification that they comply with the German TUV regulations, as well as their certification by the British Standards Association and the Rim Association of Australia.

Standard No. 206 *Door Locks and Door Retention Components:* installation of interior locking buttons on all door locks and modification of rear door locks to disable latch release controls when locking mechanism is engaged.

Standard No. 208 *Occupant Crash Protection:* installation of a complying driver's side air bag and a seat belt

warning buzzer. The petitioner asserted that the vehicle conforms to the standard's injury criteria at the front passenger position based on a test report from the vehicle's manufacturer.

Standard No. 210 *Seat Belt Assembly Anchorages:* insertion of instructions on the installation and use of child restraints in the owner's manual for the vehicle. The petitioner asserted that the vehicle is certified as complying with a European standard that contains more severe force application requirements than those of this standard.

Standard No. 212 *Windshield Retention:* application of cement to the windshield's edges.

The petitioner provided test data indicating that the vehicle satisfied the frontal barrier requirements of Standard No. 301 *Fuel System Integrity.* The petitioner also supplied data on a rear barrier crash at 31 mph with crash forces approximating those required by the standard. The data revealed that fuel leaked from the vent during the rollover that was conducted as part of this test. The petitioner installed a rollover valve in the fuel tank line to resolve that problem. The petitioner also stated that the vehicle should comply with the lateral impact test at the lower speed of 20 mph due to the reinforcing structure surrounding the fuel tank and the placement of the fuel lines inside the main frame of the vehicle.

No comments were received in response to the notice of the petition. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VCP–06 is the vehicle eligibility number assigned to vehicles admissible under this determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby decides that 1995 Mercedes-Benz Gelaendewagen G320 (long wheel base Type 463) MPVs are eligible for importation into the United States because they have safety features that comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. § 30141 (a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on December 21, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 95–105 Filed 1–3–95; 8:45 am]

BILLING CODE 4910–59–P

THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

Regional Advisory Board Meetings for Regions I–VI

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Meetings notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is hereby published for the Series 19 Regional Advisory Board meetings for Regions I through VI. The meetings are open to the public.

DATES: The 1995 meetings are scheduled as follows:

1. January 18, 9 a.m. to 12:30 p.m., San Bernardino, California, Region VI Advisory Board.
2. January 20, 9 a.m. to 12:30 p.m., Seattle, Washington, Region III Advisory Board.
3. January 25, 11 a.m. to 2 p.m., New Orleans, Louisiana, Region IV Advisory Board.
4. January 27, 9 a.m. to 12:30 p.m., Phoenix, Arizona, Region V Advisory Board.
5. January 31, 9 a.m. to 12:30 a.m., Miami, Florida, Region II Advisory Board.
6. February 2, 9 a.m. to 12:30 p.m., New York City, New York, Region I Advisory Board.

ADDRESSES: The meetings will be held at the following locations:

1. San Bernardino, California—Radisson Hotel, 295 North ''E'' Street.
2. Seattle, Washington—Seattle Hilton, Sixth and University Streets.
3. New Orleans, Louisiana—Doubletree Hotel, 300 Canal Street.
4. Phoenix, Arizona—TBA.
5. Miami, Florida—TBA.
6. New York City, New York—Park Central Hotel, 870 7th Avenue (at 56th St.).

FOR FURTHER INFORMATION CONTACT: Jill Nevius, Committee Management Officer, Thrift Depositor Protection Oversight Board, 808 17th Street, NW., Washington, DC 20232, 202/416–2626.

SUPPLEMENTARY INFORMATION: Section 501(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law No. 101–73, 103 Stat. 183, 382–383, directed the Oversight Board to establish one national advisory board and six regional advisory boards.

Purpose: The Regional Advisory Boards provide the Resolution Trust Corporation (RTC) with recommendations on the policies and programs for the sale of RTC owned real property assets.

Agenda: The Board will address issues surrounding the RTC Affordable Housing Disposition Program. Topics to be addressed at the six meetings will include monitoring and compliance, program successes and lessons learned, and cooperative efforts with state and local governments. The Boards also will hear from the vice presidents of the RTC's regional offices as well as from witnesses testifying on specific agenda topics.

Statements: Interested persons may submit to an Advisory Board written statements, data, information, or views on the issues pending before the Board prior to or at the meeting. The meetings will include a public forum for oral comments. Oral comments will be limited to approximately five minutes. Interested persons may sign up for the public forum at the meeting. All meetings are open to the public. Seating is available on a first come first served basis.

Dated: December 29, 1994.

Jill Nevius,

Committee Management Officer, Office of Advisory Board Affairs.

[FR Doc. 95–123 Filed 1–3–95; 8:45 am]

BILLING CODE 2221–01–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Renegotiation Board Interest Rate, Prompt Payment Interest Rate, and Contracts Disputes Act

Although the Renegotiation Board is no longer in existence, other Federal Agencies are required to use interest rates computed under the criteria established by the Renegotiation Act of 1971 (P.L. 92–41). For example, the Contracts Disputes Act of 1978 (P.L. 95–563) and the Prompt Payment Act (P.L. 97–177) are required to calculate interest due on claims at a rate established by the Secretary of the Treasury pursuant to Public Law 92–41 (85 Stat. 97) for the Renegotiation Board (31 U.S.C. 3902).

Therefore, notice is hereby given that, pursuant to the above mentioned sections, the Secretary of the Treasury has determined that the rate of interest applicable for the purpose of said

sections, for the period beginning January 1, 1995 and ending on June 30, 1995, is 8⅛% per centum per annum.

Dated: December 27, 1994.

Marcus Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 95–8 Filed 1–3–95; 8:45 am]

BILLING CODE 4810–35–M

[Dept. Circ. 570, 1994—Rev., Supp. No. 5]

Surety Companies Acceptable on Federal Bonds; Change of Name; The Great Lakes Reinsurance Company, U.S. Branch

The Great Lakes Reinsurance Company, U.S. Branch, a Canadian corporation, has formally changed its name to Great Lakes American Reinsurance Company, effective October 1, 1994. The Company was last listed as an acceptable reinsurer on Federal bonds at FR 34187, July 1, 1994.

A Certificate of Authority as an acceptable reinsurer on Federal bonds, dated today, is hereby issued under Sections 9304 to 9308 of Title 31 of the United States Code, to Great Lakes American Reinsurance Company, New York, New York. This new Certificate replaces the Certificate of Authority issued to the Company under its former name. The underwriting limitation of $5,217,000 established for the Company as of July 1, 1994, remains unchanged until June 30, 1995.

Certificates of Authority expire on June 30, each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the Company remains qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1, in the Department Circular 570, which outlines details as to understanding limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treausry Circular 570, 1994 Revision, at page 34187 to reflect this change.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Hyattsville, MD 20782, telephone (202) 874–6602.

Dated: December 20, 1994.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Services.

[FR Doc. 95–54 Filed 1–3–95; 8:45 am]

BILLING CODE 4810–35–M

[Dept. Circ. 570, 1994—Rev., Supp. No. 4]

Surety Companies Acceptable on Federal Bonds; Suspension of Authority; Municipal Bond Investors Assurance Corporation

Notice is hereby given that the Certificate of Authority issued by the Treasury to Municipal Bond Investors Assurance Corporation, of Armonk, New York, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is hereby suspended at the Company's request, effective today. The suspension will remain in effect until further notice.

The Company was last listed as an acceptable surety on Federal bonds at 59 FR 34166, July 1, 1994. Federal bond-approving officers should annotate their reference copies of Treasury Circular 570 to reflect the suspension.

With respect to any surety bonds currently in force with Municipal Bond Investors Assurance Corporation, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new surety bonds should be accepted from the Company. In addition, surety bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Hyattsville, MD 20782, telephone (202) 874–6850.

Dated: December 20, 1994.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 95–55 Filed 1–3–95; 8:45 am]

BILLING CODE 4810–35–M

Internal Revenue Service

Commissioner's Advisory Group: Public Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public meeting of Commissioner's Advisory Group.

SUMMARY: Public meeting of the Commissioner's Advisory Group will be held in Washington, DC.

DATES: The meeting will be held January 18, 1995.

FOR FURTHER INFORMATION CONTACT: Patricia Washburn, PC:E, 1111 Constitution Avenue, NW., room 6133 ICC, Washington, DC 20224. Telephone No. (202) 927–9741 (not a toll-free number).

Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that a public meeting of the Commissioner's Advisory Group will be held on January 18, 1995, beginning at 8:30 am in Room 3313, main Internal Revenue Service building, 1111 Constitution Avenue, NW., Washington, DC 20224.

The agenda will include the following topics:

Filing Season Readiness
AEITC
Tax Link
Legislative Update
Fedstate Update
Business Vision Subgroup
Simplified Tax and Wage Reporting Simplification
Education Subgroup
Simplification Subgroup
Commercial Return Preparer Project/ Conference on Professionalism
Technology, Security and Privacy Subgroup
IRS Information Services and Small Business Update
Interest Netting
Compliance Initiatives

Note: Last minute changes to the agenda or order of topic discussion are possible and could prevent effective advance notice.

The meeting will be in a room that accommodates approximately 50 people, including members of the Commissioner's Advisory Group and IRS officials. Due to the limited conference space, notification of intent to attend the meeting must be made with Patricia Washburn, no later than January 11, 1995. Mrs. Washburn can be reached on (202) 927–9741 (not toll-free).

If you would like to have the Committee consider a written statement, please call or write: Ms. Patricia Washburn, Intergovernmental and External Relations, PC:E, Internal Revenue Service, 1111 Constitution Avenue, NW., Room 6133 ICC, Washington, DC 20224.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95–14 Filed 1–3–95; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee for Cooperative Studies, Health Service, and Rehabilitation Research and Development Subcommittee on Scientific Review and Evaluation for Health Services Research and Development, Notice of Meeting

The Department of Veteran Affairs, Veterans Health Administration, gives notice under Public Law 92–463, that a meeting of the Advisory Committee for Cooperative Studies, Health Service, and Rehabilitation Research and

Development Subcommittee on Scientific Review and Evaluation for Health Services Research and Development will be held at The Holiday Inn, 7353 E. Indian School Road, Scottsdale, AZ, January 17 through January 19, 1995. The session on January 17, 1995, is scheduled to begin at 3:30 p.m. and end at 6:30 p.m. (MST). The sessions scheduled for January 18 and 19 are scheduled to begin at 8:00 a.m. and end at 5:00 p.m. (MST). The purpose of the meeting is to review research and development applications concerned with the measurement and evaluation of health care systems and with testing new methods of health care delivery and management. Applications are reviewed for scientific and technical merit and recommendations regarding their funding are prepared for the Associate Chief Medical Director for Research and Development.

The meeting will be open to the public (to the seating capacity of the room) at the start of the January 17 session for approximately one hour to cover administrative matters and to discuss the general status of the program. The closed portion of the meeting involves discussion, examination, reference to, and oral review of staff and consultant critiques of research protocols, and similar documents. During this portion of the meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action regarding such research projects. As provided by subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing portions of these meetings is in accordance with 5 U.S.C. 552b(c)(6) and (9)(B).

Due to the limited seating capacity of the room, those who plan to attend the open session should contact Mr. Bill Judy, Review Program Manager (12B3), Health Services Research and Development Service, Department of Veterans Affairs, 810 Vermont Avenue, NW, (Techworld), Washington, DC 20420 (phone: 202–523–7425) at least five days before the meeting.

Dated: December 20, 1994.

By Direction of the Secretary:

Heyward Bannister,

Committee Management Officer.

[FR Doc. 95–99 Filed 1–3–95; 8:45 am]

BILLING CODE 8320–01–M

A Child Development Center at the VAMC Dublin, GA

AGENCY: Department of Veterans Affairs.

ACTION: Notice of designation.

SUMMARY: The Secretary of the Department of Veterans Affairs is designating the Dublin, GA, Department of Veterans Affairs Medical Center (VAMC) for an Enhanced-Use development. The Department intends to enter into a long-term lease of real property with the developer whose proposal will provide the best quality child development and care at the greatest economic advantage for children of VAMC employees. The developer will be responsible for all apsects of construction, ownership, maintenance, and operation of the Child Development Center.

FOR FURTHER INFORMATION CONTACT: Brian McDaniel, Office of Asset and Enterprise Development (089), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 233–3307.

SUPPLEMENTARY INFORMATION: 38 U.S.C. 8161 *et seq.* specifically provides that the Secretary may enter into an Enhanced-Use lease, if the Secretary determines that at least part of the use of the property under the lease will be to provide appropriate space for an activity contributing to the mission of the Department; the lease will not be inconsistent with and will not adversely affect the mission of the Department; and the lease will enhance the property. This project meets these requirements.

Approved: December 14, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 95–98 Filed 1–3–95; 8:45 am]

BILLING CODE 8020–01–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 2
Wednesday, January 4, 1995

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).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, January 5, 1995.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public

MATTER TO BE CONSIDERED:

Protocol Revisions

The Commission will consider a final rule revising the child-resistant packaging test protocols under the Poison Prevention Packaging Act.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207, (301) 504–0800.

Dated: December 29, 1994.

Todd A. Stevenson,

Acting Secretary.

[FR Doc. 94–32334 Filed 12–30–94; 2:43 pm]

BILLING CODE 6355–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, January 4, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposals regarding amendments to Regulation DD (Truth in Savings) concerning calculation of the annual percentage yield. (Proposed earlier for public comment; Docket No. R–0836).
2. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: December 28, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–32340 Filed 12–30–94; 2:44 pm]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:00 a.m., Wednesday, January 4, 1995, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 28, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–32341 Filed 12–30–94; 2:44 pm]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, January 9, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 2lst Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals regarding conflicts of interest policies and financial disclosure forms for Federal Reserve Bank supervisory personnel. (This item was originally announced for a closed meeting on January 3, 1995.)
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 30, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–32336 Filed 12–30–94; 10:35 am]

BILLING CODE 6210–01–P

SECURITIES AND EXCHANGE COMMISSION

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 meeting during the week of January 2, 1995.

A closed meeting will be held on Thursday, January 5, 1995, at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the 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 Wallman, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, January 5, 1995, at 2:30 p.m., will be:

Institution of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

Opinions.

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: The Office of the Secretary (202) 942–7070.

Dated: December 29, 1994.

Jonathan G. Katz,

Secretary.

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